# 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): February 2, 2021**

# Mohawk Group Holdings, Inc.
**(Exact Name of Registrant as Specified in its Charter)**

| **Delaware** | **001-38937** | **83-1739858** |
|---|---|---|
| **(State or Other Jurisdiction of Incorporation)** | **(Commission File Number)** | **(IRS Employer Identification No.)** |

**Mohawk Group Holdings, Inc.**
**37 East 18th Street, 7th Floor**
**New York, NY 10003**
**(Address of Principal Executive Offices)(Zip Code)**

**(347) 676-1681**
**(Registrant's telephone number, including area code)**

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

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

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

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

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

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

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

| Title of each class | Trading Symbol | Name of each exchange on which registered |
|---|---|---|
| **Common Stock, $0.0001 par value** | **MWK** | **The Nasdaq Stock Market LLC** |

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.**

*Securities Purchase Agreement*

On February 2, 2021, Mohawk Group Holdings, Inc. (the "Company") entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") with an accredited investor (the "Investor"), pursuant to which, among other things, the Company agreed to issue and sell to the Investor, in a private placement transaction (the "Private Placement"), in exchange for the payment by the Investor of $14,025,000, less applicable expenses as set forth in the Securities Purchase Agreement, (i) a 0% coupon senior secured promissory note in an aggregate principal amount of $16,500,000 (the "Note") that will mature on February 1, 2023, and (ii) a warrant (the "Warrant") to purchase up to an aggregate of 469,931 shares of common stock of the Company, par value $0.0001 per share ("Common Stock").

The Company used all of the net proceeds from the Private Placement to fund the Asset Purchase (as defined below).

The Note is a senior secured obligation of the Company and ranks senior to all indebtedness of the Company (other than the indebtedness under the Credit Agreement (as defined below) to the extent of the value of the collateral securing such indebtedness). The Note does not have any amortization payments.

The Company may redeem all (but not less than all) of the Note at a price of 96% of the then-outstanding principal amount if the Note is redeemed prior to October 1, 2021, 98% of the then-outstanding principal amount if the Note is redeemed on or after October 1, 2021 but prior to March 1, 2022 and 100% of the then-outstanding principal amount if the Note is redeemed on or after March 1, 2022. Subject to certain exceptions, upon the completion of any equity financing, the Company will be required to redeem (at par) a principal amount of the Note and (at par) a principal amount of the December Note (as defined below). The aggregate principal amount of the Note and the December Note that the Company will redeem will be equal to no less than the greater of (i) 20% of the net proceeds of such equity financing, excluding net proceeds that will be used to make acquisitions, if any, and (ii) 5% of the net proceeds of such equity financing, in each case with a cap of $5.5 million per financing.

The Note imposes certain customary affirmative and negative covenants upon the Company, as well as covenants that (i) restrict the Company and its subsidiaries from incurring any additional indebtedness or suffering any liens, subject to specified exceptions, (ii) restrict the ability of the Company and its subsidiaries from making certain investments, subject to specified exceptions, (iii) restrict the declaration of any dividends or other distributions, subject to exceptions for specified subsidiaries of the Company, (iv) require the Company and its subsidiaries to maintain specified earnings, and (v) require the Company and certain specified subsidiaries to maintain minimum amounts of cash on hand. If an event of default under the Note occurs, the Investor can elect to redeem the Note for cash equal to 115% of the then-outstanding principal amount of the Note, plus accrued and unpaid default interest, which accrues at a rate per annum equal to 15% from the date of a default or event of default (the "Event of Default Acceleration Amount"). If the Company fails to pay the Event of Default Acceleration Amount in cash, then the Investor may elect to redeem the Note and receive the unpaid portion of the Event of Default Acceleration Amount entirely or partially in shares of Common Stock. The price for any shares issued to pay such Event of Default Acceleration Amount will be equal to 80% of the lesser of (i) the daily volume weighted average price ("VWAP") on the date the Investor delivers notice of its election to redeem the Note for shares of Common Stock (the "Event of Default Stock Payment Date"), and (ii) the average of the lowest two daily VWAPs during the ten trading day period ending on such Event of Default Stock Payment Date. The Investor also has the option of requiring the Company to redeem the Note if the Company undergoes a fundamental change for the then-outstanding principal amount of the Note plus any accrued default interest thereon.

Until the later of (i) August 2, 2022, and (ii) the date the Note is fully repaid, the Investor will, subject to certain exceptions, have the right to participate for up to 40% of any debt, preferred stock or equity-linked financing of the Company or its subsidiaries and up to 10% of any Common Stock equity financing of the Company or its subsidiaries.

Each Warrant has an exercise price of $25.10 per share, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, will become exercisable on August 2, 2021, has a term of five years from the date of issuance and will be exercisable on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the Warrant (the "Warrant Shares"), in which case the Warrant shall also be exercisable on a cashless exercise basis at the Investor's election. The Warrant includes a provision that gives the Company the right to require the Investor to exercise the Warrant if the price of the Common Stock exceeds 200% of the exercise price of the Warrant for 20 consecutive trading days and certain other conditions are satisfied.

The Note and the Warrant provide that in no event will the number of shares of Common Stock issued upon conversion of the Note or exercise of the Warrant result in the Investor's beneficial ownership exceeding 4.99% of the Company's shares outstanding at the time of conversion or exercise, as applicable (which percentage may be decreased or increased by the Investor, but to no greater than 9.99%, and provided that any increase above 4.99% will not be effective until the sixty-first (61st) day after notice of such request by the Investor to increase its beneficial ownership limit has been delivered to the Company).

The Securities Purchase Agreement also contains customary representations and warranties of the Company and the Investor. There is no material relationship between the Company or its affiliates and the Investor other than in respect of the Securities Purchase Agreement, the Note and the Warrant and in connection with the December Securities Purchase Agreement, the December Note and the December Warrant (each as defined below) as the December Investor (as defined below) is an affiliate of the Investor.

The foregoing summaries of the Securities Purchase Agreement, the Note and the Warrant do not purport to be complete and are qualified in their entirety by reference to the copies of the Securities Purchase Agreement, the form of Note and the form of Warrant that are filed herewith as Exhibits 10.1, 4.1 and 4.2, respectively.

The representations, warranties and covenants contained in the Securities Purchase Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to the Securities Purchase Agreement, and may be subject to limitations agreed upon by the contracting parties. Accordingly, the Securities Purchase Agreement is incorporated herein by reference only to provide investors with information regarding the terms of the Securities Purchase Agreement, and not to provide investors with any other factual information regarding the Company or its business, and should be read in conjunction with the disclosures in the Company's periodic reports and other filings with Securities and Exchange Commission (the "SEC").

A.G.P. / Alliance Global Partners acted as the exclusive placement agent in connection with the Private Placement.

*Amendment to Securities Purchase Agreement, Note and Warrant*

On February 2, 2021, the Company entered into (i) an amendment (the "SPA & Note Amendment") to that certain Securities Purchase Agreement (the "December Securities Purchase Agreement"), dated as of November 30, 2020, by and among the Company and an accredited investor (the "December Investor"), and to that certain Senior Secured Note due 2022 issued by the Company to the December Investor on December 1, 2020 (the "December Note") and (ii) an amendment (the "Warrant Amendment") to that certain Warrant to Purchase Common Stock issued by the Company to the December Investor on December 1, 2020 (the "December Warrant").

Pursuant to the December Securities Purchase Agreement, the Company issued and sold to the December Investor, in a private placement transaction, the December Note and the December Warrant.

The SPA & Note Amendment amends the December Securities Purchase Agreement and the December Note to, among other things, allow for the issuance of the Note and to clarify how the issuance of the Note and certain of the Investor's rights thereunder affects the December Note and the December Investor's rights under the December Note. The Warrant Amendment amends the December Warrant to amend the provision that gives the Company the right to require the December Investor to exercise the December Warrant if the price of the Common Stock exceeds 200% of the exercise price of the December Warrant for 20 consecutive trading days and certain other conditions are satisfied to increase the price per share that the Common Stock must exceed for 20 consecutive trading days from $18.02 to $30.00 per share.

The foregoing summaries of the SPA & Note Amendment and the Warrant Amendment do not purport to be complete and are qualified in their entirety by reference to the copies of the SPA & Note Amendment and the Warrant Amendment that are filed herewith as Exhibits 4.3 and 4.4, respectively.

*Amendment to MidCap Credit Agreement*

On February 2, 2021, the Company, certain of the Company's subsidiaries, MidCap Funding IV Trust, as agent, and the lenders party thereto, entered into an amendment (the "Amendment") to that certain Amended and Restated Credit Agreement, dated as of November 23, 2018, as amended (the "Credit Agreement"), providing for a $25.0 million revolving credit facility. Pursuant to the Amendment, among other things, the Credit Agreement was amended to (i) permit the incurrence of certain debt, including the Note, (ii) permit payments to the Investor as required under the Note, (iii) permit the Asset Purchase, and (iv) include certain restrictions on amendments or modifications to the Note.

The foregoing summary of the Amendment does not purport to be complete and is qualified in its entirety by reference to the copy of the Amendment that is filed herewith as Exhibit 10.2.

*Asset Purchase Agreement*

On February 2, 2021 (the "Closing Date"), the Company and its wholly owned subsidiary Truweo, LLC, a Delaware limited liability company ("Acquisition Sub" and together with the Company, "Purchaser"), entered into and closed the transactions contemplated by that certain Asset Purchase Agreement (the "Asset Purchase Agreement") with Healing Solutions, LLC, a Delaware limited liability company ("Seller"), Jason R. Hope, and only for the purposes of certain sections thereof, Super Transcontinental Holdings LLC, a Delaware limited liability company. Pursuant to the Asset Purchase Agreement, Purchaser, among other things, purchased and acquired certain of Seller's assets related to Seller's retail and ecommerce business under the brands Healing Solutions, Tarvol, Sun Essential Oils and Artizen (among others), which is conducted through certain physical locations, virtual channels or websites, including amazon.com and healingsolutions.com (the "Asset Purchase"), and Acquisition Sub assumed certain liabilities of Seller.

As consideration for the Asset Purchase, Purchaser (i) paid to Seller $15,280,173 in cash (the "Cash Purchase Price") and (ii) issued 1,387,759 shares of Common Stock to Seller, the cost basis of which was $24.01 (such basis being the volume-weighted average closing price per share of Common Stock, as reported on The Nasdaq Stock Market LLC, for the 10 consecutive trading days ending on the trading day immediately prior to the Closing Date) (the "Closing Shares"). At the closing of the Asset Purchase (the "Closing"), the Company withheld $1,993,496 of the Cash Purchase Price to serve as collateral for Seller's payment of certain overdue trade payables to be released to Seller in accordance with the terms of the Asset Purchase Agreement.

In addition to the Cash Purchase Price and the Closing Shares, following the Closing, Seller shall also be entitled to receive (i) 170,042 shares of Common Stock in respect of certain inventory acquired under the Asset Purchase Agreement (the "Inventory Consideration Shares"), as such number of shares shall be adjusted (up to a maximum of 280,000 shares) pursuant to the terms thereof, and (ii) subject to the conditions set forth in the Asset Purchase Agreement, the Earn-Out Shares (as described below). The Inventory Consideration Shares shall be issued to Seller following the final determination of inventory values pursuant to the terms of the Asset Purchase Agreement, which determination is expected to occur approximately nine to ten months following the Closing Date and such shares shall be subject to vesting restrictions which shall lapse on the date that is the one year anniversary after the Closing Date.

Pursuant to the terms of the Asset Purchase Agreement, Seller is required to use its commercially reasonable efforts to identify one or more suppliers (other than Seller) of finished goods inventory of all SKUs that constitute assets acquired in the Asset Purchase ("New Suppliers") and to initiate discussions with such New Suppliers for the purpose of negotiating new supply agreements between Purchaser or its affiliates, on the one hand, and the New Supplier, on the other hand, for the purchase of such SKUs following the Closing on terms acceptable to Purchaser in its sole discretion, acting reasonably. If, on or before the date that is 15 months after the Closing Date, an Earn-Out Consideration Event (as defined below) has occurred, then Seller shall be entitled to receive up to a maximum of 528,670 shares of Common Stock (the "Earn-Out Shares"), which number of shares is subject to reduction in accordance with the terms of the Asset Purchase Agreement based on the time period within which the Earn-Out Consideration Event occurs (if it occurs at all). An "Earn-Out Consideration Event" means the latter to occur of (i) Purchaser having entered into supplier agreements with New Suppliers in respect of each SKU that constitutes an asset acquired in the Asset Purchase and (ii) Purchaser having terminated each of the services provided to Purchaser under the Transition Services Agreement (as defined below) such that no services are being provided thereunder.

The aggregate maximum number of shares of Common Stock that are issuable to Seller under the Asset Purchase Agreement is 2,196,429 shares.

The Asset Purchase Agreement contains customary representations, warranties and covenants of Purchaser and Seller. Subject to certain customary limitations, Seller agreed to indemnify the Company and its officers, directors, employees and other authorized agents against certain losses related to, among other things, breaches of Seller's representations, warranties, covenants and agreements as well as any excluded liabilities described therein.

In connection with the Asset Purchase, the Company also agreed, pursuant to the Asset Purchase Agreement, to prepare and file one or more registration statements with the SEC for the purpose of registering for resale the Closing Shares, Inventory Consideration Shares and the Earn-Out Shares (collectively, the "Shares"). Under the Asset Purchase Agreement, the Company is required to file such registration statement with the SEC within 120 days following the date on which any such Shares are issued to Seller.

The foregoing summary of the Asset Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Asset Purchase Agreement that is filed herewith as Exhibit 2.1.

The representations, warranties and covenants contained in the Asset Purchase Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to the Asset Purchase Agreement, and may be subject to limitations agreed upon by the contracting parties. Accordingly, the Asset Purchase Agreement is incorporated herein by reference only to provide investors with information regarding the terms of the Asset Purchase Agreement, and not to provide investors with any other factual information regarding the Company or its business, and should be read in conjunction with the disclosures in the Company's periodic reports and other filings with the SEC.

*Lock-Up, Voting and Standstill Agreement*

In connection with the Asset Purchase, Seller entered into a Lock-Up, Voting and Standstill Agreement with the Company (the "Lock-Up Agreement"), pursuant to which Seller has agreed not to, directly or indirectly (subject to limited exceptions set forth therein) (i) sell, pledge, assign, transfer, hypothecate or otherwise dispose of any of the Shares issued to Seller, (ii) enter into any swap, hedge, or other agreement or arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Common Stock beneficially owned by Seller and its affiliates; (iii) engage in any short-selling of any Common Stock beneficially owned by Seller and its affiliates; or (iv) publicly announce any intention to do any of the foregoing, in each case at any time during the period commencing on the Closing Date and ending six months thereafter.

Pursuant to the Lock-Up Agreement, commencing on the Closing Date and until the date that is the six month anniversary thereof, Seller agreed that for so long as it and its affiliates collectively beneficially own any voting securities of the Company, except pursuant to a negotiated transaction with Seller approved by the board of directors of the Company (the "Board"), Seller will not (and will cause its affiliates not to) in any manner, directly or indirectly, among other things: (i) make, effect, initiate, cause or participate in (a) any acquisition of beneficial ownership of any securities of the Company or any securities of any subsidiary or other affiliate of the Company if such acquisition would result in Seller and its affiliates collectively beneficially owning 15% or more of the then outstanding voting securities of the Company, (b) any Company acquisition transaction, (c) any "solicitation" of "proxies" (as those terms are defined in Rule 14a-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended) or consents with respect to any securities of the Company or (d) frustrate or seek to frustrate any Company acquisition transaction proposed or endorsed by the Company; (ii) recommend, nominate or seek to nominate any person to the Board or otherwise act, alone or in concert with others, to seek to control or influence the management, the Board or policies or governance of the Company; (iii) demand an inspection of the Company's books and records whether pursuant to Section 220 of the General Corporation Law of the State of Delaware or otherwise; (iv) institute, solicit, assist or join any litigation, arbitration or other proceeding against or involving the Company or any of its current or former directors or officers (including derivative actions); or (v) agree or offer to take, or encourage or propose (publicly or otherwise) the taking of, any of the foregoing actions, or assist, induce or encourage any other person to take any of the foregoing actions.

In addition, pursuant to the Lock-Up Agreement and at all times prior to the termination date thereunder, Seller shall timely vote in person or by proxy at each annual or special meeting of the Company's stockholders all shares of Common Stock held by Seller in accordance with the recommendations of the Board on each matter presented to the Company's stockholders at such meeting or in any consent solicitation as set forth in the applicable definitive proxy statement, including without limitation the election, removal and/or replacement of directors.

The foregoing summary of the Lock-Up Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Lock-Up Agreement that is filed herewith as Exhibit 10.3.

*Manufacturing Supply Agreement*

In connection with the Asset Purchase and as of the Closing Date, Mohawk Group, Inc., a wholly owned subsidiary of the Company and sole member of the Acquisition Sub ("Acquisition Sub Parent"), entered into a manufacturing supply agreement with Seller (the "Supply Agreement"), pursuant to which Acquisition Sub Parent will purchase certain finished goods (the "Products") from Seller. The term of the Supply Agreement is for 15 months from and after the Closing Date and Acquisition Sub Parent may terminate at any time with 60 days written notice. Seller may not sell or offer for sale, distribute or otherwise dispose of any of the Products to any other person or entity without Acquisition Sub Parent's consent.

The foregoing description of the Supply Agreement does not purport to be complete and is qualified in its entirety to the full text of the Supply Agreement that is filed herewith as Exhibit 10.4.

*Consulting Agreements*

In connection with the Asset Purchase Agreement and as of the Closing Date, the Company entered into consulting agreements (the "Consulting Agreements") with each of Richard Perry, Christopher Marshall and Quinn McCullough (collectively, the "Consultants"). The Consultants will provide certain consulting services to the Company for up to 15 months and if there is an Earn-Out Consideration Event, the Company may issue up to a maximum of 208,242 shares of Common Stock to the Consultants in the aggregate (the "Consulting Shares"), which number of shares is subject to reduction based on the time period within which the Earn-Out Consideration Event occurs under the Asset Purchase Agreement (if it occurs at all). As provided in the Consulting Agreements, if the Consultant is not an "accredited investor" as defined in Regulation D under the Securities Act of 1933, as amended (the "Securities Act"), such Consultant may receive cash in lieu of shares of Common Stock pursuant to the terms of the Consulting Agreement. The Consultants shall have piggy-back registration rights with respect to any such Consulting Shares.

The foregoing description of the Consulting Agreements does not purport to be complete and is qualified in its entirety to the full text of the Consulting Agreements that are filed herewith as Exhibits 10.5, 10.6 and 10.7.

*Transition Services Agreement*

In connection with the Asset Purchase and as of the Closing Date, Acquisition Sub entered into a Transition Services Agreement (the "Transition Services Agreement") with Seller. Pursuant to the Transition Services Agreement, Seller will provide certain transition services to Acquisition Sub for fees that will not exceed $623,729 per month. Acquisition Sub is entitled to reduce the services provided under the Transition Services Agreement (in whole or in part) upon advance written notice to the Seller. Unless earlier terminated by the parties in accordance with the terms thereof, the Transition Services Agreement will terminate on the date that is the 15 month anniversary of the Closing Date.

The foregoing description of the Transition Services Agreement does not purport to be complete and is qualified in its entirety to the full text of the Transition Services Agreement that is filed herewith as Exhibit 10.8.

**Item 2.01. Completion of Acquisition or Disposition of Assets.**

The information set forth in Item 1.01 of this Current Report on Form 8-K regarding the Asset Purchase is incorporated herein by reference into this Item 2.01.

**Item 2.03. Creation of a Direct Financial Obligation.**

The information set forth in Item 1.01 of this Current Report on Form 8-K regarding the Note is incorporated herein by reference into this Item 2.03.

**Item 3.02. Unregistered Sales of Securities.**

The information set forth in Item 1.01 of this Current Report on Form 8-K regarding the Private Placement, the Asset Purchase and the Consulting Agreements is incorporated herein by reference into this Item 3.02.

The Note, the Warrant, the shares of Common Stock issuable pursuant to the Note and the Warrant Shares (collectively, the "Securities") were offered and sold to the Investor on February 2, 2021 in a transaction exempt from registration under the Securities Act in reliance on Section 4(a)(2) thereof and Rule 506(b) of Regulation D thereunder. The Investor represented that it was an "accredited investor," as defined in Regulation D, and was acquiring the Securities for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof. Accordingly, the Securities have not been registered under the Securities Act and the Securities may not be offered or sold in the United States absent registration or an exemption from registration under the Securities Act and any applicable state securities laws.

The Closing Shares were offered and sold on February 2, 2021 in a transaction exempt from registration under the Securities Act, in reliance on Section 4(a)(2) thereof and Rule 506 of Regulation D thereunder. When the Inventory Consideration Shares are issued to Seller and in the event that any Earn-Out Shares are issued to Seller, such shares will be issued by the Company to Seller in reliance upon on Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D thereunder. Seller represented that it was an "accredited investor," as defined in Regulation D, and was acquiring the Closing Shares, the Inventory Consideration Shares and the Earn-Out Shares for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof.

In the event that any Consulting Shares are issued to the Consultants, such shares will be issued by the Company to Consultants in reliance upon on Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D thereunder. In the event that any Consulting Shares are issued to the Consultants, the Consultants are expected to each make representations that such Consultant is an "accredited investor," as defined in Regulation D, and is acquiring the Consulting Shares for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof. As noted above, if the Consultant is not an "accredited investor" as defined in Regulation D under the Securities Act, such Consultant may receive cash in lieu of shares of Common Stock pursuant to the terms of the Consulting Agreement.

Except for the registration rights contemplated by the Asset Purchase Agreement and the piggy-back registration rights contemplated by the Consulting Agreements, the Closing Shares have not been, and the Inventory Consideration Shares, Earn-Out Shares (if any) and Consulting Shares (if any) will not be, registered under the Securities Act and the Shares and the Consulting Shares may not be offered or sold in the United States absent registration or an exemption from registration under the Securities Act and any applicable state securities laws.

Neither this Current Report on Form 8-K nor the exhibits attached hereto is an offer to sell or the solicitation of an offer to buy shares of Common Stock, notes, warrants or any other securities of the Company.

**Item 8.01. Other Events.**

On February 2, 2021, the Company issued a press release announcing its entry into the Securities Purchase Agreement and the Asset Purchase Agreement and the closing of the transactions contemplated by the Securities Purchase Agreement the Asset Purchase Agreement. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

**(a) Financial Statements of Business Acquired.**

The Company intends to file historical financial information required by this Item 9.01(a) under the cover of an amendment to this Current Report on Form 8-K no later than 71 calendar days after the date on which this Current Report on Form 8-K was required to be filed.

**(b) Pro Forma Financial Information.**

The Company intends to file pro forma financial statements required by this Item 9.01(b) under the cover of an amendment to this Current Report on Form 8-K no later than 71 calendar days after the date on which this Current Report on Form 8-K was required to be filed.

**(d) Exhibits.**

| Exhibit Number | Description |
|---|---|
| 2.1* | Asset Purchase Agreement, dated February 2, 2021, by and among (i) Mohawk Group Holdings, Inc. and Truweo, LLC, as Purchaser, (ii) Healing Solutions, LLC, (iii) Jason R. Hope, and (vi) for the purposes of Section 5.11 and Article VII, Super Transcontinental Holdings LLC. |
| 4.1 | Form of Senior Secured Note due 2023. |
| 4.2 | Form of Warrant to Purchase Common Stock, dated February 2, 2021. |
| 4.3 | Amendment to Senior Secured Note due 2022 and Securities Purchase Agreement, dated as of February 2, 2021. |
| 4.4 | Amendment to Warrant to Purchase Common Stock, dated as of February 2, 2021. |
| 10.1+ | Securities Purchase Agreement, dated as of February 2, 2021, by and among Mohawk Group Holdings, Inc. and each of the investors listed on the Schedule of Buyers attached thereto. |
| 10.2+ | Limited Consent and Amendment No. 10 to Amended and Restated Credit Agreement, dated as of February 2, 2021, by and among Mohawk Group Holdings, Inc., Mohawk Group, Inc., certain subsidiaries of Mohawk Group, Inc., set forth on the signature pages thereto, MidCap Funding IV Trust, as agent, and the lenders party thereto. |
| 10.3 | Lock-Up, Voting and Standstill Agreement, dated February 2, 2021, by and between Mohawk Group Holdings, Inc. and Healing Solutions, LLC. |
| 10.4+ | Manufacturing Supply Agreement, dated February 2, 2021, by and between Mohawk Group, Inc. and Healing Solutions, LLC. |
| 10.5+ | Consulting Agreement, dated February 2, 2021, by and between Mohawk Group, Inc. and Richard Perry. |
| 10.6+ | Consulting Agreement, dated February 2, 2021, by and between Mohawk Group, Inc. and Christopher Marshall. |
| 10.7+ | Consulting Agreement, dated February 2, 2021, by and between Mohawk Group, Inc. and Quinn McCullough. |
| 10.8+ | Transition Services Agreement, dated February 2, 2021, by and between Healing Solutions, LLC and Truweo, LLC . |
| 99.1 | Press Release dated February 2, 2021. |

* Non-material schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of any of the omitted schedules and exhibits upon request by the SEC.

\+ Non-material schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of any of the omitted schedules and exhibits upon request by the SEC.

**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.

**MOHAWK GROUP HOLDINGS, INC.**

Date: February 3, 2021

By: /s/ Yaniv Sarig
Name: Yaniv Sarig
Title: President and Chief Executive Officer

**Exhibit 2.1**

# ASSET PURCHASE AGREEMENT

among

**MOHAWK GROUP HOLDINGS, INC.**

*and*

**TRUWEO, LLC**

*as Purchaser*

*and*

**HEALING SOLUTIONS, LLC**

*as Seller*

*and*

**JASON R. HOPE**

*as Founder*

*and*

**SUPER TRANSCONTINENTAL HOLDINGS LLC**

*as Sole Voting Member*

Dated as of February 2, 2021

**SCHEDULES**

| | |
|---|---|
| Schedule R-Brands | Product Brands |
| Schedule 1.1-AAA | Acquired Amazon Accounts |
| Schedule 1.1-AM | Acquired Marks |
| Schedule 1.1-EAL | Excluded Amazon Listings |
| Schedule 1.1-SKU | Excluded SKU Inventory |
| Schedule 1.1-K | Knowledge Persons of Seller |
| Schedule 1.1-RB | Retained Business |
| Schedule 2.1(a)(i) | Acquired Contracts |
| Schedule 2.1(a)(ii) | Transferred IP |
| Schedule 2.1(a)(vi) | Credits and Prepaid Deposits related to Specified Inventory |
| Schedule 2.1(b)(v) | Excluded Contracts |
| Schedule 2.1(b)(xiii) | Other Excluded Assets |
| Schedule 2.2(b)(xii) | Certain Other Excluded Liabilities |
| Schedule 2.5(h) | Consents |
| Schedule 2.5(j) | Consultant |
| Schedule 2.12(a) | Overdue Payables |

**DISCLOSURE SCHEDULES**

| | |
|---|---|
| Schedule 3.1 | Seller Jurisdictions |
| Schedule 3.2 | No Violations |
| Schedule 3.3 | Consents and Approvals; Permits |
| Schedule 3.5(a) | Financial Statements; Accounting and Internal Controls |
| Schedule 3.8 | Absence of Changes or Events |
| Schedule 3.9(b) | Damaged Personal Property |
| Schedule 3.9(c) | Physical Location of Acquired Assets |
| Schedule 3.10(a) | Intellectual Property (Owned) |
| Schedule 3.11 | Contracts |
| Schedule 3.12 | Litigation |
| Schedule 3.13 | Compliance with Laws |
| Schedule 3.15 | Suppliers |
| Schedule 3.16 | Products |

**EXHIBITS**

| | |
|---|---|
| Exhibit A-1 | Acquisition Sub Bill of Sale and Assignment Agreement |
| Exhibit A-2 | Form of Purchaser Designee Bill of Sale and Assignment Agreement |
| Exhibit A-3 | Acquisition Sub Parent Bill of Sale and Assignment and Assumption Agreement |
| Exhibit B | Trademark Assignment Agreement |
| Exhibit C | Inventory Statement |
| Exhibit D | Lock-Up, Voting and Standstill Agreement |
| Exhibit E | Supplier Agreement |
| Exhibit F | Form of Consulting Agreement |
| Exhibit G | Transition Services Agreement |
| Exhibit H | Selling Stockholder Questionnaire |
| Exhibit I | Press Release |

# ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (as may be amended, restated, supplemented or otherwise modified in accordance with Section 8.6, this "**Agreement**"), dated as of February 2, 2021, is among (i) Mohawk Group Holdings, Inc., a Delaware corporation ("**Parent**"), and Truweo, LLC, a Delaware limited liability company and wholly owned subsidiary of Parent ("**Acquisition Sub**" and together with Parent, "**Purchaser**"), and (ii) Healing Solutions, LLC, a Delaware limited liability company ("**Seller**"), (iii) Jason R. Hope ("**Founder**"), and (iv) solely for the purposes of Section 5.11 and Article VII, Super Transcontinental Holdings LLC, a Delaware limited liability company ("**Sole Voting Member**").

## RECITALS

**WHEREAS**, Founder, indirectly, and the Sole Voting Member, directly, owns all of the issued and outstanding voting equity interests in Seller and will derive a substantial benefit from the Transactions;

**WHEREAS**, Seller is engaged in the retail and e-commerce businesses, including the sale and distribution of essential oils, home supplies, appliances, equipment and certain other products under the brands Healing Solutions, Tarvol, Sun Essential Oils, Artizen and including such other brands as are set forth on Schedule R-Brands which businesses are conducted through certain physical locations, virtual channels or websites, including amazon.com and healingsolutions.com (the "**Business**");

**WHEREAS**, Seller is also engaged in the business of (i) providing certain operational support functions and capabilities to the Business and (ii) manufacturing essential oils and other wellness products (the businesses set forth in this recital, collectively the "**Retained Businesses**") which are not included in the Business or the Acquired Assets and are not being transferred to or acquired by Purchaser or any Purchaser Designee, unless and until Purchaser exercises its option to acquire such businesses pursuant to the terms of this Agreement; and

**WHEREAS**, Seller desires to sell to Purchaser and/or Purchaser Designees, and Purchaser desires to acquire (either directly or indirectly through one or more Purchaser Designees) and assume from Seller, all of the Acquired Assets and the Assumed Liabilities, free and clear of all Liens other than Permitted Liens and otherwise on the terms and subject to the conditions set forth herein.

## AGREEMENT

In consideration of the foregoing and the mutual representations, warranties, covenants and agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## ARTICLE I
## DEFINITIONS

**Section 1.1 Certain Defined Terms**. For purposes of this Agreement:

"**3PL**" means third party logistics provider, including, as the context may require, Seller and its Affiliates.

"**Acquired Amazon Accounts**" means those certain Amazon accounts set forth on Schedule 1.1-AAA and doing business under the names listed adjacent to such accounts, and the related Amazon Business Services Agreements.

"**Acquired Assets**" has the meaning set forth in Section 2.1(a).

"**Acquired Contracts**" has the meaning set forth in Section 2.1(a)(i).

"**Acquired Marks**" means the Trademarks set forth on Schedule 1.1-AM.

"**Acquisition Sub**" has the meaning set forth in the Preamble.

"**Acquisition Sub Parent**" means Mohawk Group, Inc., a Delaware corporation.

"**Actual Closing Inventory**" has the meaning set forth in Section 2.8(a).

"**Actual Closing Inventory Paid Amount**" means, in respect of any given SKU of Specified Inventory, the aggregate amount of Costs that have been paid by Seller as of the Closing for the Actual Closing Inventory.

"**Actual Closing Inventory Payable Amount**" means, in respect of any given SKU of Specified Inventory, the aggregate amount of Costs that Seller has not paid (and for which Purchaser will be responsible for hereunder) as of the Closing for the Actual Closing Inventory.

"**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by or is under common control with such Person. As used herein, the term "control" means: (i) the power to vote at least 10% of the voting power of a Person, or (ii) the possession, directly or indirectly, of any other power to direct or cause the direction of the management and policies of such a Person, whether through ownership of voting securities, by contract or otherwise. For greater certainty and without limiting the foregoing, Founder is an Affiliate of Seller.

"**Affiliated Group**" means an affiliated group as defined in Section 1504 of the Code (or analogous combined, consolidated or unitary group defined under state, local or foreign income Tax Law).

"**Aggregate Actual Closing Inventory Paid Amount**" means the aggregate of the Actual Closing Inventory Paid Amount across all SKUs of Specified Inventory.

"**Aggregate Actual Closing Inventory Payable Amount**" means the aggregate of the Actual Closing Inventory Payable Amount across all SKUs of Specified Inventory.

"**Aggregate Estimated Closing Annual Sell-Through Cost**" means the aggregate of the Estimated Closing Annual Sell-Through Cost across all SKUs of Specified Inventory.

"**Aggregate Estimated Closing Excess Inventory Discount Cost**" means the aggregate of the Estimated Closing Excess Inventory Discount Cost across all SKUs of Specified Inventory.

"**Aggregate Estimated Closing Inventory Paid Amount**" means the aggregate of the Estimated Closing Inventory Paid Amount across all SKUs of Specified Inventory.

"**Aggregate Estimated Closing Inventory Payable Amount**" means the aggregate of the Estimated Closing Inventory Payable Amount across all SKUs of Specified Inventory.

"**Aggregate Estimated Closing Inventory Value**" means the aggregate of the Estimated Closing Inventory Value across all SKUs of Specified Inventory.

"**Aggregate Estimated Closing Net Inventory Value**" means the amount equal to (a) the Aggregate Estimated Closing Inventory Value *minus* (b) the Aggregate Estimated Closing Inventory Payable Amount *plus* (c) the Aggregate Estimated Closing Inventory Paid Amount.

"**Aggregate Final Estimated Annual Sell-Through Inventory Cost**" means the aggregate of the Final Estimated Annual Sell-Through Inventory Costs across all SKUs of Specified Inventory.

"**Aggregate Final Estimated Closing Inventory Value**" means the aggregate of the Final Estimated Closing Inventory Value across all SKUs of Specified Inventory.

"**Aggregate Final Estimated Closing Net Inventory Value**" means an amount equal to (a) the Aggregate Final Estimated Closing Inventory Value *minus* (b) the Aggregate Actual Closing Inventory Payable Amount *plus* (c) the Aggregate Actual Closing Inventory Paid Amount.

"**Aggregate Final Estimated Excess Inventory Cost**" means the aggregate of the Final Estimated Excess Inventory Cost across all SKUs of Specified Inventory.

"**Agreement**" has the meaning set forth in the Preamble.

"**Allocation Schedule**" has the meaning set forth in Section 5.1(a).

"**Amazon**" means Amazon.com, Inc., a Delaware corporation, and its worldwide Affiliates.

"**Amazon Business Services Agreements**" means the terms of service agreements relating to the Acquired Amazon Accounts.

"**Ancillary Agreements**" means the Bills of Sale and Assignment and Assumption Agreements, the Trademark Assignment Agreement, the Lock-Up, Voting and Standstill Agreement, the Supplier Agreement, and the Transition Services Agreement.

"**ASIN**" means Amazon Standard Identification Number, which is an alphanumeric unique identifier assigned by Amazon.com and its partners for product identification within the Amazon organization.

"**Assumed Liabilities**" has the meaning set forth in Section 2.2(a).

"**Audit Opinion**" has the meaning set forth in Section 5.12(b).

"**Balance Sheet Date**" has the meaning set forth in Section 3.5(a).

"**Bankruptcy and Equity Exception**" has the meaning set forth in Section 3.1(c).

"**Basket Amount**" has the meaning set forth in Section 7.4(a).

"**Bills of Sale and Assignment and Assumption Agreements**" has the meaning set forth in Section 2.5(b).

"**Business**" has the meaning set forth in the Recitals.

"**Business Day**" means a day other than Saturday, Sunday or any other day on which banks in New York are required or authorized to be closed.

"**CARES Act**" means the Coronavirus Aid, Relief, and Economic Security Act.

"**Cash Purchase Price**" has the meaning set forth in Section 2.3.

"**Closing**" has the meaning set forth in Section 2.4.

"**Closing Date**" has the meaning set forth in Section 2.4.

"**Closing Payment**" has the meaning set forth in Section 2.7(a).

"**Closing Shares**" means 1,387,759 shares of Parent Common Stock.

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

"**Consulting Agreements**" has the meaning set forth in Section 2.5(j).

"**Contracts**" means all contracts, agreements, licenses, indentures, notes, bonds, instruments, leases, mortgages, sales orders, purchase orders, arrangements, commitments, obligations and other understandings or undertakings of any nature, in any case whether written or oral, that are legally binding, or purport by their terms to be legally binding, as well as any bids or proposals which, if accepted, would result in a binding contract, and all amendments, restatements, supplements or other modifications thereto or waivers thereunder.

"**Cost**" means all costs incurred by a Party to procure or ship inventory, including manufacturing costs, freight costs, duties, import costs, insurance costs and levies and other similar costs.

"**Data Breach**" means (a) the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data or other data, in either case, transmitted, stored, or otherwise Processed by Seller or a Service Provider on behalf of Seller or (b) any breach of Personal Data or other data that, in either case, would otherwise give rise to any obligations on behalf of Seller under Privacy Requirements.

"**Disclosure Schedules**" has the meaning set forth in Article III.

"**Discounted Cost**" means, in respect of any given SKU of Specified Inventory, an amount equal to (a) the applicable Cost per unit *multiplied by* (b) the Excess Inventory Discount Rate.

**"Disputed Amounts"** has the meaning set forth in Section 2.12(c).

"**E-Commerce Assets**" means all website traffic, analytics Software and accounts, graphics, content, databases, forms, internal search engines, advertising on or relating to the websites, data, programming code, user and customer lists, consumer data and all other information and property as it pertains to the websites of the Business and/or the operation thereof, including all social media accounts, including Facebook, Twitter, Pinterest, YouTube, Google Plus, MySpace, comparison shopping accounts, Google AdWords accounts, Google Merchant Center accounts, Webmaster Tools accounts, Google Analytics accounts, Bing AdCenter accounts, and any other similar accounts, services or websites used in connection with any of the Business (and all users, fans and/or followers thereof), blogs, email accounts, servers, host accounts, applications, Software and platforms used by the Business' websites and/or its blog(s), and any other accounts, tools, extensions, application programming interfaces (APIs), electronic data interchanges (EDIs) or third party relationships or Software used by Seller to operate, or that has been collected or used during the operation of, the Business.

"**Earn-Out Consideration Event**" has the meaning set forth in Section 2.9(b).

"**Earn-Out Shares**" has the meaning set forth in Section 2.9(c)(iii).

"**Earn-Out Termination Date**" has the meaning set forth in Section 2.9(c)(iii).

"**Estimated Closing Annual Sell-Through Cost**" means, in respect of any given SKU of Specified Inventory, an amount equal to (a) the Cost per unit *multiplied by* (b) the Estimated Closing Annual Sell-Through Inventory Units.

"**Estimated Closing Annual Sell-Through Forecast**" means, in respect of any given SKU of Specified Inventory, the aggregate number of units that the Parties have forecasted will be sold during the period commencing on the Closing Date and ending on the one year anniversary thereof.

"**Estimated Closing Annual Sell-Through Inventory Units**" means, in respect of any given SKU of Specified Inventory, the aggregate number of such units that Purchaser and/or a Purchaser Designee has estimated in good faith that it could sell during the period commencing on the Closing Date and ending on the one year anniversary thereof, given the number of units of such Specified Inventory transferred to Purchaser and/or a Purchaser Designee by Seller and/or one of its Affiliates at the Closing, up to a maximum of the Estimated Closing Annual Sell-Through Forecast.

"**Estimated Closing Excess Inventory Discount Cost**" means, in respect of any given SKU of Specified Inventory, an amount equal to (a) the Discounted Cost per unit *multiplied by* (b) the Estimated Closing Excess Inventory Units.

"**Estimated Closing Excess Inventory Units**" means, in respect of any given SKU of Specified Inventory and given the number of units of such Specified Inventory transferred to Purchaser and/or a Purchaser Designee by Seller and/or one of its Affiliates at the Closing, a number of units equal to (a) Estimated Total Units *minus* (b) Estimated Closing Annual Sell-Through Forecast.

"**Estimated Closing Inventory**" has the meaning set forth in Section 2.5(d).

"**Estimated Closing Inventory Paid Amount**" means, in respect of any given SKU of Specified Inventory, the aggregate amount of Costs that have been paid by Seller as of the Inventory Statement Date for the Estimated Closing Ordered Inventory.

"**Estimated Closing Inventory Payable Amount**" means, in respect of any given SKU of Specified Inventory, the aggregate amount of Costs that Seller has not paid (and for which Purchaser will be responsible for hereunder), including open purchase orders and accounts payable invoices, as applicable, as of the Inventory Statement Date for the Estimated Closing Inventory and the Estimated Closing Ordered Inventory.

"**Estimated Closing Inventory Value**" means, in respect of any given SKU of Specified Inventory, an amount equal to (a)(i) the Cost per unit *multiplied by* (ii) the Estimated Closing Annual Sell-Through Inventory Units for such SKU, *plus* (b)(i) the Discounted Cost per unit *multiplied by* (ii) the Estimated Closing Excess Inventory Discount Cost for such SKU.

"**Estimated Closing Net Inventory Value**" means, in respect of any given SKU of Specified Inventory, an amount equal to (a) the Estimated Closing Inventory Value for such SKU *minus* (b) the Estimated Closing Inventory Payable Amount for such SKU *plus* (c) the Estimated Closing Inventory Paid Amount for such SKU.

"**Estimated Closing Ordered Inventory**" has the meaning set forth in Section 2.5(d).

"**Estimated Total Units**" means, in respect of any given SKU of Specified Inventory, the sum of the (a) Estimated Closing Inventory *plus* (b) Estimated Closing Ordered Inventory.

"**Event**" means any event, change, development, effect, condition, circumstance, matter, occurrence or state of facts.

"**Excess Inventory Discount Rate**" means 50%.

"**Exchange Act**" has the meaning set forth in Section 4.3.

"**Excluded Amazon Listings**" means all SKUs set forth on Schedule 1.1-EAL.

"**Excluded Assets**" has the meaning set forth in Section 2.1(b).

"**Excluded Contracts**" has the meaning set forth in Section 2.1(b)(v).

"**Excluded Liabilities**" has the meaning set forth in Section 2.2(b).

"**Excluded SKU Inventory**" means all of the hand sanitizer inventory SKUs set forth on Schedule 1.1-SKU.

"**Expired Inventory**" means any Specified Inventory that, as of the Final Inventory Count Date, has a "Use By", "Expiration Date" or similar date reference within 180 days thereof, or any Specified Inventory that is damaged, broken, defective, spoiled or similarly rendered obsolete such that it is unsellable.

"**Export Approvals**" has the meaning set forth in Section 3.17.

"**Final Determination**" has the meaning set forth in Section 7.8.

"**Final Estimated Annual Sell-Through Inventory Cost**" means, in respect of any given SKU of Specified Inventory, an amount equal to (a) the Cost per unit *multiplied by* (b) the Final Estimated Annual Sell-Through Inventory Units.

"**Final Estimated Annual Sell-Through Inventory Units**" means a number of units equal to (a) the Sold Actual Closing Inventory *plus* (b) the Forecast Period Estimated Actual Closing Inventory Sales Volume.

"**Final Estimated Closing Inventory Value**" means, in respect of any given SKU of Specified Inventory, an amount equal to (a) (i) the Cost per unit *multiplied by* (ii) the Final Estimated Annual Sell-Through Inventory Units *plus* (b) (i) the Discounted Cost per unit *multiplied by* (ii) the Final Estimated Excess Inventory Units.

"**Final Estimated Closing Net Inventory Value**" means, in respect of any given SKU of Specified Inventory, an amount equal to (a) the Final Estimated Closing Inventory Value *minus* (b) the Actual Closing Inventory Payable Amount *plus* (c) the Actual Closing Inventory Paid Amount.

"**Final Estimated Excess Inventory Cost**" means, in respect of any given SKU of Specified Inventory, an amount equal to (a) the Discounted Cost *multiplied by* (b) the Final Estimated Excess Inventory Units.

"**Final Estimated Excess Inventory Units**" means, in respect of any given SKU of Specified Inventory, a number of units equal to (a) the number of units of Unsold Actual Closing Inventory *minus* (b) the Forecast Period Estimated Actual Closing Inventory Sales Volume; *provided* that in no event shall the resulting number of units from the foregoing calculation be less than zero units.

"**Final Inventory Count Date**" means the date on which a final inventory count of the Specified Inventory is conducted by Purchaser, which date shall not be earlier than September 15, 2021, nor later than November 15, 2021.

"**Final Inventory Statement**" has the meaning set forth in Section 2.8(b).

"**Final Post-Closing Inventory Adjustment Amount**" means an amount equal to (a) the Aggregate Final Estimated Closing Net Inventory Value *minus* (b) the Aggregate Estimated Closing Net Inventory Value.

"**Financial Statements**" has the meaning set forth in Section 3.5(a).

"**FIRPTA Certificate**" has the meaning set forth in Section 2.5(i).

"**Forecast Period**" means the period of time remaining from the Final Inventory Count Date until the one year anniversary of the Closing Date.

"**Forecast Period Estimated Actual Closing Inventory Sales Volume**" means, in respect of any given SKU of Specified Inventory, the number of units of Unsold Actual Closing Inventory that, based on the Forecast Period Maximum Sales Volume, are expected to be sold during the Forecast Period.

"**Forecast Period Maximum Sales Volume**" has the meaning set forth in Section 2.8(b).

"**Founder**" has the meaning set forth in the Preamble.

"**Fundamental Representations**" means, collectively, the representations and warranties contained in Section 3.1 (Organization and Qualification; Authorization), Section 3.2 (No Violation), Section 3.4 (Fair Consideration; No Fraudulent Conveyance), Section 3.9(a) (Acquired Assets), Section 3.10 (Intellectual Property), Section 3.14 (Taxes) and Section 3.25 (No Brokers or Finders).

"**GAAP**" means U.S. generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession that are applicable to the circumstances from time to time.

"**General Cap**" has the meaning set forth in Section 7.4(b).

"**Government Official**" means, collectively, any officer or employee of a Governmental Authority, any Person acting for or on behalf of any Governmental Authority, any political party or official thereof and any candidate for political office.

"**Governmental Authority**" means any court, tribunal, arbitrator, authority, agency, commission, bureau, board, department, official, body or other instrumentality of the United States, any foreign country, or any domestic or foreign state, province, county, city, other political subdivision or any other similar body or organization exercising governmental or quasi-governmental power or authority.

**"Holdback Amount"** means $1,993,496.03.

"**Improper Payment Laws**" means the United States Foreign Corrupt Practices Act of 1977, any legislation implementing the Organisation for Economic Cooperation and Development Convention on Combating Bribery of Foreign Official in International Business Transactions, and any other applicable Law regarding anti-bribery or illegal payments or gratuities.

"**Independent Accountant**" means a nationally recognized firm of independent certified public accountants to be mutually agreed on, which shall be one of the big four accounting firms, other than Seller's accountant and Purchaser's accountant.

"**Independent Auditor**" has the meaning set forth in Section 5.12(b).

"**Intellectual Property**" means, collectively, in the United States and all countries or jurisdictions foreign thereto, (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all Patents, (b) all Trademarks, all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (c) all moral rights, copyrights and other rights in any work of authorship, compilation, derivative work or mask work and all applications, registrations, and renewals in connection therewith, (d) all trade secrets, data (including raw data, technical data, clinical trial data, and test results), (e) databases, confidential information, ideas, research and development, know-how, methods, formulas, compositions, manufacturing and production processes and techniques, regulatory filings, submissions, and correspondence, results, analyses, studies, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals, (f) Software, (g) all other proprietary and intellectual property rights, (h) all copies and tangible embodiments of any of the foregoing (in whatever form or medium), (i) the exclusive right to display, perform, reproduce, make, use, sell, distribute, import, export and create derivative works or improvements based on any of the foregoing and (j) all income, royalties, damages and payments related to any of the foregoing (including damages and payments for past, present or future infringements, misappropriations or other conflicts with any intellectual property), and the right to sue and recover for past, present or future infringements, misappropriations or other conflict with any intellectual property.

"**International Trade Laws**" means any applicable (a) Sanctions, (b) U.S. export control Laws (including the International Traffic in Arms Regulations (22 CFR §§ 120-130, as amended), the Export Administration Regulations (15 CFR §§ 730-774, as amended) and any regulation, order, or directive promulgated, issued or enforced pursuant to such laws), (c) laws pertaining to imports and customs, including those administered by the Bureau of Customs and Border Protection in the U.S. Department of Homeland Security (and any successor thereof) and any regulation, order, or directive promulgated, issued or enforced pursuant to such laws, (d) the anti-boycott laws administered by the U.S. Department of Commerce and the U.S. Department of the Treasury and (e) export, import and customs Laws of other countries in which Seller has conducted and/or currently conduct business.

"**Inventory Consideration Shares**" has the meaning set forth in Section 2.3.

"**Inventory Determination Date**" has the meaning set forth in Section 2.8(d).

"**Inventory Statement**" has the meaning set forth in Section 2.5(d).

"**Inventory Statement Date**" means December 31, 2020.

"**IP Registration Updates**" has the meaning set forth in Section 2.5(m).

"**Issuance Date**" has the meaning set forth in Section 5.15(b).

"**Item Product Cost**" means all manufacturing costs incurred by a Party to procure finished goods inventory.

"**Knowledge**" means, when referring to the "knowledge" of Seller, or any similar phrase or qualification based on knowledge of Seller, (i) the actual knowledge of any executive, manager, director, or supervisor of Seller or of any of the individuals listed on Schedule 1.1-K, and (ii) the knowledge that any such person referenced in clause (i) above, as a prudent business person, would have obtained after making due inquiry with respect to the particular matter in question.

"**Law**" means the common law of any state or other jurisdiction, or any provision of any foreign, federal, state or local law, statute, code, rule, regulation, Order, certification standard, accreditation standard, Permit, judgment, regulatory code of practice, statutory guidance, injunction, decree or other decision of any court or other tribunal or Governmental Authority.

"**Liabilities**" means any indebtedness, liabilities, demands, commitments, purchase orders, warranties, product liabilities, or obligations of any nature whatsoever, whether accrued or unaccrued, absolute or contingent, direct or indirect, asserted or unasserted, fixed or unfixed, known or unknown, choate or inchoate, perfected or unperfected, liquidated or unliquidated, secured or unsecured, or otherwise, whether due or to become due, whether arising out of any Contract or tort based on negligence or strict liability and whether or not the same would be required by GAAP to be stated in financial statements or disclosed in the notes thereto, and however arising and including all fees, costs and expenses related thereto.

"**Liens**" means all liens, security interests, claims, mortgages, deeds of trust, preemptive rights, leases, charges, options, rights of first refusal, easements, proxies, voting trusts or agreements, transfer restrictions, pledges, assessments, covenants, burdens and other encumbrances of every kind, including restrictions on voting or use.

"**Lock-Up, Voting and Standstill Agreement**" has the meaning set forth in Section 2.5(e).

"**Losses**" means any and all Liabilities, losses, damages, judgments, awards, settlements, royalties, diminution in value, interest, penalties, fines, Taxes, demands, Proceedings, claims, deficiencies, costs and expenses of any kind (including reasonable fees and expenses of attorneys, accountants and other experts paid in connection with the investigation or defense of any of the foregoing or any Proceeding relating to any of the foregoing).

"**Nasdaq**" means The Nasdaq Stock Market, LLC.

"**New Suppliers**" has the meaning set forth in Section 2.9(a).

"**Non-Assignable Assets**" has the meaning set forth in Section 2.1(c)(i).

"**Non-Paying Party**" has the meaning set forth in Section 5.1(b).

"**OFAC**" has the meaning set forth in the definition of Sanctions.

"**Option Exercise Date**" has the meaning set forth in Section 5.10.

"**Order**" means any legally binding order, judgment, ruling, injunction, award, stipulation, assessment, decree or writ, whether preliminary or final, of any Governmental Authority.

**"Overdue Payables"** has the meaning set forth in Section 2.12(a).

"**Parent**" has the meaning set forth in the Preamble.

"**Parent Certificate**" means a certificate in form and substance reasonably satisfactory to Seller, dated as of the Closing Date and duly executed and delivered by Parent, certifying that attached thereto are (i) true, complete and accurate copies of the organizational documents of Parent (and the certificate of incorporation or comparable organizational document of Parent shall also be certified as of a recent date by the Secretary of State of the State of Parent's jurisdiction of organization), and (ii) a true, complete and accurate copy of resolutions duly adopted by the board of directors of Parent adopting and approving the Transaction Documents to which Parent or Acquisition Sub is a party.

"**Parent Common Stock**" shall mean the common stock, par value $0.0001 per share, of Parent.

"**Parent Disclosure Schedules**" has the meaning set forth in Article IV.

"**Parent SEC Documents**" has the meaning set forth in Section 4.5.

"**Parent Stock Price**" means $24.01.

"**Party**" means any party to this Agreement.

"**Patents**" means all patents and pending applications for patents of the United States and all countries and jurisdictions foreign thereto and all reissues, reexamined patents, divisions, continuations, continuations-in-part, revisions, and extensions thereof.

"**Paying Party**" has the meaning set forth in Section 5.1(b).

**"Payoff Documents"** has the meaning set forth in Section 2.12(b).

"**Permits**" means permits, licenses, registrations, consents, certificates, grants, waivers, qualifications, approvals and all other authorizations by or of Governmental Authorities.

"**Permitted Lien**" means (a) statutory Liens for Taxes not yet due and payable, (b) statutory Liens of landlords for amounts not yet due and payable, and (c) Liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for amounts not yet due and payable.

"**Person**" means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated association, corporation, firm or other entity or any Governmental Authority.

"**Personal Data**" means (a) all data that identifies an individual or, in combination with any other information or data available to Seller, is capable of identifying or locating an individual or (b) as the terms "personal data," "personal information," "personally-identifiable information," or similar terms, are otherwise defined under Privacy Laws.

"**Post-Closing Statement**" has the meaning set forth in Section 2.8(a).

"**Privacy Laws**" means (a) all applicable Laws relating to the Processing of data (including Personal Data), data privacy, or information security, such as the Federal Trade Commission Act, the Telephone Consumer Protection Act, the Health Insurance Portability and Accountability Act, the Health Information Technology for Economic and Clinical Health, the California Consumer Privacy Act of 2018, state privacy laws, state health laws, state data breach laws, and the General Data Protection Regulation 2016/679 and all implementation legislation relating thereto and (b) the Payment Card Information Data Security Standards and any other applicable self-regulatory frameworks, codes of conduct, or similar rules or regulations.

"**Privacy Requirements**" has the meaning set forth in Section 3.10(h).

"**Proceeding**" means any suit, action, cause of action, litigation, hearing, inquiry, examination, demand, proceeding, controversy, complaint, appeal, arbitration, mediation, dispute, claim, allegation, investigation or audit of any nature whether civil, criminal, quasi criminal, indictment, administrative, regulatory or otherwise and whether at Law or in equity.

"**Process**," "**Processed**," or "**Processing**" means the collection, use, storage, processing, distribution, transfer, import, export, protection (including via security measures), disposal, disclosure, or other activity regarding data (whether electronically or in any other form or medium), including Personal Data.

"**Purchase Option**" has the meaning set forth in Section 5.10.

"**Purchase Price**" has the meaning set forth in Section 2.3.

"**Purchaser**" has the meaning set forth in the Preamble.

"**Purchaser Confidential Information**" means (a) any confidential, non-public and/or proprietary information with respect to Purchaser and its Affiliates, the Business, the Acquired Assets, the Assumed Liabilities, including any related operations, clients, customers, prospects, personnel, properties, processes and products, financial, technical, commercial and other information (regardless of the form or format of the information or the manner or media in or through which it is provided to or otherwise obtained by Seller, the Sole Voting Member or Founder or their respective Representatives) and the existence and terms of any Transaction Document and (b) any analyses, compilations, studies, notes, copies, memoranda or other documents prepared by or for Seller, the Sole Voting Member or Founder or any of their respective Representatives, to the extent they contain or show such information; *provided* that "Purchaser Confidential Information" shall not include information that was or becomes generally available to the public other than as a result of any direct or indirect act or omission by Seller or Founder or any of their respective representatives.

"**Purchaser Designees**" has the meaning set forth in Section 5.6.

"**Purchaser Indemnified Parties**" means Parent, Acquisition Sub and their respective Affiliates, officers, directors, managers and employees.

"**Purchaser's Closing Deliverables**" has the meaning set forth in Section 2.6.

"**Reconciliation Period**" has the meaning set forth in Section 2.8(d).

"**Released Parties**" has the meaning set forth in Section 5.8.

"**Representative**" means with respect to any Person, such Person's respective directors, officers, employees, representatives, agents, attorneys, consultants, bankers, or advisors.

"**Restricted Period**" has the meaning set forth in Section 5.7(a).

"**Retained Business**" has the meaning set forth in the Recitals, and includes those operational support functions and capabilities set forth on Schedule 1.1-RB.

"**Retained Business Assets**" means the assets used exclusively in the Retained Business.

"**Retained Business Assets Purchase Price**" has the meaning set forth in Section 5.10.

"**Rule 3-05B Due Date**" has the meaning set forth in Section 5.12(e).

"**Rule 3-05B Fee**" has the meaning set forth in Section 5.12(e).

"**Rule 3-05B Financial Statements**" has the meaning set forth in Section 5.12(a).

"**Sanctions**" means economic or financial sanctions, requirements or trade embargoes imposed, administered or enforced from time to time by U.S. Governmental Authorities (including the Office of Foreign Assets Control ("**OFAC**"), the U.S. Department of State and the U.S. Department of Commerce), the United Nations Security Council, the European Union, Her Majesty's Treasury or any other relevant Governmental Authority.

"**SEC**" means the U.S. Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Seller**" has the meaning set forth in the Preamble.

"**Seller Certificate**" means a certificate in form and substance reasonably satisfactory to Purchaser, dated as of the Closing Date and duly executed and delivered by Seller, certifying that attached thereto are (i) true, complete and accurate copies of the organizational documents of Seller (and the certificate of incorporation or comparable organizational document of Seller shall also be certified as of a recent date by the Secretary of State of the State of Seller's jurisdiction of organization), and (ii) a true, complete and accurate copy of resolutions duly adopted by the board of directors (or comparable governing body) of Seller adopting and approving the Transaction Documents to which Seller is a party.

"**Seller's Closing Deliverables**" has the meaning set forth in Section 2.5.

"**Seller Confidential Information**" means (a) any confidential, non-public and/or proprietary information exclusively related to the Retained Business, the Excluded Assets, the Excluded Liabilities, Seller, Founder or Sole Voting Member, including any related operations, clients, customers, prospects, personnel, properties, processes and products, financial, technical, commercial and other information (regardless of the form or format of the information or the manner or media in or through which it is provided to or otherwise obtained by Parent or Acquisition Sub or their respective Representatives), and (b) any analyses, compilations, studies, notes, copies, memoranda or other documents prepared by or for Parent or Acquisition Sub or any of their respective Representatives, to the extent they contain or show such information; *provided* that "Seller Confidential Information" shall not include information that was or becomes generally available to the public other than as a result of any direct or indirect act or omission by Parent or Acquisition Sub or any of their respective representatives.

"**Seller Indemnifying Parties**" has the meaning set forth in Section 7.1(c).

"**Seller Intellectual Property**" has the meaning set forth in Section 3.10(b).

"**Seller Taxes**" means any Taxes (a) of or imposed on Seller or any of its Affiliates for any taxable period, (b) imposed on or with respect to the Business or the Acquired Assets for any taxable period (or portion thereof) ending on or before the Closing Date, including any Straddle Period Taxes allocable to Seller pursuant to this Agreement and any Taxes arising with respect to any compensation or employee benefit obligations for Seller's employees or former employees arising on or prior to the Closing Date, (c) imposed on Seller in connection with the transactions contemplated by this Agreement, (d) constituting any Transfer Taxes and (e) imposed on Purchaser or any of its Affiliates as a transferee or successor of Seller.

"**Selling Stockholder Questionnaire**" has the meaning set forth in Section 5.15(h)(i).

"**Service Provider**" means each director, officer, employee, manager, independent contractor, consultant, leased employee or other service provider of Seller; *provided* that Service Provider shall not include third-party software or services such as advertising agencies, 3PLs and accounting service or any other Person who is not controlled by Seller or any of Seller's Affiliates.

"**SKU**" means a stock-keeping unit maintained by a business in respect of a product or good in which it trades.

"**Sold Actual Closing Inventory**" means, in respect of any given SKU of Specified Inventory, the number of units of the Actual Closing Inventory that were sold prior to the Final Inventory Count Date, if any.

"**Software**" means all websites, computer software and firmware (including source code, executable code, data, databases, user interfaces and related documentation).

"**Sole Voting Member**" has the meaning set forth in the Preamble.

"**Specified Inventory**" has the meaning set forth in Section 2.1(a)(v).

"**Straddle Period Tax**" has the meaning set forth in Section 5.1(b).

"**Supplier**" has the meaning set forth in Section 3.15.

"**Supplier Agreement**" has the meaning set forth in Section 2.5(f).

"**Tax**" means any and all multi-national, federal, state, local or foreign income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, registration, value added, excise, natural resources, entertainment, amusement, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, personal property, *ad valorem*, capital stock, social security, unemployment, disability, payroll, license, employee or other withholding, composite, healthcare, escheat or unclaimed property (whether or not considered a tax under applicable Law), or other tax, assessment, duty, fee, or similar charge of any kind whatsoever, including any interest, penalties or additions to Tax, any penalties resulting from any failure to timely or properly file a Tax Return, or additional amounts in respect of the foregoing; the foregoing shall include any transferee or secondary liability for a Tax and any liability assumed by agreement or arising as a result of being (or ceasing to be) a member of any Affiliated Group (or being included (or required to be included) in any Tax Return relating thereto).

"**Tax Contest**" has the meaning set forth in Section 5.1(d).

"**Tax Returns**" means returns, declarations, reports, notices, forms, claims for refund, information returns or other documents (including any related or supporting schedules, statements or information, and including for the avoidance of doubt all Forms 1099, FinCEN Form 114, Form TD F 90-22.1 and any predecessor or successor forms thereto) filed or required to be filed with any Governmental Authority, or maintained by any Person, or required to be maintained by any Person, in connection with the determination, assessment or collection of any Tax of any party or the administration of any Laws, regulations or administrative requirements relating to any Tax.

"**Third Party Claim**" has the meaning set forth in Section 7.3(a).

"**Trademark Assignment Agreement**" has the meaning set forth in Section 2.5(c).

"**Trademarks**" means, in the United States and all countries and jurisdictions foreign thereto, registered trademarks, registered service marks, trademark and service mark applications, unregistered trademarks and service marks, registered trade names and unregistered trade names, corporate names, fictitious names, registered trade dress and unregistered trade dress, logos, slogans, Internet domain names, rights in telephone numbers, and other indicia of source, origin, endorsement, sponsorship or certification, together with all translations, adaptations, derivations, combinations and renewals thereof.

"**Trading Day**" means a day on which Nasdaq is open for trading.

"**Transaction Documents**" means this Agreement and the Ancillary Agreements and any other schedule, certificate, instrument or other document contemplated thereby.

"**Transaction Expenses**" means (a) all of the fees, costs, expenses and any other obligations incurred by Seller, Founder or any of their respective Affiliates in connection with the Transactions or any transaction or series of transactions similar to such transactions, including all fees, costs and expenses payable to attorneys, financial advisors, accountants, consultants or other advisors, (b) all payments by Seller, Founder or any of their respective Affiliates to obtain any third party consent required under any Acquired Contract in connection with the consummation of the Transactions, and (c) all obligations that arise in whole or in part as a result of the consummation of the Transactions, under any Contract or employee benefit plan in effect on or before the Closing Date, including all change of control, severance, retention, stock appreciation, phantom stock or similar obligations or any other accelerations of or increases in rights or benefits, and all Taxes that are payable in connection with or as a result of the satisfaction of such obligations.

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

"**Transfer Taxes**" has the meaning set forth in Section 5.1(c).

"**Transition Services Agreement**" has the meaning set forth in Section 2.5(l).

"**Treasury Regulations**" means the Treasury Regulations promulgated under the Code.

"**Unsold Actual Closing Inventory**" means, in respect of any given SKU of Specified Inventory, the number of units of the Actual Closing Inventory that have not been sold prior to the Final Inventory Count Date, if any.

"**U.S.**" or "**United States**" means the United States of America.

"**USPTO**" has the meaning set forth in Section 2.5(m).

## ARTICLE II
## PURCHASE AND SALE; CLOSING

**Section 2.1 Acquired Assets and Excluded Assets**.

(a) Acquired Assets. On the terms and subject to the conditions set forth in this Agreement, upon the Closing, Purchaser and/or a Purchaser Designee shall purchase and acquire from Seller, and Seller shall sell, convey, assign or transfer, as applicable, and deliver to Purchaser and/or a Purchaser Designee, all of Seller's right, title and interest as of the Closing in all properties, assets, rights and interests of any kind, whether tangible or intangible, real or personal, and wherever located, that are owned, used, or held for use by Seller in connection with the Business, except for the Excluded Assets (the "**Acquired Assets**"), free and clear of all Liens other than Permitted Liens, including the following:

(i) all Contracts related to the Business to which Seller is a party and all rights of Seller thereunder, including but not limited to the Amazon Business Services Agreements and terms of service agreements for WalMart and eBay's e-commerce platforms set forth on Schedule 2.1(a)(i) and any Contracts related to the sale of products in any physical retail space, and excluding the Excluded Contracts (the "**Acquired Contracts**");

(ii) all Intellectual Property, including the Acquired Marks, E-Commerce Assets and other Intellectual Property set forth on Schedule 2.1(a)(ii) and such Intellectual Property otherwise used in connection with the Specified Inventory;

(iii) the Acquired Amazon Accounts;

(iv) all lists, records and other information pertaining to accounts and referral sources, all lists, records and other information pertaining to vendors, suppliers, licensors and customers, all advertising, marketing and promotional materials, and all drawings, diagrams, reports, studies, plans, books, ledgers, files and business and accounting records of every kind (including all financial, business and marketing plans), in each case whether evidenced in writing, electronic data, computer software or otherwise;

(v) all finished goods inventory, goods in transit, returned goods and other goods available for sale, excluding for the avoidance of doubt all other inventory (including raw materials and work-in-process inventory) and having an SKU (but excluding the Excluded SKU Inventory), in each case as set forth on the Inventory Statement ("**Specified Inventory**");

(vi) all credits, prepaid expenses and security deposits related to the Specified Inventory, including those set forth on Schedule 2.1(a)(vi);

(vii) all claims, refunds, credits, causes of action, rights of recovery and rights of set-off of any kind (other than those related to Excluded Assets or Excluded Liabilities); and

(viii) all goodwill associated with the Business or any of the Acquired Assets.

To the extent any assets or property (including any Intellectual Property) owned by an Affiliate of Seller are used in, held for use in, or are reasonably necessary for the continued conduct of the Business (other than the Excluded Assets), they shall be included within the defined term "Acquired Assets" for purposes hereof if they would have been so included had they been owned by Seller, and Seller shall cause such Affiliate, to convey such assets and property to Purchaser free and clear of all Liens other than Permitted Liens for no additional consideration.

(b) Excluded Assets. The following properties, assets, rights and interests of Seller (collectively, the "**Excluded Assets**") are expressly excluded from the purchase and sale contemplated hereby and as such are not included in the Acquired Assets:

(i) all cash and cash equivalents, bank accounts and securities of Seller;

(ii) all claims, causes of action, rights of recovery and rights of setoff and all rights to receive mail and communications, in each case with respect to the Excluded Assets and the Excluded Liabilities;

(iii) Seller's rights under or pursuant to the Transaction Documents;

(iv) the Excluded Amazon Listings, and inventory of the Excluded Amazon Listings;

(v) all Contracts, if any, listed on Schedule 2.1(b)(v) and all Supplier and manufacturing Contracts (collectively, the "**Excluded Contracts**");

(vi) all Retained Business Assets;

(vii) all real property, whether leased or owned, including all plants, buildings, fixtures and other improvements located on such real property and all easements, licenses, rights of way, permits and appurtenances to all owned real property (including all appurtenant rights in and to public streets, whether or not vacated);

(viii) any leasehold or subleasehold estate or other right to use or occupy any interest in real property, including any Contract pursuant to which Seller leases or otherwise has the right to use or occupy any interest in real property;

(ix) all inventory that is not Specified Inventory (including raw materials, supplies and work-in-process inventory, and the Excluded SKU Inventory);

(x) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Seller, all employee-related or employee benefit-related files or records, and the books and records which Seller is required by applicable Law to retain copies of;

(xi) all insurance policies of Seller and all rights to applicable claims and proceedings thereunder;

(xii) all Tax assets (including Tax refunds and Tax prepayments) of Seller; and

(xiii) all of the properties, assets, rights, rights of recovery and any other interests, if any, listed on Schedule 2.1(b)(xiii).

(c) Non-Assignable Assets.

(i) To the extent that the assignment hereunder of any Acquired Asset is not permitted under applicable Law or is not permitted without the consent of any other Person (each, a "**Non-Assignable Asset**"), and such consent is not obtained prior to the Closing, then, notwithstanding anything to the contrary in this Agreement or any Ancillary Agreement, this Agreement, such Ancillary Agreement, and any related instruments of transfer shall not constitute an assignment of the Non-Assignable Asset and Purchaser shall assume no Liabilities thereunder or with respect thereto.

(ii) From and after the Closing Date and until the date that is 30 days after the occurrence of an Earn-Out Consideration Event, Seller and Purchaser shall use commercially reasonable efforts (without any Party incurring substantial costs or expense), to (A) obtain any such required consent, authorization or approval required to assign any Non-Assignable Assets and (B) obtain for Purchaser substantially all of the economic and operational benefits of such Non-Assignable Asset and Purchaser shall perform all covenants, obligations and responsibilities of Seller with respect to such Non-Assignable Asset to the extent Purchaser would have been responsible therefor if such consent had been obtained on or prior to the Closing Date and such Non-Assignable Asset had been assigned to Purchaser, including by (1) entering into a mutually agreeable arrangement between Seller and Purchaser and (2) subject to the consent and control of Purchaser, enforcing, at the cost and for the account of Purchaser, any and all rights of Seller against any third party arising out of the breach or cancellation thereof by such other party or otherwise. Seller shall hold in trust for the benefit of Purchaser and shall deliver to Purchaser promptly upon receipt of all required consents, such Non-Assignable Asset and all income, proceeds and other monies received by Seller that belong to Purchaser (including any payments and reimbursement made by any third party), to the extent related to or arising from any such Non-Assignable Asset in connection with the arrangements under this Section 2.1(c). Purchaser shall hold in trust for the benefit of Seller and shall deliver to Seller, promptly upon receipt thereof, any Excluded Asset and all income, proceeds and other monies received by Purchaser that belong to Seller (including any payments and reimbursement made by any third party), to the extent related to or arising from the Excluded Assets.

(iii) Once such consent, authorization or approval is obtained, (A) the applicable Non-Assignable Asset will be deemed to have been automatically transferred to Purchaser or the applicable Purchaser Designee on the terms set forth in this Agreement, (B) the Liabilities arising out of the use, performance, ownership or operation of the applicable Non-Assignable Asset will be deemed to be Assumed Liabilities (except those Liabilities that are Excluded Liabilities), and (C) the rights pursuant to the applicable Non-Assignable Asset will be deemed to be Acquired Assets.

**Section 2.2 Assumed Liabilities and Excluded Liabilities**.

(a) Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, as additional consideration for the Acquired Assets, upon the Closing, Purchaser and/or a Purchaser Designee shall assume only the following Liabilities of Seller (the "**Assumed Liabilities**"):

(i) accounts payable related to the Specified Inventory; and

(ii) all executory obligations under the Acquired Contracts required to be paid, performed or otherwise discharged after the Closing Date, but in any event not including any Liability arising from the performance, non-performance, breach or default of or under, any torts related to the performance of, or violation of Law or infringements under, any such Acquired Contracts to the extent occurring or arising, in whole or in part, prior to the Closing.

(b) Excluded Liabilities. Notwithstanding anything to the contrary in the Transaction Documents and regardless of whether such Liability is disclosed in the Disclosure Schedules or otherwise, neither Purchaser nor any Purchaser Designee shall assume or in any way become liable for any Liabilities of Seller, including any such Liabilities arising out of or relating to the Business and/or the Acquired Assets (in each case, other than the Assumed Liabilities), regardless of when or by whom asserted (collectively, the "**Excluded Liabilities**"), including:

(i) all Liabilities to fund checks written or similar transactions authorized, by Seller that are outstanding on or before the Closing Date;

(ii) all Seller Taxes;

(iii) all indebtedness and any guarantees of indebtedness of any Person;

(iv) all Transaction Expenses;

(v) all Liabilities under (A) any Acquired Contract, relating to or arising from any breach on or prior to the Closing Date, or any event, circumstance or condition first occurring or existing on or prior to the Closing Date that with notice, lapse of time or both would constitute or result in a breach by Seller of any of its obligations under any Contract or (B) any Contract that is not an Acquired Contract;

(vi) all Liabilities with respect to any of the Excluded Assets (including under any Contracts related thereto);

(vii) all Liabilities relating to or arising from any fraudulent conveyance or similar claims made by any third party or any claims made by Seller or any of its Affiliates relating to or arising from any payment made by Purchaser or a Purchaser Designee to Seller or at the direction of Seller in accordance with the terms hereof;

(viii) all Liabilities of Purchaser or a Purchaser Designee arising under any bulk transfer Law or any common law doctrine of defacto merger or successor liability, which is related to, the result of or arises out of the transactions contemplated hereby and which is not an express Assumed Liability;

(ix) all Liabilities with respect to any products that were sold or services that were rendered by Seller and are subsequently returned to Purchaser or a Purchaser Designee or otherwise rejected by the purchaser thereof as a result of a breach of warranty or other breach of Seller to such purchaser;

(x) all Liabilities for product liability occurrences (including occurrences relating to the destruction of property, personal injury or death or any occurrence resulting from any failure to warn or any deficit in design, engineering or construction) with respect to products designed or manufactured (for or on behalf of Seller) or services rendered by Seller on or prior to the Closing Date and any resulting claims and litigation arising prior to, on or after the Closing Date;

(xi) Seller's Liabilities under this Agreement and/or the Ancillary Agreements;

(xii) all Liabilities arising from, arising out of or relating to the matters and/or products set forth on Schedule 2.2(b)(xii);

(xiii) all Liabilities arising from or relating to the employment, engagement or termination by Seller or any of its Affiliates of any current or former Service Provider (including with respect to any employee benefit plans maintained or sponsored by Seller);

(xiv) all Liabilities relating to any Proceedings pending or threatened against Seller or any of the current or former Service Providers; and

(xv) all other Liabilities related to or arising out of the operation of the Business or the ownership of the Acquired Assets on or prior to the Closing Date not included as an Assumed Liability in the definition of "Assumed Liabilities" in Section 2.2(a).

For purposes of this Section 2.2(b), "Seller" shall be deemed to include all Affiliates of Seller and any predecessors to Seller and any Person with respect to which Seller is a successor-in-interest (including by operation of Law, merger, liquidation, consolidation, assignment, assumption or otherwise).

**Section 2.3 Purchase Price**. The aggregate amount of consideration payable by Purchaser to Seller for the Acquired Assets shall be an amount equal to: (a) $15,280,172.88 in cash (the "**Cash Purchase Price**"), *plus* (b) the Closing Shares; *plus* (c) 170,042 shares of Parent Common Stock (the "**Inventory Consideration Shares**"), as such number of shares shall be adjusted pursuant to Section 2.8, *plus* (d) subject to the conditions set forth in Section 2.9, the Earn-Out Shares (items (a)-(d), the "**Purchase Price**") *plus* (e) the assumption of the Assumed Liabilities.

**Section 2.4 Closing**. The closing of the transactions contemplated by this Agreement (the "**Closing**") shall be effected by electronic mail exchange of true, complete and accurate copies of executed originals of Seller's Closing Deliverables and Purchaser's Closing Deliverables on the date hereof, which date is referred to herein as the "**Closing Date**." The consummation of the transactions contemplated by this Agreement shall be deemed to occur at 12:01 AM Pacific time on the Closing Date.

**Section 2.5 Seller's Closing Deliverables**. In addition to the other requirements set forth in this Agreement, at the Closing, Seller shall deliver or cause to be delivered to Purchaser each of the following documents and instruments (collectively, the "**Seller's Closing Deliverables**"):

(a) a Seller Certificate, duly executed by Seller;

(b) the Acquisition Sub Bill of Sale and Assignment Agreement in the form of Exhibit A-1, the Purchaser Designee Bill of Sale and Assignment Agreements in the form of Exhibit A-2 and the Acquisition Sub Parent Bill of Sale and Assignment and Assumption Agreement in the form of Exhibit A-3, each duly executed by Seller (collectively, the "**Bills of Sale and Assignment and Assumption Agreements**"), with respect to the conveyance by Seller to Purchaser of the Acquired Assets;

(c) assignments of intellectual property, in the form of Exhibit B, with respect to the Acquired Marks, duly executed by Seller (the "**Trademark Assignment Agreements**");

(d) a certificate setting forth, for each SKU of Specified Inventory, the (i) brand, (ii) name of the applicable Acquired Amazon Account associated with the units of Specified Inventory, (iii) name of the entity owning such account, (iv) SKU name, (v) ASIN, (vi) product type, (vii) (A) estimated number of units of Specified Inventory on hand (pursuant to validly executed and accepted purchase orders), including at Amazon and at all 3PL or other facilities (for each SKU, the "**Estimated Closing Inventory**"), (B) estimated number of units of Specified Inventory in transit and ordered (pursuant to validly executed and accepted purchase orders) (for each SKU, the "**Estimated Closing Ordered Inventory**") and (C) Estimated Total Units, by location, (viii) Estimated Closing Annual Sell-Through Forecast, (ix) Cost per unit, (x) Discounted Cost per unit, (xi) Estimated Closing Annual Sell-Through Inventory Units, (xii) Estimated Closing Excess Inventory Units, (xiii) Estimated Closing Annual Sell-Through Cost, (xiv) Aggregate Estimated Closing Annual Sell-Through Cost, (xv) Estimated Closing Excess Inventory Discount Cost, (xvi) Aggregate Estimated Closing Excess Inventory Discount Cost, (xvii) Estimated Closing Inventory Payable Amount, (xviii) Estimated Closing Inventory Paid Amount; (xix) Estimated Closing Inventory Value, (xx) Estimated Closing Net Inventory Value, (xxi) Aggregate Estimated Closing Inventory Value, (xxii) Aggregate Estimated Closing Inventory Payable Amount, (xxiii) Aggregate Estimated Closing Net Inventory Value and (xxiv) a listing of all outstanding purchase orders (including any identifying numbers thereof) for Specified Inventory, the outstanding payments owing thereunder, the number of units to be delivered pursuant thereto and whether the expected date of delivery for such units is equal to or greater than 45 days after the Closing Date, all such data and calculations being as of the Inventory Statement Date and presented in the form of Exhibit C, duly executed by Seller (the "**Inventory Statement**");

(e) the Lock-Up, Voting and Standstill Agreement, in the form of Exhibit D, duly executed by Seller (the "**Lock-Up, Voting and Standstill Agreement**");

(f) the Manufacturing Supply Agreement, in the form of Exhibit E, duly executed by Seller and Acquisition Sub Parent (the "**Supplier Agreement**");

(g) an IRS Form W-9 for Seller, duly executed by Seller;

(h) subject to Section 2.1(c), all consents of any Persons listed on Schedule 2.5(h);

(i) a non-foreign affidavit dated as of the Closing Date from Seller, sworn under penalty of perjury and in form and substance required under the Treasury Regulations issued pursuant to Section 1445 of the Code stating that (or if Seller is a disregarded entity for U.S. federal income tax purposes, its regarded owner) Seller is not a "foreign person" as defined in Section 1445 of the Code (the "**FIRPTA Certificate**");

(j) a Consulting Agreement, in the form of Exhibit F, duly executed by each of the Persons set forth on Schedule 2.5(j) (collectively, the "**Consulting Agreements**");

(k) a receipt executed by Seller evidencing payment in full by Purchaser (on behalf of itself and all Purchaser Designees) of the payment of the Closing Payment due at the Closing, in form and substance reasonably acceptable to Purchaser (to be deemed delivered upon Seller's receipt of the payment of Closing Payment due at the Closing);

(l) the Transition Services Agreement, in the form of Exhibit G, duly executed by Seller and Purchaser (the "**Transition Services Agreement**"); and

(m) filing receipts from the United States Patent and Trademark Office (the "**USPTO**") evidencing all pre-Closing assignments of registered Intellectual Property (including the Intellectual Property set forth on Schedule 2.1(a)(ii)) that Seller and, as applicable, its Affiliates have filed for recordation purposes (the "**IP Registration Updates**").

**Section 2.6 Purchaser's Closing Deliverables**(a) . In addition to the other requirements set forth in this Agreement, at the Closing, Purchaser shall deliver or cause to be delivered to (a) Seller a counterpart of each other Ancillary Agreement to which Purchaser and/or any applicable Purchaser Designee is a party, duly executed by such Person, (b) the Consulting Agreements, duly executed by Parent and (c) the Parent Certificate (collectively, the "**Purchaser's Closing Deliverables**").

**Section 2.7 Actions at Closing**. At the Closing, Purchaser shall:

(a) pay, or cause to be paid to Seller, by wire transfer of immediately available funds to the account or accounts designated separately in writing by Seller, an amount of cash equal to (i) the Cash Purchase Price *minus* (ii) the Holdback Amount (the "**Closing Payment**"); and

(b) issue, or cause Parent's transfer agent to issue (in book-entry format), the Closing Shares to Seller.

**Section 2.8 Post-Closing Inventory**.

(a) No later than 45 days after the Closing Date, Purchaser or its Representatives shall prepare and deliver to Seller a written statement (the "**Post-Closing Statement**"), setting forth the (i) number of units of Specified Inventory (by SKU), whether ordered, on hand (including at Amazon and at all 3PL or other facilities) or in transit at the Closing that were actually transferred and delivered (or deemed to be transferred and delivered with respect to any Specified Inventory being retained at Seller's or one of its Affiliate's facilities pursuant to the Transition Services Agreement) to Purchaser ("**Actual Closing Inventory**") under the Transaction Documents, as determined solely by Purchaser reasonably and in good faith, (ii) the Actual Closing Inventory Payable Amount, (iii) the Aggregate Actual Closing Inventory Payable Amount, (iv) the Actual Closing Inventory Paid Amount and (v) the Aggregate Actual Closing Inventory Paid Amount.

(b) No later than ten Business Days after the Final Inventory Count Date, Purchaser or its Representatives shall, in respect of each SKU of Specified Inventory, prepare and deliver to seller a written statement (the "**Final Inventory Statement**"), setting forth the (i) unit sales demand forecast for the Forecast Period, to be based on actual sales numbers during the period of time prior to the Final Inventory Count Date that is equal in duration to the Forecast Period (the "**Forecast Period Maximum Sales Volume**"), (ii) Sold Actual Closing Inventory, (iii) Unsold Actual Closing Inventory, (iv) Forecast Period Estimated Actual Closing Inventory Sales Volume, (v) Final Estimated Annual Sell-Through Inventory Units, (vi) Final Estimated Excess Inventory Units (vii) Cost per unit of the Final Estimated Annual Sell-Through Inventory Units, (viii) Discounted Cost per unit of the Final Estimated Excess Inventory Units, (ix) Final Estimated Annual Sell-Through Inventory Cost, (x) Aggregate Final Estimated Annual Sell-Through Inventory Cost, (xi) Final Estimated Excess Inventory Cost, (xii) Aggregate Final Estimated Excess Inventory Cost, (xiii) Final Estimated Closing Inventory Value, (xiv) Final Estimated Closing Net Inventory Value, (xv) Aggregate Final Estimated Closing Inventory Value, (xvi) Aggregate Final Estimated Closing Net Inventory Value, (xvii) Final Post-Closing Inventory Adjustment Amount, and (xviii) Expired Inventory as of the Final Inventory Count Date, the value of which shall be deemed to be zero value and shall therefore be disregarded for the purposes of all calculations on the Final Inventory Statement, including calculation of the Final Post-Closing Inventory Adjustment Amount. For the avoidance of doubt, Expired Inventory shall not be included as Unsold Actual Closing Inventory and Purchaser shall have no Liabilities or obligation to pay any amounts in connection with the Expired Inventory.

(c) Upon receipt of the Post-Closing Statement and the Final Inventory Statement, Seller (and to the extent reasonably requested, its representatives) will be given reasonable access upon reasonable notice to Purchaser's (and/or the applicable Purchaser Designee's) relevant books, records, workpapers and personnel related to the information and calculations used in the formulation of such statements (subject to customary confidentiality, hold harmless or release agreements related to such access) during business hours for the limited purpose of verifying the Final Post-Closing Inventory Adjustment Amount set forth in the Final Inventory Statement. If the Final Post-Closing Inventory Adjustment Amount is a negative value such adjustment shall be for the benefit of Purchaser and the number of Inventory Consideration Shares issuable to Seller shall be decreased in accordance with this Section 2.8(c) and if such amount is a positive value such adjustment shall be for the benefit of Seller and the number of Inventory Consideration Shares issuable to Seller shall be increased in accordance with this Section 2.8(c). If the number of Inventory Consideration Shares issuable to Seller pursuant to and in accordance with this Agreement shall be increased or decreased pursuant to the preceding sentence, then the number of shares by which the Inventory Consideration Shares shall be increased or decreased shall be that number of shares of Parent Common Stock that is equal to (i) the Final Post-Closing Inventory Adjustment Amount *divided by* (ii) Parent Stock Price, and such shares shall be issued to Seller in accordance with Section 2.8(e). For the avoidance of doubt, for purposes of this Section 2.8(c) the Excluded SKU Inventory shall not be considered Specified Inventory and shall not be included in the Post-Closing Statement and no adjustment to the Inventory Consideration Shares shall be made in respect thereof.

(d) If Purchaser does not receive any written objections from Seller to the Post-Closing Statement or the Final Inventory Statement, in each case, within 30 days following Purchaser's delivery thereof, then Seller shall be deemed to have no objection to such statement, which shall become final and binding on the Parties hereto. If Seller does not agree that such statement correctly states the Actual Closing Inventory or the Final Post-Closing Inventory Adjustment Amount, as applicable, Seller shall promptly (but not later than 30 days after the delivery of such statement) give written notice to Purchaser of any objections thereto (describing in reasonable detail the nature of the disagreement asserted), and all undisputed amounts with respect to such calculation shall thereupon become binding, final and conclusive upon the Parties and enforceable in a court of law, absent manifest error or fraud. Purchaser and Seller shall negotiate in good faith to resolve any disputes and agree upon the resulting calculations in such statement. If Seller and Purchaser resolve such disputes within 30 days after the applicable written notice of objection is delivered by Seller to Purchaser (any such period, a "**Reconciliation Period**"), the applicable calculation and resulting statement shall be adjusted accordingly and shall thereupon become binding, final and conclusive upon all Parties and enforceable in a court of law, absent manifest error or fraud. If Seller and Purchaser cannot resolve the disputed items within the applicable Reconciliation Period, all unresolved disputed items shall be promptly referred to the Independent Accountant. The Independent Accountant shall be directed to render a written report on the unresolved disputed items with respect to the applicable calculation and statement as promptly as practicable, but in no event later than 30 days following the Parties' referral to the Independent Accountant. Purchaser and Seller shall each furnish to the Independent Accountant such work papers, schedules, and other documents and information relating to the unresolved disputed items as the Independent Accountant may reasonably request. The Independent Accountant shall resolve the disputed items based solely on the applicable definitions and other terms in this Agreement and the presentations by Purchaser and Seller, and not by independent review. The resolution of the dispute and resulting calculation by the Independent Accountant shall be final and binding on the Parties hereto, absent manifest error or fraud and any Inventory Consideration Shares due shall be issued in accordance with Section 2.8(e) hereof. Purchaser, on the one hand, and the Seller, on the other hand, shall bear that percentage of the fees and expenses of the Independent Accountant equal to the proportion (expressed as a percentage and determined by the Independent Accountant) of the dollar value of the disputed amounts determined in favor of the other party by the Independent Accountant. In the event of any court proceedings arising out of the Post-Closing Statement or the Final Inventory Statement, in each case, including any Proceedings to enforce the right to receive any shares of Parent Common Stock issuable in connection therewith in any applicable tribunal, the

prevailing party shall be entitled to recover its attorneys' fees and other costs incurred in connection with such proceedings. The date on which the Post-Closing Statement or the Final Inventory Statement, as the case may be, becomes binding, final and conclusive upon the Parties pursuant to this Section 2.8(d) (the "**Inventory Determination Date**"),

(e) Within five Business Days following the Inventory Determination Date, Parent shall issue, or cause Parent's transfer agent to issue (in book-entry format), the Inventory Consideration Shares, as adjusted pursuant to Section 2.8(c), Section 2.8(d) and Section 2.14. Upon issuance, the Inventory Consideration Shares, shall be subject to vesting restrictions, and such shares shall vest on the date that is the one year anniversary of the Closing Date and not later than the third Business Day after the one year anniversary of the Closing Date, Parent shall take such action to cause its transfer agent to remove any restrictive legends referencing such vesting restrictions and cause such shares to be released to Seller. From and after the date on which the Inventory Consideration Shares are issued to Seller, Seller shall have all voting, dividend and other rights as a stockholder of Parent.

(f) Notwithstanding anything to the contrary in this Section 2.8, Seller hereby covenants and agrees that in no event shall the aggregate number of Inventory Consideration Shares issuable to Seller under this Agreement exceed 280,000 shares.

**Section 2.9 Earn-Out**.

(a) From and after the Closing, Seller shall use its commercially reasonable efforts to identify one or more suppliers (other than Seller) of finished goods inventory of all SKUs that constitute Acquired Assets ("**New Suppliers**") and to initiate discussions with such New Suppliers for the purpose of negotiating new supply agreements between Purchaser or its Affiliates, on the one hand, and the New Supplier, on the other hand, for the purchase of such SKUs following the Closing on terms acceptable to Purchaser in its sole discretion, acting reasonably. Purchaser shall be entitled to participate in all discussions and communications with any New Supplier, including the negotiation of new supply agreements with such supplier, and all supply agreements or other contracts with any New Supplier shall be subject to Purchaser's written approval, which approval shall not be unreasonably withheld.

(b) "**Earn-Out Consideration Event**" shall mean the latter to occur of, in each case prior to the Earn-Out Termination Date, (i) Purchaser having entered into supplier agreements with New Suppliers in respect of each SKU of Specified Inventory and (ii) Purchaser having terminated each of the Services (as defined in the Transition Services Agreement) provided under the Transition Services Agreement such that no Services are being provided thereunder.

(c) If the Earn-Out Consideration Event occurs:

(i) prior to the date that is nine months following the Closing Date, Parent shall issue, or cause Parent's transfer agent to issue (in book-entry format), 528,670 shares of Parent Common Stock to Seller;

(ii) on or after the date that is nine months following the Closing Date but before the date that is 12 months following the Closing Date, Parent shall issue, or cause Parent's transfer agent to issue (in book-entry format), 396,502 shares of Parent Common Stock to Seller; or

(iii) on or after the date that is 12 months following the Closing Date but before the date that is 15 months following the Closing Date (the date that is 15 months following the Closing Date, the "**Earn-Out Termination Date**"), Parent shall issue, or cause Parent's transfer agent to issue (in book-entry format), 264,335 shares of Parent Common Stock to Seller (any shares of Parent Common Stock issued under any of (i)-(iii), the "**Earn-Out Shares**"); or

(d) If the Earn-Out Consideration Event does not occur by the Earn-Out Termination Date, then Parent shall not, and shall have no obligation to, issue any shares of Parent Common Stock to Seller or any other Person as Earn-Out Shares in connection with this Agreement or the Consulting Agreements.

(e) The Parties understand and agree that (i) Seller's contingent right to receive the Earn-Out Shares shall not be represented by any form of certificate or other instrument, is not transferable and is unsecured and (ii) Seller shall not have any rights as a securityholder of Purchaser or a Purchaser Designee solely as a result of Seller's contingent right to receive any consideration under this Section 2.9.

**Section 2.10 Book Entry Statement**. Any time Parent is required to issue shares of Parent Common Stock to Seller pursuant to this Article II, Parent shall issue such shares in book-entry form and provide Seller with a book statement from Parent's transfer agent evidencing the issuance of such shares.

**Section 2.11 Purchase of Excluded SKU Inventory**. At any time prior to the first anniversary of the Closing Date, Seller agrees to promptly sell and deliver to Purchaser and its Affiliates (or to a third party on behalf of Purchaser and its Affiliates) such number of units of the Excluded SKU Inventory as are required and requested in writing by Purchaser or its Affiliates to fulfill any orders that Purchaser or its Affiliates receive for units of the Excluded SKU Inventory. Notwithstanding the foregoing, any Excluded SKU Inventory that are associated with Acquired Amazon Accounts shall not be the property of Purchaser and shall be held by Purchaser and/or its Affiliates on a consignment basis only. Not later than the 15th day of each month, Purchaser shall pay to Seller, by wire transfer of immediately available funds to the account designated by Seller, the aggregate cost of all such Excluded SKU Inventory sold by Purchaser or its Affiliates in the immediately preceding month, at the cost per unit set forth in Schedule 1.1-SKU. Notwithstanding the foregoing, on the first anniversary of the Closing, and for a period of 45 days thereafter, Purchaser shall be entitled to purchase all remaining and unsold Excluded SKU Inventory then held by Seller at fifty percent discount off of the cost set forth in Schedule 1.1-SKU.

**Section 2.12 Overdue Trade Payables**.

(a) Schedule 2.12(a) sets forth the overdue payables of Seller and its Affiliates in respect of the Retained Business (the "**Overdue Payables**"). Purchaser shall withhold the Holdback Amount from the Cash Purchase Price to serve as collateral for Seller's payment of the Overdue Payables in accordance with this Section 2.12. Purchaser shall have no obligation to keep the Holdback Amount in a segregated account.

(b) Subject to Section 2.12(c), promptly following the Closing and in any event not later the 30th day following the Closing Date, Seller shall pay and discharge (and the Sole Voting Member and Founder shall cause Seller to pay and discharge) all of the Overdue Payables. Upon such payment and discharge, Seller shall provide Purchaser with evidence that such payments have been made and such obligations have been discharged, including by delivering to Purchaser executed payoff letters reasonably acceptable to Purchaser evidencing that Seller has no outstanding balance owing to the applicable trade creditors with respect to such Overdue Payables (collectively, the "**Payoff Documents**").

(c) Notwithstanding the foregoing, if any of the Overdue Payables are being disputed by Seller in good faith, then Seller shall not be required to pay such Overdue Payables that are in dispute until such time as such dispute has been resolved, provided that Seller has expressly identified on Schedule 2.12(a) those payables that are in dispute (such disputed amounts, the "**Disputed Amounts**"). Upon the payment and discharge of any Disputed Amounts, Seller shall provide Purchaser with evidence that such payments have been made and such obligations have been discharged, including by delivering to Purchaser the Payoff Documents in respect of such Disputed Amounts.

(d) Following Purchaser's receipt of any Payoff Documents in respect of an Overdue Payable, Purchaser shall promptly, and in any event within five Business Days following such receipt, pay the amount set forth in the applicable Payoff Documents to Seller by wire transfer to a bank account designated in writing by Seller, with such amounts being paid from and out of the Holdback Amount; *provided, however,* that in no event shall Purchaser be required to pay Seller any amounts in excess of the Holdback Amount.

(e) After all Payoff Documents have been received by Purchaser from Seller in respect of all Overdue Payables, any remaining portion of the Holdback Amount that has not been paid to Seller shall also be paid by Purchaser to Seller by wire transfer of immediately available funds.

**Section 2.13 Treatment of Excess Returns and Chargebacks**. Seller agrees that if any retailer to whom Seller or any of its Affiliates sold or otherwise transferred product(s) prior to the Closing (and such product(s) would otherwise constitute an Acquired Asset) returns or chargebacks from such retailers any of such product(s) during the period from and after the Closing and until the date that is the first anniversary of the Closing Date, then Seller shall be responsible for the amount of any such product(s) so returned or charged back that is equal to or greater than seven and one-half percent (7.5%) of the aggregate amount of sales of such products during the three months immediately preceding such return or chargeback and Parent shall reduce the number of Inventory Consideration Shares by the aggregate value of such returns divided by the Parent Stock Price; *provided,* that if the Inventory Consideration Shares are not sufficient to cover the aggregate amount of such returns and chargebacks for which Seller is responsible under this Section 2.13, then Parent shall reduce the number of Earn-Out Shares by the amount of such shortfall.

**Section 2.14 Withholding**. Purchaser and any other party making a payment pursuant to this Agreement will be entitled to deduct and withhold from any amounts payable pursuant to this Agreement any amounts that Purchaser reasonably determines are required to be deducted and withheld pursuant to applicable Law. If the FIRPTA Certificate has been provided, then in the event that Purchaser is required by applicable Law to make any deduction or withholding from any payment of the Purchase Price to Seller hereunder, then Purchaser shall use commercially reasonable efforts to provide Seller with written notice of such intended deduction or withholding at least five (5) Business Days prior to making such deduction or withholding. The Parties shall cooperate in good faith in order to determine whether payments by the Purchaser are subject to withholding or deduction requirements under any applicable Law and whether any such deduction or withholding can be reduced or eliminated. To the extent that any such amounts are so deducted or withheld and are remitted to the appropriate Governmental Authority, such amounts will be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

## ARTICLE III
## REPRESENTATIONS AND WARRANTIES WITH RESPECT TO SELLER AND THE BUSINESS

Except as set forth in the corresponding sections or subsections of the Disclosure Schedules attached hereto (collectively, the "**Disclosure Schedules**") (each of which shall qualify only the specifically identified sections or subsections hereof to which such Disclosure Schedule relates and shall not qualify any other provision of the Transaction Documents), each of Seller and Founder, jointly and severally, represents and warrants to Purchaser as of the Closing as follows:

**Section 3.1 Organization and Qualification; Authorization**.

(a) Seller is duly organized, validly existing and in good standing (except to the extent that the failure to be in good standing would not be material to Seller) under the Laws of the State of Delaware and has all requisite power and authority to own, lease and operate its assets, properties and business and to carry on its business as now being conducted.

(b) Seller is duly qualified or otherwise authorized as a foreign entity to transact business in each jurisdiction listed on Schedule 3.1(b) of the Disclosure Schedules, which are all of the jurisdictions in which ownership of the Acquired Assets or operation of the Business as currently conducted requires Seller to so qualify, except to the extent that the failure to be so qualified would not have a material effect on the Business.

(c) Seller has all requisite power and authority to (i) execute, deliver and perform its obligations under the Transaction Documents to which it is or will be a party and (ii) consummate the Transactions. The execution and delivery of the Transaction Documents to which Seller is or will be a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the Transactions have been or will be duly authorized, including any stockholder approvals that may be required under Seller's organizational documents or Delaware General Corporation Law.

(d) This Agreement has been, and the Ancillary Agreements to which Seller is or will be a party will be, duly executed and delivered by Seller and constitute the legal, valid and binding obligation of Seller, enforceable against it in accordance with their respective terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws affecting the rights of creditors generally and the availability of equitable remedies (the "**Bankruptcy and Equity Exception**"). Founder has all requisite capacity to execute and deliver this Agreement and any other Transaction Documents to which he is a party.

(e) Schedule 3.1(e) of the Disclosure Schedules sets forth the name of each Affiliate of Seller that owns any asset or property (including any Intellectual Property) that is used in, held for use in, or is reasonably necessary for the conduct of the Business. Seller is the sole, beneficial and legal owner of all outstanding voting or other equity or economic interests in such Affiliates. Seller has all requisite power and authority to cause such Affiliates to transfer the Acquired Assets held thereby and to execute any and all documentation necessary to effect the transfer thereof, including any applicable Ancillary Agreements.

**Section 3.2 No Violation**. Except as set forth on Schedule 3.2 of the Disclosure Schedules, the execution, delivery and performance by Seller of the Transaction Documents and the consummation of the Transactions will not: (a) violate, contravene or conflict with any provision of the charter documents, bylaws or similar organizational documents of Seller; (b) violate, contravene or conflict with any resolution adopted by Seller's board of directors or stockholders; (c) violate, contravene or conflict with any Law or Order; (d) contravene, conflict with, result in the violation or breach of any of the terms or conditions of, or constitute (with or without notice or lapse of time or both) a material default under or an event which would, or could reasonably be expected to give rise to, any right of notice, modification, acceleration, payment, suspension, withdrawal, cancellation or termination under, or in any manner release any party thereto from any obligation under, or otherwise affect any rights of Seller under, any material Acquired Contract or material Permit that is an Acquired Asset; or (e) result in the creation or imposition of any Lien upon any Acquired Asset that would materially impact Purchaser's intended use of such Acquired Asset.

**Section 3.3 Consents and Approvals; Permits**. Except as set forth on Schedule 3.3 of the Disclosure Schedules, no consent, approval, Order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Authority or other Person, and no Permit, is required to be made or obtained by Seller in connection with the authorization, execution, delivery and performance by Seller of the Transaction Documents or the consummation of the Transactions.

**Section 3.4 Fair Consideration; No Fraudulent Conveyance**. Seller is not now insolvent, and will not be rendered insolvent by the sale, transfer and assignment of the Acquired Assets pursuant to the terms of this Agreement or the transactions contemplated hereby. Seller has no intention to file for bankruptcy, and, to Seller's Knowledge, no insolvency proceedings of any character including bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Seller or any of the Acquired Assets or Assumed Liabilities are pending or threatened. Seller is not entering into this Agreement and the Transactions with the intent to defraud, delay or hinder Seller's creditors and the consummation of the Transactions will not have any such effect. The Transactions do not constitute a fraudulent conveyance, or otherwise give rise to any right of any creditor of Seller whatsoever to any of the Acquired Assets after the Closing.

**Section 3.5 Financial Statements; Accounting and Internal Controls**.

(a) Schedule 3.5(a) of the Disclosure Schedules sets forth copies of the following financial statements of Seller, including the Business (collectively, the "**Financial Statements**"): (i) the unaudited balance sheets of Seller and the Business as of December 31, 2020 (the "**Balance Sheet Date**"), December 31, 2019 and December 31, 2018, and the related unaudited statements of operations for each of the years then ended (together with all related notes and schedules thereto).

(b) The Financial Statements (including the notes and schedules thereto) (i) have been prepared in accordance with GAAP consistently applied throughout the periods covered thereby, except that they lack footnotes required by GAAP. The Financial Statements (i) present fairly the assets, liabilities and financial condition of Seller and the Business as of such dates and the results of operations of Seller and the Business for such period and (ii) are consistent with the books and records of Seller and the Business (which books and records are correct and complete in all material respects). Since the Balance Sheet Date, there has been no material change in any accounting principles, policies, methods or practices, including any change with respect to reserves (whether for bad debt, contingent liabilities or otherwise) of Seller and the Business.

**Section 3.6 Accounts Payable**. All accounts payable of Seller are reflected accurately and properly, in all material respects, on its books and records, including the Financial Statements and the Inventory Statement, are valid and such accounts payable of Seller have arisen in bona fide arm's-length transactions in the ordinary course of business, and Seller with respect to the Business has been paying its accounts payable as and when due.

**Section 3.7 Inventory**. All of the Specified Inventory is of a quality no less than the quality of finished goods and other inventories maintained by Seller in connection with the Business in the ordinary course of business consistent with past practice and is merchantable and fit for the purpose for which it was procured or manufactured, and is not slow-moving, obsolete, damaged, or defective. All Specified Inventory is owned by Seller, or one or more of its Affiliates, free and clear of any Liens (other than Permitted Liens), and no Specified Inventory is held on excluded consignment basis and was acquired in the ordinary course of business consistent with past practice, has not been adulterated or misbranded, and complies with Seller's internal quality assurance guidelines. The "Use By", "Expiration Date" or other similar date references on substantially all of the Specified Inventory are to dates that are more than 270 days after the Closing Date.

**Section 3.8 Absence of Changes or Events**. Except as set forth on the applicable subsection of Schedule 3.8 of the Disclosure Schedules, since December 31, 2019, (a) Seller has conducted the Business only in the ordinary course consistent with past practice, (b) no Event has occurred that, individually or in combination with any other Events, has had or could reasonably be expected to have a material and adverse effect on the Business or the Acquired Assets, (c) Seller has not suffered any loss, damage, destruction or other casualty affecting any material Acquired Assets, whether or not covered by insurance; and (d) there has been no termination of or receipt of notice of termination, notice of intention to discontinue, or change to any financial or other material terms, with respect to any manufacturer of Seller related to the Acquired Assets.

**Section 3.9 Acquired Assets**.

(a) Seller, or one or more of its Affiliates, has, and immediately following the Closing, Purchaser or the applicable Purchaser Designee will continue to have (on the same terms and conditions as Seller, or the applicable Affiliate, held such Acquired Assets as of immediately prior to the Closing), good and marketable title to, or a valid right to use, all of the Acquired Assets, free and clear of any and all Liens (other than Permitted Liens). The Acquired Assets to which Seller has good and marketable title to, or a valid right to use, are all the

assets and property that are necessary to enable the Business to be conducted immediately after the Closing in substantially the same manner as the Business has been conducted since December 31, 2019, including, that the Specified Inventory for each SKU is all the inventory necessary, and such inventory is sufficient, for the Business to operate in the ordinary course consistent with past practice for 90 days after the Closing Date. None of the Excluded Assets (other than the Retained Business Assets) is material to the Business. As a result of the consummation of the Transactions, no Affiliate of Seller will have any right, title or interest in any of the Acquired Assets or Assumed Liabilities.

(b) Except as set forth in Schedule 3.9(b), all material items of tangible personal property owned or leased by Seller that constitute Acquired Assets are in good operating condition and repair, ordinary wear and tear excepted, and are suitable for the purposes for which they are presently being used.

(c) Schedule 3.9(c) of the Disclosure Schedules sets forth the physical location of all of the Acquired Assets that are tangible personal property.

**Section 3.10 Intellectual Property**.

(a) Schedule 3.10(a) of the Disclosure Schedules contains a true, complete and accurate description and list of all (i) patented or registered Intellectual Property owned by Seller, (ii) pending patent applications and applications for other registrations of Intellectual Property owned by Seller, and (iii) unregistered Trademarks, copyrights, and data (of any type or kind), if any, that are owned by Seller and are necessary to Seller's conduct of the Business as presently conducted or presently contemplated by Seller to be conducted (indicating for each of (i) and (ii) the applicable jurisdiction, registration number (if registered), application number, date issued (if issued) and date filed).

(b) Seller exclusively owns and possesses all right, title and interest in and to, or has the right under a valid and enforceable license to use and otherwise commercialize or exploit, all Intellectual Property necessary for or used or otherwise commercialized or exploited in the operation of the Business as presently conducted and as presently proposed by Seller to be conducted, free and clear of all Liens (the "**Seller Intellectual Property**"), and all Seller Intellectual Property owned by Seller is included in the Acquired Assets and after consummation of the transactions contemplated by this Agreement and the Ancillary Agreement will be exclusively owned by Purchaser or the applicable Purchaser Designee. None of the Seller Intellectual Property that is registered with any Governmental Authority, nor, to Seller's Knowledge, any other Seller Intellectual Property, is invalid or unenforceable in whole or in part. No loss or expiration of any of the Seller Intellectual Property is pending, reasonably foreseeable or, to Seller's Knowledge, threatened. No Seller Intellectual Property is subject to any maintenance fees or taxes or actions falling due within 90 days after the Closing Date.

(c) Seller has taken all action necessary or reasonably advisable to protect and maintain in full force and effect the Seller Intellectual Property, including to maintain the confidentiality of all trade secrets and confidential information of Seller or with respect to the Business. No event has occurred, and, to Seller's Knowledge, no circumstance or condition exists, that (with or without notice or lapse of time) will, or reasonably could be expected to, result in the delivery, license or disclosure of any such trade secrets or confidential information (if any), included in the Acquired Assets, to any other Person and no such trade secrets or confidential information have been impermissibly disclosed to any other Person or accessed or used by any other Person in an unauthorized manner.

(d) Founder and each current or former Service Provider of Seller has executed a valid and enforceable written agreement (i) assigning to Seller ownership of all rights in any Intellectual Property included as part of the Seller Intellectual Property and developed by such Founder or Service Provider, solely or jointly with others, in the course and scope of his or her employment or engagement by Seller, and (ii) containing confidentiality and non-use terms and conditions sufficient to protect all trade secrets and confidential information (if any) included in the Acquired Assets. Neither Founder nor any other equity holders of Seller, if any, owns or holds any Seller Intellectual Property.

(e) (i) There have been no claims made or threatened against Seller asserting the invalidity, misuse or unenforceability of any Seller Intellectual Property or challenging Seller's ownership of such Intellectual Property owned or purported to be owned by Seller or right to use, commercialize or exploit any other Seller Intellectual Property, in either case free and clear of Liens, and to Seller's Knowledge, there is no basis for any such claim, (ii) Seller has not received any notices of, and to Seller's Knowledge there are no facts which indicate a likelihood of, any direct, vicarious, indirect, contributory or other infringement, violation or misappropriation by Seller of any Intellectual Property (including any cease-and-desist letters or demands or offers to license any Intellectual Property from any other Person), (iii) the conduct of the Business as previously conducted has not infringed, misappropriated or violated, and as presently conducted does not and will not infringe, misappropriate or violate, any Intellectual Property of any other Person, whether directly, vicariously, indirectly, contributorily or otherwise, (iv) to Seller's Knowledge, the conduct of the Business as presently proposed to be conducted by Purchaser or any applicable Purchaser Designee will not infringe, misappropriate or violate, any Intellectual Property of any other Person, whether directly, vicariously, indirectly, contributorily or otherwise, and (v) to Seller's Knowledge, no Seller Intellectual Property has been infringed, misappropriated or violated by any other Person.

(f) The use and licensing of all Trademarks owned or purported to be owned by Seller and included in the Acquired Marks has been subject to reasonable and adequate quality control, and Seller has not conducted the Business or used or enforced (or failed to use or enforce) any of such Trademarks in a manner that could result in the abandonment, cancellation, invalidity, or unenforceability of any such Trademarks.

(g) The E-Commerce Assets currently used by Seller and included in the Acquired Assets are sufficient for the current needs of the Business, including as to capacity and ability to process current peak volumes in a timely manner. In the past 12 months, there have been no bugs in, or failures, breakdowns, or continued substandard performance of, any such E-Commerce Assets that has caused the substantial disruption or interruption in or to the use of such E-Commerce Assets by Seller or the conduct of the Business.

(h) Each privacy policy or other policy or terms published by Seller that relates to Personal Data, and the date that such policies or terms were published or otherwise in effect, have been delivered or made available to Purchaser. Seller is in material compliance with all applicable Privacy Laws, its own privacy policies, terms of use, and other terms or policies or Contracts, and any third party privacy policies, terms of use, or other terms or policies or Contracts binding on Seller with respect to, in each case, data security, Data Breach notification requirements, the privacy of Service Provider, users, visitors, and customers, or the Processing of any Personal Data or other data (collectively, the "**Privacy Requirements**"). No claims are currently pending or, to Seller's Knowledge, are threatened against Seller by any Person alleging a violation of any Privacy Requirements. The execution and delivery of this Agreement and the Ancillary Agreements, the performance by Seller of its obligations hereunder and thereunder, and the consummation of the transactions contemplated hereby and thereby (i) will comply with all Privacy Requirements, (ii) will not impair any rights of, or impose any obligations or restrictions on, Seller with respect to any use, disclosure, commercialization or exploitation of, or otherwise relating to, any Personal Data or other data, and (iii) will not give rise to any right on the part of any Person to impair any such rights or impose any such obligations or restrictions. Seller has at all times made all necessary disclosures to, and obtained any necessary consents from, users, customers, employees, contractors and other applicable Persons required under all Privacy Requirements and has all necessary authority and legal bases to transfer Personal Data Processed in the conduct of the Business to Purchaser. Such Personal Data can be Processed by Purchaser after the Closing in a manner substantially the same as currently Processed by Seller without additional notice to, or consent from, data subjects. To Seller's Knowledge, none of Seller, anyone acting on behalf of Seller, or any software tool created or used by or on behalf of Seller, has used false log-on credentials with respect to any third party website or other false representation or statement or unauthorized or unlawful mechanism, code (including markup languages, programming languages, or scripts), or action to access (including access in excess of authorization),

obtain, damage, exploit, Process, or otherwise use any Personal Data or other data. Seller has never received a complaint or been the subject of any Proceeding or investigation regarding its Processing of Personal Data or other data or its privacy or data security policies, practices, or activities. In compliance with Privacy Requirements, Seller has adequate security measures in place to protect Personal Data and other data in its possession, custody, or control. Seller has not experienced any Data Breach.

**Section 3.11 Contracts**. Schedule 3.11 of the Disclosure Schedules contains a true, complete and accurate list as of the Closing Date of all Acquired Contracts and all outstanding purchase orders (true and complete copies of which Seller has provided to Purchaser) (a) by which any of the Acquired Assets are bound or affected or (b) to which Seller is a party or by which it is bound in connection with the Business, the Acquired Assets or Assumed Liabilities and all such Acquired Contracts are in full force and effect and are valid and enforceable in accordance with their terms, and (c) Seller has at all times been in compliance with all material terms and requirements of such contracts and, except for those matters set forth in such Schedule 3.11, has received no communication regarding any actual, alleged material breach or default under any such Acquired Contract. There are no Contracts to which Seller or any of its Affiliates are bound, or to which any Acquired Assets are subject, that are shared between the Business and the Retained Business.

**Section 3.12 Litigation**. There are no Proceedings pending or, to Seller's Knowledge, threatened against Seller or any of the current or former officers, directors or employees of Seller or current or former Service Providers, in each case in respect of the Business or related to or affecting the Acquired Assets or the Assumed Liabilities, nor, to Seller's Knowledge, is there any reasonable basis for any such Proceeding. There is no Order to which Seller is a party or by which Seller is bound. Schedule 3.12 of the Disclosure Schedules sets forth all settlements made by Seller in connection with the Acquired Assets in excess of providing a customer with a replacement product or refund of the purchase price for such product.

**Section 3.13 Compliance with Laws**. Except as set forth in Schedule 3.13, Seller is in compliance, and has at all times complied, in all material respects with all Laws in connection with the conduct, ownership, use, occupancy or operation of the Business and the Acquired Assets, and Seller has not received during the past five years, nor, to Seller's Knowledge, is there any basis for, any notice or other communication from any Governmental Authority or any other Person that Seller is not in material compliance with any Law applicable to the Business or the Acquired Assets.

**Section 3.14 Taxes**.

(a) Seller has timely and properly filed all Tax Returns required to be filed by or with respect to it, the Business, or the Acquired Assets. All such Tax Returns are accurate and complete in all material respects. Seller has timely and properly paid all Taxes required to be paid by it or with respect to the Acquired Assets or Business, whether or not shown as due on any Tax Return.

(b) There are no Liens for Taxes upon the Business or any of the Acquired Assets other than Permitted Liens.

(c) There is no Tax deficiency or adjustment outstanding, assessed or proposed against Seller, nor has Seller executed any outstanding waiver of any statute of limitations on or extension of the period for the assessment or collection of any material Tax which is still outstanding, in each case with respect to the Business or the Acquired Assets.

(d) No Tax audits or administrative or judicial Tax Proceedings are being conducted with respect to Seller with respect to the Business or the Acquired Assets. Seller has not received from any Governmental Authority any (i) written notice indicating an intent to open an audit or other review with respect to Taxes relating to the Business or the Acquired Assets, (ii) written request for information related to Tax matters with respect to the Business or the Acquired Assets, or (iii) written notice of deficiency or proposed adjustment or assessment for any amount of Tax relating to the Business or the Acquired Assets that has not been resolved or paid in full.

(e) Seller has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, in each case, that relates to the Business or the Acquired Assets, that, in either case, remains in effect.

(f) No claim has been made by an authority in a jurisdiction where Seller does not file Tax Returns that Seller may be subject to taxation by that jurisdiction with respect to the Business or the Acquired Assets.

(g) The Assumed Liabilities do not include any obligation to pay any "applicable employment taxes" (as defined in Section 2302 of the CARES Act) in respect of the Business that would have been due on or before the Closing Date but for Section 2302(a)(1) of the CARES Act.

(h) With respect to the Business, Seller has (i) timely deducted, withheld, and remitted all Taxes required to have been deducted, withheld, or remitted in connection with any amounts paid or owing to any employee, independent contractor, equity interest holder, or other third party, and all IRS Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed, (ii) timely and properly collected all sales, use, value-added, and similar Taxes required to be collected, and has remitted or will remit on a timely basis such amounts to the appropriate Governmental Authority, and (iii) properly requested, received, and retained all necessary exemption certificates and other documentation supporting any claimed exemption or waiver of Taxes on sales or similar transactions as to which it would otherwise have been obligated to collect or withhold Taxes. Each Person who provides or provided services to Seller who is classified as an independent contractor or other non-employee for any purpose is properly classified.

(i) Seller is not a party to or bound by (and no Assumed Liability includes or constitutes) (i) any Tax allocation, indemnification, or sharing agreement (other than this Agreement) or (ii) any closing or other agreement or ruling with any Governmental Authority with respect to Taxes, in each case that could bind Purchaser or any of its Affiliates after the Closing.

(j) None of the Assumed Liabilities is an obligation to make a payment that is not deductible under Section 280G of the Code or to compensate any individual for excise taxes paid pursuant to Section 4999 of the Code.

(k) Seller does not have any Liability for (and no Assumed Liability constitutes or includes Liability for) the Taxes of any other Person as a transferee or successor, as the result of being or having been a member of an Affiliated Group, by Contract (other than this Agreement and any contract entered into in the ordinary course the principal purpose of which does not relate to Taxes), or otherwise, in each case that would bind Purchaser or any of its Affiliates after the Closing Date.

(l) Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2. None of the Acquired Assets is a "United States real property interest" under Section 897(c) of the Code.

(m) None of the Acquired Assets is (i) a "section 197(f)(9) intangible" (as defined in Treasury Regulation Section 1.197-2(h)(1)(i) and assuming for this purpose that the transition period ends on August 10, 1993), or (ii) an interest in a Person classified as a partnership, a corporation or a disregarded entity for U.S. federal, state or local income tax purposes.

(n) No Acquired Asset is (i) property required to be treated as owned by another Person pursuant to Section 168(f)(8) of the Internal Revenue Code of 1954, as amended and in effect immediately before the enactment of the Tax Reform Act of 1986; (ii) "tax-exempt use property" within the meaning of Section 168(h)(1) of the Code; (iii) "tax-exempt bond financed property" within the meaning of Section 168(g) of the Code; (iv) "limited use property" within the meaning of Revenue Procedure 76-30, (v) subject to Section 168(g)(1)(A) of the Code; (vi) subject to a "Section 467 rental agreement" as defined in Section 467 of the Code; or (vii) subject to any provision of Law similar to any of the foregoing.

**Section 3.15 Suppliers**. Schedule 3.15 of the Disclosure Schedules contains a true, complete and accurate list of all of (a) the vendors and suppliers to Seller with respect to the Business (each a "**Supplier**"), ordered from largest to smallest by the aggregate dollar value of purchases by Seller during the 12 month period ended December 31, 2020 and (b) with respect to each Supplier, the aggregate dollar value of purchases. In addition, each Supplier with which Seller has entered into a Contract that is in effect at the Closing shall be identified on the list by reference to Schedule 2.1(a)(i). No material Supplier has terminated or adversely modified the amount, frequency or terms of the business such Supplier conducts with Seller. Seller has not received any notice, nor does Seller have any Knowledge, that any material Supplier intends to terminate or adversely modify the amount, frequency or terms of the business such Supplier conducts with Seller. Except as disclosed on Schedule 3.15 of the Disclosure Schedules, Seller does not have any outstanding material dispute with a material Supplier, nor does Seller have any Knowledge, of any material dissatisfaction on the part of any material Supplier.

**Section 3.16 Products**. Except as set forth in Schedule 3.16, all products manufactured, sold or delivered by Seller included among the Acquired Assets comply with all applicable warranties, and Seller does not have any material Liability for replacement thereof or other material damages in connection therewith. No products manufactured, sold or delivered by Seller are subject to any guaranty, warranty or other indemnity beyond the applicable standard terms and conditions of sale with respect thereto which, in each case, have been made available to Purchaser. Seller has not received any notice of any claims for, and to Seller's Knowledge, except as set forth in Schedule 3.16, there are no product recalls, returns, warranty obligations or service calls relating to any of its products included among the Acquired Assets, and there is no reasonable basis therefor. To Seller's Knowledge, Seller does not have any Liability arising out of any injury to individuals or property as a result of the ownership, possession or use of any products manufactured, sold or delivered by Seller included among the Acquired Assets.

**Section 3.17 International Trade Laws**. Seller has, at all times as to which the applicable statute of limitations has not yet expired, conducted its transactions in accordance with all applicable International Trade Laws. Without limiting the foregoing: (a) Seller has obtained, and is in compliance with, all export licenses, license exceptions and other consents, notices, waivers, approvals, orders, authorizations, registrations, declarations, classifications and filings with any Governmental Authority required for (i) the export and re-export of products, services, Software and technologies and (ii) releases of technologies and Software to foreign nationals located in the United States and abroad (collectively, the "**Export Approvals**"); (b) there are no pending or, to Seller's Knowledge, threatened claims against Seller with respect to such Export Approvals; (c) to Seller's Knowledge, there are no actions, conditions or circumstances pertaining to Seller's import or export transactions that may give rise to any future claims; (d) to Seller's Knowledge, no Export Approvals with respect to the transactions contemplated hereby are required; (e) Seller has not received written notice to the effect that a Governmental Authority claimed or alleged that Seller was not in compliance with International Trade Laws; and (f) neither Seller nor any of its Affiliates has made any voluntary disclosures to, or has been subject to any fines, penalties or sanctions from, any Governmental Authority regarding any past violations of International Trade Laws.

**Section 3.18 Anticorruption; Improper Payments**. None of Seller, nor any Representative, Affiliate, or, to Seller's Knowledge, any other Person authorized to act on behalf of Seller, will or has, directly or indirectly, taken any act in furtherance of an offer, payment, promise to pay, authorization, or ratification of payment, directly or indirectly, of any money or anything of value (including any gift, sample, rebate, travel, meal and lodging expense, entertainment, service, equipment, debt forgiveness, donation, grant or other thing of value, however characterized) to any Government Official or any other Person to secure any improper advantage or to obtain or retain business that would or may cause Seller to be in violation of Improper Payment Laws. Seller complies, will

and has at all times complied, with all Improper Payment Laws. Without limiting the generality of the foregoing, (a) Seller has not violated and is not in violation of, in any material respect, the U.S. Anti-Kickback Statute (42 U.S.C. Section 1302a-7(b)), the Federal False Claims Act (31 U.S.C. Sections 3729, et seq.) or any related or similar Law and (b) there has been no use or authorization of money or anything of value relating to any unlawful payment or secret or unrecorded fund or any false or fictitious entries made in the books and records of Seller relating to the same. None of Seller, nor, to Seller's Knowledge, any equity holder of Seller, nor any of their respective Representatives, Affiliates or Persons acting on their behalf have received any notice or communication from any Person that alleges, nor been involved in any internal investigation involving any allegations relating to potential violation of any Improper Payment Laws or other applicable Law, nor have received a request for information from any Governmental Authority regarding Improper Payment Laws. None of Seller, nor to Seller's Knowledge, any Representative, Affiliate or other agent of Seller, has employed or retained, directly or indirectly, a Government Official or a family member of a Government Official. No Government Official has, directly or indirectly, the right of control over, or any beneficial interest in Seller. Seller further agrees that should it learn of any information regarding potential violations of the Improper Payment Laws or any information otherwise relevant to this provision, it will promptly advise Purchaser of such knowledge or suspicion.

**Section 3.19 Restricted Securities**. Seller understands that the shares of Parent Common Stock to be issued pursuant to this Agreement have not been registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of Seller's representations as expressed herein. Until such time as the shares of Parent Common Stock are registered in accordance with Section 5.15, Seller understands that the shares of Parent Common Stock to be issued pursuant to this Agreement are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, Seller must hold the shares of Parent Common Stock until they are registered with the SEC and qualified by state authorities, or an exemption from such registration and qualification requirements is available. Seller acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including the time and manner of sale, the holding period for the Parent Common Stock and on requirements relating to Parent which are outside of Seller's control, and which Parent is under no obligation and may not be able to satisfy.

**Section 3.20 Accredited Investor**. Seller is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

**Section 3.21 Investment Experience**. Seller represents that it is a sophisticated investor experienced in evaluating and investing in private placement transactions of securities of companies in similar stage of development as Purchaser and acknowledges that Seller can bear the economic risk of its investment for an indefinite period of time, and has such knowledge and experience in financial and business matters that Seller is capable of evaluating the merits and risks of the investment in the Parent Common Stock.

**Section 3.22 No General Solicitation**. Neither Seller, nor any of Seller's officers, managers, employees, agents, members or partners has either directly or indirectly, including through a broker or finder (a) engaged in any general solicitation, or (b) published any advertisement in connection with the offer and sale of the Parent Common Stock.

**Section 3.23 Legends**. Seller understands that the Parent Common Stock acquired hereunder and any securities issued in respect of or exchange therefor may bear any one or more of the following legends:

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

(b) “THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A LOCK-UP, VOTING AND STANDSTILL AGREEMENT WHICH PLACES CERTAIN RESTRICTIONS ON THE TRANSFER AND VOTING OF THE SHARES REPRESENTED HEREBY. ANY PERSON ACCEPTING ANY INTEREST IN SUCH SHARES SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SUCH AGREEMENT. A COPY OF SUCH LOCK-UP, VOTING AND STANDSTILL AGREEMENT WILL BE FURNISHED TO THE RECORD HOLDER OF THIS CERTIFICATE WITHOUT CHARGE UPON WRITTEN REQUEST TO THE COMPANY AT ITS PRINCIPAL PLACE OF BUSINESS.”;

(c) “THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO TIME VESTING RESTRICTIONS AS SET FORTH IN AN AGREEMENT BETWEEN PARENT AND THE REGISTERED HOLDER, OR SUCH HOLDER’S PREDECESSOR IN INTEREST, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF PARENT. ANY TRANSFER OR ATTEMPTED TRANSFER OF ANY SHARES IN VIOLATION OF SUCH AGREEMENT IS VOID.”; and

(d) any legend required by the securities laws of any state to the extent such laws are applicable to the Parent Common Stock represented by the certificate so legended.

**Section 3.24 Information; Investment Purpose**. Seller has requested, received, reviewed and considered all the information Seller deems necessary, appropriate or relevant as a prudent and knowledgeable investor in evaluating the investment in Parent Common Stock. Seller further represents that it has had an opportunity to ask questions of and receive answers from Purchaser regarding the terms and conditions of the offering of the shares of Parent Common Stock and the business, prospects and financial condition of Purchaser necessary to verify the accuracy of any information furnished to Seller or to which Seller had access. Seller is acquiring the shares of Parent Common Stock pursuant to this Agreement in the ordinary course of Seller’s business and for Seller’s own account for investment purposes only and with no present intention of distributing any Parent Common Stock, and no arrangement or understanding exists with any other persons regarding the distribution of Parent Common Stock.

**Section 3.25 No Brokers or Finders**. Neither Seller nor any of its Affiliates has retained any broker or finder, agreed to pay or made any statement or representation to any Person that would entitle such Person to, any broker’s, finder’s or similar fees or commissions in connection with the Transactions.

**Section 3.26 Disclosure**. None of the representations and warranties contained in this Article III, the information contained in the Exhibits and Disclosure Schedules attached hereto and the written statements, documents, certificates or other items prepared and supplied to Purchaser or its Affiliates by or on behalf of Seller in connection with the Transactions, contain any untrue statement of a material fact or omit a material fact necessary to make each statement contained herein or therein, in light of the circumstances in which they were made, not misleading.

## ARTICLE IV
## REPRESENTATIONS AND WARRANTIES OF PARENT AND ACQUISITION SUB

Except as set forth in the corresponding sections or subsections of the Parent Disclosure Schedules attached hereto (collectively, the “**Parent Disclosure Schedules**”) (each of which shall qualify only the specifically identified sections or subsections hereof to which such Parent Disclosure Schedule relates and shall not qualify any other provision of the Transaction Documents), each of Parent and Acquisition Sub, jointly and severally, hereby represent and warrant to Seller as of the Closing Date as follows:

**Section 4.1 Organization; Authorization**. Parent is a corporation and Acquisition Sub is a limited liability company; each is duly organized, validly existing and in good standing (except to the extent that the failure to be in good standing would not be material to Parent or Acquisition Sub, as applicable) under the Laws of the State of Delaware and has all requisite power and authority to own, lease and operate its assets, properties and business and to carry on its business as now being conducted. Acquisition Sub is wholly owned by Acquisition Sub Parent and Acquisition Sub Parent is wholly owned by Parent. Each of Parent and Acquisition Sub has all requisite power and authority to execute and deliver the Transaction Documents, to consummate the Transactions and to comply with the terms, conditions and provisions hereof and thereof. The execution, delivery and performance by each of Parent and Acquisition Sub of the Transaction Documents to which it is or will be a party have been duly and properly authorized by all requisite corporate action in accordance with applicable Law and with its organizational documents. The Transaction Documents to which either Parent and Acquisition Sub is or will be a party have been or will be duly executed and delivered by Parent and Acquisition Sub, as applicable, and constitute the legal, valid and binding obligation of Parent or Acquisition Sub, as applicable, enforceable against it in accordance with its terms, except as such enforceability may be limited by the Bankruptcy and Equity Exception.

**Section 4.2 No Violation**. The execution, delivery and performance by each of Parent and Acquisition Sub of the Transaction Documents to which it is a party and the consummation by each of Parent and Acquisition Sub of the Transactions will not violate, contravene or conflict with any: (a) Law, assuming that all consents, approvals and authorizations contemplated by clauses (a) – (c) of Section 4.3 below have been obtained, and all filings described in such clauses have been made, or (b) provision of the charter documents, bylaws or similar organizational documents of Parent or Acquisition Sub.

**Section 4.3 Consents and Approvals**. No consent, approval, Order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Authority or other Person is required to be made or obtained by Parent, Acquisition Sub Parent or Acquisition Sub in connection with the authorization, execution, delivery and performance by Parent, Acquisition Sub Parent or Acquisition Sub of the Transaction Documents to which Parent, Acquisition Sub Parent or Acquisition Sub is a party, or the consummation by Parent, Acquisition Sub Parent or Acquisition Sub of the Transactions, except for (a) the filing with the SEC of such filings and other reports as may be required pursuant to the applicable requirements of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), (b) the applicable requirements of Nasdaq, and (c) the filings of documents with any applicable state securities authorities that may be required in connection with the issuance of Parent Common Stock.

**Section 4.4 Valid Issuance**. The shares of Parent Common Stock to be issued pursuant to Article II will, when issued in accordance with the provisions of this Agreement, be validly issued, fully paid and nonassessable.

**Section 4.5 Parent SEC Filings; Financial Statements; Undisclosed Liabilities**. Parent has timely filed with the SEC all reports, schedules, forms, statements, and other documents required to be filed by Parent under the Securities Act and Exchange Act for the two years preceding the Closing Date (or such shorter period as Parent was required by Law to file such material) (the foregoing materials being collectively referred to herein as the "**Parent SEC Documents**"). As of their respective dates, each of the Parent SEC Documents complied as to form in all material respects with the applicable requirements of the Securities Act, the Exchange Act, and the Sarbanes-Oxley Act, and the rules and regulations of the SEC thereunder applicable to such Parent SEC Documents. None of the Parent SEC Documents, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of Parent included in the Parent SEC Documents: (i) complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto as in effect at the time of filing; (ii) were prepared in accordance with GAAP (except as may be otherwise specified in such financial statements or the notes thereto and except that in the case of unaudited interim financial statements, may not contain all footnotes required by GAAP); and (iii) fairly presented in all material respects the financial position of Parent and its consolidated subsidiaries as of and for the dates thereof any the results of operations and cash flows for the periods then ended, subject, in the case of unaudited interim financial statements, to normal and year-end audit adjustments.

**Section 4.6 Litigation**. There is no pending Proceeding and, to Purchaser's knowledge, no Person has threatened to commence any Proceeding that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Transactions. To the knowledge of Purchaser, no event has occurred, and no claim, dispute or other condition or circumstance exists, that would reasonably be expected to, give rise to or serve as a basis for the commencement of any such Proceeding.

**Section 4.7 No Brokers or Finders**. Neither Parent nor Acquisition Sub has retained any broker or finder, agreed to pay or made any statement or representation to any Person that would entitle such Person to, any broker's finder's or similar fees or commissions in connection with the Transactions.

## ARTICLE V
## COVENANTS AND AGREEMENTS

**Section 5.1 Agreements Regarding Tax Matters**.

(a) Allocation. Purchaser and Seller agree that the Purchase Price (plus any Assumed Liabilities treated as consideration for income Tax purposes) shall be allocated for all income Tax purposes consistently with Section 1060 of the Code as shown on an allocation schedule to be prepared in accordance with this Section 5.1(a) (the "**Allocation Schedule**"). Purchaser shall prepare and provide the Allocation Schedule to Seller within 90 days after the Closing Date. If within 20 days after such delivery, Seller notifies Purchaser in writing that it objects to the allocation set forth in the Allocation Schedule, the Parties shall use commercially reasonable efforts to resolve such dispute. In the event that the Parties are unable to resolve such dispute within 20 days, the dispute shall be resolved by the Independent Accountant, and the Allocation Schedule shall be adjusted to reflect such resolution. Any and all fees, expenses and costs of the Independent Accountant shall be borne by the Party whose proposed determination of all disputed items submitted to the Independent Accountant, in the aggregate, yields the larger discrepancy to that of the Independent Accountant's final determination of such disputed items. In the event of any adjustment to the Purchase Price (or any other item of consideration for income Tax purposes) requiring an amendment to the Allocation Schedule, Purchaser shall amend the Allocation Schedule in accordance with this Section 5.1(a) and shall provide such amended allocation to Seller (which, subject to the dispute resolution provisions set forth in this Section 5.1(a) shall become the Allocation Schedule). Each Party agrees to (i) prepare and timely file all applicable Tax Returns in a manner consistent with the final Allocation Schedule and (ii) act in accordance with any such Allocation Schedule for all Tax purposes, in each case unless otherwise required by a "determination" within the meaning of Section 1313 of the Code.

(b) Straddle Period Taxes. In the case of any real or personal property Taxes (or other similar ad valorem Taxes or Taxes imposed on a periodic basis) attributable to the Business or the Acquired Assets that are imposed for a period beginning on or before and ending after the Closing Date (each, a "**Straddle Period Tax**"), any such Straddle Period Taxes shall be prorated between Purchaser and Seller on a daily basis. The Party required by Law to pay any such Straddle Period Tax (the "**Paying Party**") shall file the Tax Return related to such Straddle Period Tax within the time period prescribed by Law and shall timely pay such Straddle Period Tax. To the extent any portion of such payment is the responsibility of the other party hereunder, the Paying Party shall provide the other party (the "**Non-Paying Party**") with notice of the amount of such Straddle Period Taxes, and within 10 days of receipt of such notice, the Non-Paying Party shall reimburse the Paying Party for the Non-Paying Party's share of such Straddle Period Taxes.

(c) Transfer Taxes. All transfer, documentary, sales, use, stamp, value added, goods and services, excise, registration and other similar Taxes, and all conveyance or filing fees, recording charges and other similar fees and charges (including any penalties and interest) incurred in connection with the consummation of the transactions contemplated by this Agreement and any Ancillary Agreements ("**Transfer Taxes**") shall be paid by Seller when due, and Seller shall at its expense prepare and file all Tax Returns and other documentation with respect to all such Transfer Taxes, and if required by Law, Purchaser shall join in the execution thereof.

(d) Cooperation. To the extent relevant to the Business or the Acquired Assets, each Party shall (i) provide the other with such assistance as may reasonably be required in connection with the preparation of any Tax Return and the conduct of any audit or other examination by any Governmental Authority or in connection with judicial or administrative proceedings relating to any Liability for Taxes and (ii) retain and provide the other with all records or other information that may be relevant to the preparation of any Tax Returns, or the conduct of any audit, examination or other proceeding relating to Taxes (each, a "**Tax Contest**"). Such cooperation shall include obtaining and providing appropriate forms, providing the necessary powers of attorney, retaining and providing records and information that are reasonably relevant to any such Tax Return or Tax Contest, and making employees available on a mutually convenient basis to provide additional information and explanation of any materials provided hereunder, in each case at the expense of the party requesting such cooperation. Seller shall retain all documents, including prior years' Tax Returns, supporting work schedules and other records with respect to the Acquired Assets and Business, including all sales, use and employment Tax Returns and shall not destroy or otherwise dispose of any such records for six years after Closing or, if later, until the expiration of the applicable statute of limitations, without the prior written consent of Purchaser. Purchaser shall promptly notify Seller of any Tax Contest that could reasonably give rise to a Seller Indemnification obligation under Article VII hereof and Seller shall have the right, but not the obligation, to participate in any such Tax Contest at its sole expense. Purchaser shall not settle, compromise, or resolve any such Tax Contest without the prior written consent of Seller, such consent not to be unreasonably withheld, conditioned or delayed.

**Section 5.2 Employee Matters**. Nothing in this Agreement shall (a) create a Contract between Purchaser and any Service Provider, or (b) require or be construed to require Purchaser or any Affiliate of Purchaser to provide any employee benefit plan or non-cash compensation (including retirement benefits, health or welfare benefits, equity-based compensation, or severance) to any Person. Notwithstanding anything in this Agreement to the contrary, no Service Provider may rely on this Agreement as the basis for any breach of contract claim against Purchaser.

**Section 5.3 Further Assurances**. Each of the Parties agrees that subsequent to the Closing, upon the reasonable request of any other Party from time to time, it shall execute and deliver, or cause to be executed and delivered, such further instruments and take such other actions as may be necessary or desirable to carry out the transactions contemplated by the Transaction Documents or to vest, perfect or confirm of record or otherwise in Purchaser any and all right, title and interest in, to and under any of the Acquired Assets as a result of or in connection with the Transactions.

**Section 5.4 Public Announcements**. The Parties agree that in connection with the Closing, Purchaser shall issue a press release in the form of Exhibit I. Other than with respect to such press release, neither Seller nor Founder or any of their respective Affiliates, or any of their respective Representatives shall issue or cause the publication of any press release or other public announcement relating to the Transaction Documents or the Transactions (whether before or after the Closing) without the prior written consent of Purchaser, except as such Person believes in good faith and based on reasonable advice of counsel is required by applicable Law (in which case the disclosing Person will advise Purchaser in writing before making such disclosure) or Proceeding.

**Section 5.5 Wrong Pocket Provisions**.

(a) If, at any time following the Closing, Seller becomes aware that any Acquired Asset which should have been transferred to Purchaser or a Purchaser Designee pursuant to the terms of the Transaction Documents was not transferred to Purchaser or a Purchaser Designee as contemplated by the Transaction Documents, then Seller shall promptly transfer or cause its Affiliates to transfer such Acquired Asset to Purchaser or the applicable Purchaser Designee for no additional consideration.

(b) If, at any time following the Closing, Seller becomes aware that any Assumed Liability was not assumed by Purchaser or a Purchaser Designee as contemplated by this Agreement or the Ancillary Agreements, then Seller shall promptly notify Purchaser and the applicable Purchaser Designee and Purchaser, the applicable Purchaser Designee and Seller shall each use reasonable efforts to resolve the ownership of such Assumed Liability by written agreement.

(c) If, at any time following the Closing, Purchaser or a Purchaser Designee becomes aware that any Excluded Asset which should have been retained by Seller pursuant to the terms of this Agreement or the Ancillary Agreements was transferred to Purchaser or a Purchaser Designee, then Purchaser or the applicable Purchaser Designee shall promptly transfer or cause its Affiliates to transfer such Excluded Asset to Seller for no additional consideration.

(d) If, at any time following the Closing, Purchaser or a Purchaser Designee becomes aware that any Excluded Liability (whether arising prior to, at or following the Closing) was assumed by Purchaser or a Purchaser Designee, then Purchaser shall promptly notify Seller and Purchaser, the applicable Purchaser Designee and Seller shall each use reasonable efforts to resolve the ownership of such Excluded Liability by written agreement.

**Section 5.6 Purchaser Designees**. Purchaser may designate Persons that are direct or indirect wholly owned subsidiaries of Purchaser as of the Closing (the "**Purchaser Designees**"), (a) as purchasers of any of the Acquired Assets and/or (b) to assume any of the Assumed Liabilities, in each case in accordance with a written designation made by Purchaser to Seller in writing and in accordance with the terms of this Agreement; *provided* that no such designation of a Purchaser Designee shall limit or waive any of Purchaser's, or each of Parent's or Acquisition Sub's obligations hereunder and each of Parent and Acquisition Sub shall be jointly and severally liable for the performance of all the Purchaser's obligations set forth in the Transaction Documents regardless of any designation of such Purchaser Designee. Whenever a Purchaser Designee is required to engage in an act or omission, Purchaser agrees to cause such Purchaser Designee to do so, and Purchaser also agrees to be responsible for the acts and omissions of each Purchaser Designee if in violation of the terms hereof.

**Section 5.7 Restrictive Covenants**.

(a) Non-Competition. Each of Seller and Founder covenants and agrees that, during the period beginning on the Closing Date and ending on the date that is the third anniversary of the Closing Date (the "**Restricted Period**"), such Party and their respective Affiliates will not, directly or indirectly, engage or participate in any manner (as an owner, equity holder, financing source, director, manager, officer, employee, agent, representative, consultant, service provider or otherwise) in any business, including worldwide retail and online sale, that would reasonably be deemed to compete with (i) the products sold as part of the Acquired Assets or (ii) any existing product sold by Purchaser as of the Closing Date, anywhere in world. Notwithstanding the foregoing, nothing contained in this Section 5.7(a) shall prohibit Seller or Founder or their respective Affiliates from the passive ownership of less than 2% of any class of stock listed on a national securities exchange or traded in the over-the-counter market.

(b) Non-Solicitation of Business Relationships. Without limiting the generality of the provisions of Section 5.7(a) above, each of Seller and Founder hereby covenants and agrees that during the Restricted Period, Seller and its Affiliates will not, directly or indirectly, solicit, induce or advise or participate in any manner (as an owner, equity holder, financing source, director, manager, officer, employee, agent, representative, consultant, service provider or otherwise) in any business that solicits, induces or advises, any Person that is or was a customer, supplier or other business relation of Seller or its Affiliates at any time during the 48 month period prior to the Closing Date for purposes of diverting such Person's business from Purchaser and/or a Purchaser Designee or providing any goods or services which are or may reasonably be considered to be competitive with those provided by the Business.

(c) Non-Solicitation of Employees and Contractors. Each of Seller and Founder covenants and agrees that during the Restricted Period each of Seller and Founder and their respective Affiliates will not, directly or indirectly, solicit, induce, employ or engage, or participate in any manner (as an owner, equity holder, financing source, director, manager, officer, employee, agent, representative, consultant, service provider or otherwise) in any business that solicits, induces, employs or engages, any individual that served as an employee or independent contractor of Seller or its Affiliates at any time during the 12 month period prior to the Closing Date, or otherwise seek to influence or alter any such Person's relationship with Purchaser or any of Affiliates of Purchaser.

(d) Non-Disparagement.

(i) Each of Seller and Founder covenants and agrees that each of Seller and Founder and their respective Affiliates will not, directly or indirectly, make, cause to be made or condone the making of any statement or other communication, written or otherwise, that could constitute disparagement or criticism of, or that could otherwise be considered to be derogatory or detrimental to, or otherwise reflect adversely on, harm the reputation of, or encourage any adverse action against the Business, Purchaser or any Affiliate of Purchaser or any of their employees or Affiliates. Nothing in this Section 5.7(d)(i) shall limit Seller or Founder or their respective Affiliates' ability to make true and accurate statements or communications in connection with any disclosure Seller or Founder or their respective Affiliates reasonably believe (based on reasonable advice of counsel) is required pursuant to applicable Law.

(ii) Each of Parent and Acquisition Sub covenants and agrees that each of Parent and Acquisition Sub and their respective Affiliates will not, directly or indirectly, make, cause to be made or condone the making of any statement or other communication, written or otherwise, that could constitute disparagement or criticism of, or that could otherwise be considered to be derogatory or detrimental to, or otherwise reflect adversely on, harm the reputation of, or encourage any adverse action against the Seller or any Affiliate of Seller or any of their employees or Affiliates. Nothing in this Section 5.7(d)(ii) shall limit Parent and Acquisition Sub or their respective Affiliates' ability to make true and accurate statements or communications in connection with any disclosure Parent and Acquisition Sub or their respective Affiliates reasonably believe (based on reasonable advice of counsel) is required pursuant to applicable Law.

(e) Acknowledgements; Remedies. Seller and Founder each acknowledges and agrees that (i) the covenants and agreements set forth in this Section 5.7 were a material inducement to Purchaser to enter into this Agreement and to perform its obligations hereunder, (ii) Purchaser and their Affiliates would not obtain the benefit of the bargain set forth in this Agreement as specifically negotiated by the Parties if Founder or Seller or any of their respective Affiliates breached any provision of this Section 5.7, (iii) any breach of any provision of this Section 5.7 by Founder or Seller or any of their respective Affiliates would result in a significant loss of goodwill by Purchaser and the Business, (iv) the Purchase Price is sufficient consideration to make the covenants and agreements set forth herein enforceable, (v) the length of time, scope and geographic coverage of the covenants set forth in this Section 5.7 is reasonable given the benefits Founder and Seller will directly or indirectly receive hereunder, (vi) Founder and Seller are familiar with all the restrictive covenants contained in this Section 5.7 and are fully aware of its obligations hereunder, and (vii) Founder and Seller will not challenge the reasonableness of the time, scope, geographic coverage or other provisions of this Section 5.7 in any Proceeding, regardless of who initiates such Proceeding. If any provision of this Section 5.7 relating to the length of time, scope or geographic coverage shall be declared by a court of competent jurisdiction or arbitrator to exceed the maximum length of time, scope geographic coverage, as applicable, under applicable Law, said length of time, scope or geographic coverage shall be deemed to be, and thereafter shall become, the maximum length of time, scope or geographic coverage that

such court or arbitrator deems reasonable and enforceable and this Agreement shall automatically be considered to have been amended and restated to reflect such determination. Each of Founder and Seller further acknowledge and agree that irreparable injury will result to Purchaser if Founder or Seller or any of their respective Affiliates breaches any of the terms of this Section 5.7, and that in the event of an actual or threatened breach by Founder or Seller or any of their respective Affiliates of any of the provisions contained in this Section 5.7, Purchaser will have no adequate remedy at Law. Each of Founder and Seller accordingly agree that in the event of any actual or threatened breach by Founder or Seller or any of their respective Affiliates of any of the provisions contained in this Section 5.7, Purchaser shall be entitled to injunctive and other equitable relief without (A) posting any bond or other security, (B) proving actual damages and (C) showing that monetary damages are an inadequate remedy. Nothing contained herein shall be construed as prohibiting Purchaser from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of any damages that it is able to prove. Each of Founder and Seller shall cause their respective Affiliates to comply with this Section 5.7, and shall be liable for any breach by any of their respective Affiliates of this Section 5.7. In the event of a breach or violation by Founder or Seller or any of their respective Affiliates of this Section 5.7, the Restricted Period with respect to such party shall be extended by a period of time equal to the period of time during which such Person violates the terms of this Section 5.7.

**Section 5.8 Release and Waiver**. Each of Founder and Seller, effective upon the Closing, hereby irrevocably waives, releases and discharges Purchaser and its officers, directors, managers, stockholders, Affiliates and representatives (collectively, the "**Released Parties**"), from any and all claims, Liabilities, debts or obligations of any kind or nature whatsoever (including in respect of rights of contribution or indemnification), in each case whether absolute or contingent, liquidated or unliquidated, known or unknown, and agrees not to bring or threaten to bring or otherwise join in any claim against any of the Released Parties relating to, arising out of or in any way connected with any facts or circumstances (known or unknown) relating to the Business which existed on or prior to the Closing Date; *provided* that the foregoing waiver and release shall not apply to any claim, indemnity, or obligation of Purchaser pursuant to the Transaction Documents or in respect of any Assumed Liability. Except as otherwise expressly provided for in the Transaction Documents, each of Founder and Seller agrees that from and after the Closing, Purchaser will not have any Liabilities to such Person or any of their respective Affiliates.

**Section 5.9 Reserved**.

**Section 5.10 Option to Purchase Retained Business Assets**. At any time on or prior to the date that is 30 days after the (a) occurrence of an Earn-Out Consideration Event pursuant to Section 2.9 or (b) if an Earn-Out Consideration Event has not occurred, the Earn-Out Termination Date (any such date, the "**Option Exercise Date**"), Purchaser shall have the option to purchase all or any portion of the Retained Business Assets for a price of $1.00 (the "**Retained Business Assets Purchase Price**" and such option, the "**Purchase Option**"). If Purchaser determines to exercise such option, Purchaser shall provide written notice to Seller that it is exercising such option and, following receipt of such written notice and payment of the Retained Business Assets Purchase Price, Seller shall be deemed to have sold, conveyed, assigned, transferred and delivered or shall be deemed to have caused such Retained Business Assets to be sold, conveyed, assigned, transferred and delivered to Purchaser or a Purchaser Designee, and such Retained Business Assets shall be deemed to be an Acquired Asset from and after the date on which the Retained Business Assets Purchase Price was paid by Purchaser; *provided*, *however*, that any Liabilities associated with or otherwise related in any way to the Retained Business Assets shall automatically be deemed Excluded Liabilities.

**Section 5.11 Founder's Obligation and Sole Voting Member's Obligations**. Founder and Sole Voting Member shall, and shall cause Seller to, perform and comply with each of the covenants set forth in this Agreement. Founder and Sole Voting Member each acknowledge and agree that such Person will derive substantial benefit from the consummation of the Transactions and such Person's execution and delivery of this Agreement is a material inducement and condition to Purchaser's willingness to enter into the Agreement and to consummate the Transactions. Founder and Sole Voting Member each hereby (a) acknowledge that Seller has made certain

covenants and undertaken and is subject to certain obligations under this Agreement and the Ancillary Agreements, (b) agree to cause Seller to perform and comply with each of its covenants and obligations set forth in this Agreement and the Ancillary Agreements, and (c) agree to guarantee and be jointly and severally responsible for the payment and performance of Seller's obligations, including indemnification obligations, under this Agreement and the Ancillary Agreements. In the event Seller and the Sole Voting Member fail to perform or otherwise discharge their respective obligations under any Transaction Document, Purchaser agrees that it shall first pursue its right to such performance or discharge of obligations (including any payment obligations) directly from Seller and the Sole Voting Member prior to proceeding against the Founder.

**Section 5.12 Rule 3-05B Financial Statements**.

(a) Seller shall obtain and deliver to Purchaser by the date that is 60 days after the Closing, audited financial statements for the Business for the year ended December 31, 2020 (the "**Rule 3-05B Financial Statements**"). Seller shall reasonably cooperate with Purchaser regarding other financial information relating to the Business that Purchaser determines may be required in connection with any filing with the SEC by Purchaser after the Closing.

(b) The Rule 3-05B Financial Statements will be (i) prepared in accordance with the books and records of the Business, (ii) prepared in accordance with Regulation S-X and GAAP and (iii) accompanied by an opinion (the "**Audit Opinion**") of CBIZ & Mayer Hoffman McCann (the "**Independent Auditor**"), which opinion complies with Regulation S-X. Seller agrees to provide Purchaser with an opportunity to review and comment on drafts of the Rule 3-05B Financial Statements, the form and substance of which shall be reasonably acceptable to Purchaser, and with reasonable access to the books, records and personnel of the Business and Seller and all documents, schedules and work papers that are reasonably necessary for purposes of such review.

(c) To the extent Purchaser determines that it is required to file the Rule 3-05B Financial Statements with the SEC under applicable requirements of Law, then Seller will use their commercially reasonable efforts to cause the Independent Auditor to provide to Purchaser no later than five Business Days prior to the required filing date of the Rule 3-05B Financial Statements the consents necessary to permit the inclusion of the Audit Opinion in any reports and registration statements of Purchaser.

(d) Whether or not Purchaser is ultimately required to file the Rule 3-05B Financial Statements with the SEC under applicable Law, Purchaser shall reimburse Seller within 30 days of receipt of detailed invoices for all reasonable out-of-pocket costs, fees and expenses incurred by Seller in connection with the preparation of the Rule 3-05B Financial Statements and the Audit Opinion, including any such costs, fees and expenses paid or payable to third party consultants (in each case, without markup and on a pass-through basis); *provided, however*, that Purchaser shall have no obligation to reimburse Seller hereunder if the Rule 3-05B Financial Statements are not delivered to Purchaser on or before the date that is 60 days after the Closing.

(e) If Seller fails to deliver the Rule 3-05B Financial Statements to Purchaser by the date that is 60 days after the Closing Date (the "**Rule 3-05B Due Date**"), Seller shall pay $250,000 to Purchaser (the "**Rule 3-05B Fee**"), by wire transfer of immediately available funds within two (2) Business Days following the Rule 3-05B Due Date. Each of the Parties acknowledges that the Rule 3-05B Fee is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate Purchaser, in the circumstance in which such fee is due and payable, for the efforts and resources expended and the risks associated with failure to timely obtain the Rule 3-05B Financial Statements and in reliance on this Agreement and on the expectation of the receipt of such financial statements, which amount would otherwise be impossible to calculate with precision.

**Section 5.13 Confidentiality**.

(a) From and after the Closing, Seller, the Sole Voting Member and Founder shall, and shall cause their respective Representatives to, hold in confidence all Purchaser Confidential Information and Seller, the Sole Voting Member and Founder shall be liable for the disclosure of such Purchaser Confidential Information by their respective Representatives to the same extent as if such representative were the disclosing Seller, Sole Voting Member or Founder itself. If Seller, the Sole Voting Member or Founder or any of their respective Representatives are requested or required by Order to disclose any such Purchaser Confidential Information, Seller, the Sole Voting Member or Founder, as applicable, shall promptly notify Purchaser of the same to permit Purchaser to seek a protective order or take other action deemed appropriate by Purchaser. In such circumstances, Seller, the Sole Voting Member or Founder, as applicable, will participate in Purchaser's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded to such Purchaser Confidential Information. If, absent the entry of a protective order, Seller, the Sole Voting Member or Founder, as applicable, and such Person's Representatives are, in the written opinion of their legal counsel, compelled as a matter of Law to disclose any such Purchaser Confidential Information, such Person may disclose to the party compelling disclosure only that part of such Purchaser Confidential Information as is required by Law to be disclosed, and such Person shall exercise its reasonable best efforts to obtain confidential treatment therefor. Upon Purchaser's request, Seller, the Sole Voting Member and Founder will each return and cause their respective Representatives to return to Purchaser all such Purchaser Confidential Information provided by or on behalf of Purchaser and destroy all Purchaser Confidential Information prepared by Seller, the Sole Voting Member or Founder or their respective Representatives, except to the extent such Persons are required to retain such Purchaser Confidential Information to comply with applicable Law. The foregoing shall not require Seller or its Representatives to return or destroy electronic copies of Purchaser Confidential Information created pursuant to their respective back-up and archival procedures.

(b) From and after the Closing, Parent and Acquisition Sub shall, and shall cause their respective Representatives to, hold in confidence all Seller Confidential Information and Parent and Acquisition Sub shall be liable for the disclosure of such Seller Confidential Information by their respective Representatives to the same extent as if such Representative were the disclosing Parent or Acquisition Sub itself. If Parent or Acquisition Sub or any of their respective Representatives are requested or required by Order to disclose any such Seller Confidential Information, Parent and Acquisition Sub, as applicable, shall promptly notify Seller of the same to permit Seller to seek a protective order or take other action deemed appropriate by Seller. In such circumstances, Parent or Acquisition Sub, as applicable, will participate in Seller's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded to such Seller Confidential Information. If, absent the entry of a protective order, Parent or Acquisition Sub, as applicable, and such Person's Representatives are, in the written opinion of their legal counsel, compelled as a matter of Law (or pursuant to the rules and regulations of the SEC or listing requirements of Nasdaq or any other exchange upon which securities of Parent may be listed) to disclose any such Seller Confidential Information, such Person may disclose to the party compelling disclosure only that part of such Seller Confidential Information as is required by Law (or pursuant to the rules and regulations of the SEC or listing requirements of Nasdaq or any other exchange upon which securities of Parent may be listed) to be disclosed, and such Person shall exercise its reasonable best efforts to obtain confidential treatment therefor. Upon Seller's request, Parent and Acquisition Sub will each return and cause their respective Representatives to return to Seller all such Seller Confidential Information provided by or on behalf of Seller and destroy all Seller Confidential Information prepared by Parent or Acquisition Sub or their respective Representatives, except to the extent such Persons are required to retain such Seller Confidential Information to comply with applicable Law. The foregoing shall not require Parent or Acquisition Sub or their Representatives to return or destroy electronic copies of Seller Confidential Information created pursuant to their respective back-up and archival procedures.

**Section 5.14 Seller's Operations**. Seller agrees that it will not wind-down, liquidate or otherwise dissolve its corporate (or similar) existence until the termination of each of the Supplier Agreement and the Transition Services Agreement, and the expiration of Seller's obligations hereunder.

**Section 5.15 Registration and Certain Other Rights**.

(a) Definitions. The following definitions will apply to this Section 5.15.

(i) "**Register**," "**registered**," and "**registration**" shall refer to a registration under the Securities Act effected by preparing and filing (A) a Registration Statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of effectiveness of such Registration Statement or (B) a prospectus and/or prospectus supplement in respect of an appropriate effective Registration Statement.

(ii) "**Registrable Securities**" means (A) the issued shares of Parent Common Stock representing the Closing Shares, Inventory Consideration Shares and/or the Earn-Out Shares and (B) any equity securities of Parent issued or issuable directly or indirectly with respect to the securities referred to in the foregoing clause (A) by way of stock dividend or stock split or in connection with a combination of shares, recapitalization, reclassification, merger, amalgamation, arrangement, consolidation or other reorganization; *provided* that, such securities will cease to be Registrable Securities upon the earliest to occur of (1) when they are sold pursuant to an effective Registration Statement under the Securities Act, or (2) when they become eligible for sale without restriction pursuant to Rule 144 (including Rule 144(c)).

(iii) "**Registration Expenses**" means all expenses incurred by Parent in effecting any registration pursuant to this Agreement (whether or not any registration or prospectus becomes effective or final) or otherwise complying with its obligations under this Section 5.15, including all registration, filing and listing fees, printing expenses, fees and disbursements of counsel for Parent, blue sky fees and expenses, expenses of Parent's independent accountants in connection with any regular or special reviews or audits incident to or required by any such registration, but shall not include Selling Expenses.

(iv) "**Registration Statement**" means any registration statement of Parent filed under the Securities Act that covers the resale of any of the Registrable Securities pursuant to the provisions of this Agreement, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all material incorporated by reference in such Registration Statement.

(v) "**Rule 144**" means Rule 144 promulgated by the SEC pursuant to the Securities Act, as such rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same purpose and effect as such rule.

(vi) "**Selling Expenses**" means all discounts, selling commissions and stock Transfer Taxes applicable to the sale of Registrable Securities and fees and disbursements of financial advisors for Seller and all similar commissions relating to Seller's disposition of Registrable Securities.

(vii) "**Seller Indemnitee**" means: (a) Seller; (b) such Person's current and future Affiliates; (c) the respective Representatives of the Persons referred to in clauses "(a)" and "(b)" above; and (d) the respective successors and assigns of the Persons referred to in clauses "(a)," "(b)," and "(c)" above.

(b) Registration Rights. Subject to the terms and conditions of this Agreement and Parent's receipt of information from Seller that is required to be included in a Registration Statement regarding Seller, Parent hereby agrees to prepare and file with the SEC (i) a Registration Statement or (ii) to the extent permitted by the rules and regulations of the SEC, a prospectus supplement in respect of an appropriate effective Registration Statement in each case for the purpose of registering the resale of all of the Registrable Securities as soon as reasonably practicable following the date on which such Registrable Securities are issued to Seller (any such date, the "**Issuance Date**"); *provided* that Parent may exclude the Registrable Securities of Seller if Seller has not complied with the provisions of this Section 5.15 or has notified Parent in writing of its election to exclude all of its Registrable Securities from such Registration Statement. A draft of any such Registration Statement or prospectus supplement shall be provided to Seller and its counsel for their review and comment a reasonable time

prior to its filing. Parent shall use commercially reasonable efforts to keep any Registration Statement continuously effective and in compliance with the Securities Act and usable for resale of all Registrable Securities until the earlier of (A) the date on which all Registrable Securities covered by such Registration Statement have been sold and any required prospectus delivery period with respect to such sale shall have expired, and (B) the date on which all Registrable Securities covered by such Registration Statement may be sold without restriction pursuant to Rule 144 (including Rule 144(c)).

(c) Expenses of Registration. All Registration Expenses incurred in connection with any registration, qualification or compliance hereunder shall be borne by Parent. All Selling Expenses incurred in connection with any registrations hereunder shall be borne by Seller.

(d) Obligations of Parent.

(i) Parent shall use commercially reasonable efforts to file a Registration Statement within 120 days of the applicable Issuance Date; *provided*, *however*, that in no event shall Parent be required to file more than two Registration Statements in any 12 month period.

(ii) Parent shall use commercially reasonable efforts to cause any such Registration Statement to become effective. Parent shall notify Seller by e-mail as promptly as practicable after any such Registration Statement becomes effective or any prospectus or prospectus supplement has been filed and shall simultaneously provide Seller with copies of any related prospectus to be used in connection with the sale or other disposition of the securities covered thereby.

(iii) Parent shall use commercially reasonable efforts to prepare and file with the SEC such amendments and supplements to the applicable Registration Statement and the prospectus or prospectus supplement used in connection with such Registration Statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement; *provided*, *however*, that Parent shall have no obligation to amend any Registration Statement to give effect to any transfers effected by Seller.

(iv) Parent shall use its commercially reasonable efforts to procure the cooperation of Parent's transfer agent in settling any sale or transfer of Registrable Securities.

(v) If requested by Seller, Parent shall promptly include in a prospectus supplement or amendment such information as Seller may reasonably request in order to permit the intended method of distribution of such securities and make all required filings of such prospectus supplement or such amendment as soon as practicable after Parent has received such request; *provided*, *however*, that Parent shall have no obligation to file any prospectus supplement or amendment to give effect to any transfers effected by Seller.

(vi) Parent shall promptly notify Seller who holds Registrable Securities at any time when a prospectus relating to the sale of Registrable Securities is required to be delivered under the Securities Act of the happening of any event, as a result of which the prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances under which they were made, and at the request of a seller of Registrable Securities promptly prepare and furnish to Seller a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances under which they were made.

(vii) Parent shall advise Seller of Registrable Securities promptly after it shall receive notice or obtain knowledge thereof, of (A) the issuance of any stop order, injunction or other order or requirement by the SEC suspending the effectiveness of any Registration Statement or the initiation or threatening of any Proceeding for such purpose, (B) the issuance by any state securities or other regulatory authority of any order suspending the qualification or exemption from qualification of any of the Registrable Securities under state securities or "blue sky" laws or the initiation or threat of initiation of any Proceedings for that purpose, and (C) the removal of any such stop order, injunction or other order or requirement or Proceeding or the lifting of any such suspension.

(viii) Parent shall use commercially reasonable efforts to prevent the issuance of any stop order, injunction or other order or requirement suspending the effectiveness of any Registration Statement and obtain as soon as practicable the withdrawal of any such stop order, injunction or other order or requirement that is issued.

(e) Suspension of Sales. Upon receipt of written notice from Parent that a Registration Statement, prospectus or prospectus supplement contains or may contain an untrue statement of a material fact or omits or may omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that Parent's board of directors has determined in good faith that circumstances exist that make inadvisable use of such Registration Statement, prospectus or prospectus supplement, Seller shall forthwith discontinue use of any such Registration Statement until Seller has received copies of a supplemented or amended prospectus or prospectus supplement, or Seller is advised in writing by Parent that the use of the prospectus and, if applicable, prospectus supplement may be resumed, and, if so directed by Parent, Seller shall deliver to Parent all copies, other than permanent file copies then in Seller's possession, of the prospectus and, if applicable, prospectus supplement covering such Registrable Securities in use at the time of receipt of such notice. The total number of days that any such suspension described in this paragraph may be in effect in any 180-day period shall not exceed 30 Business Days.

(f) Obligations of Seller.

(i) Seller agrees that, upon receipt of any notice from Parent of the occurrence of any event of the kind described in Section 5.15(e) hereof, Seller shall immediately discontinue use of such Registration Statement covering such Registrable Securities until Seller's receipt of the copies of the supplemented or amended prospectus contemplated by Section 5.15(e) hereof or receipt of notice that no supplement or amendment is required and that the Seller's use of such Registration Statement may be resumed. Parent may provide appropriate stop orders to enforce the provisions of this Section 5.15(f).

(ii) Seller covenants and agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to any Registration Statement filed by Parent pursuant to this Agreement.

(iii) Seller covenants and agrees that it will notify Parent following the sale of Registrable Securities to a third party as promptly as reasonably practicable, and in any event within 10 days, following the sale of such Registrable Securities.

(iv) Seller agrees that it will not effect any disposition or other transfer of the Registrable Securities that would constitute a sale within the meaning of the Securities Act other than transactions exempt from the registration requirements of the Securities Act or pursuant to, and as contemplated in, any Registration Statement, and that it will promptly notify Parent of any material changes in the information set forth in any such Registration Statement furnished by or regarding Seller or its plan of distribution.

(g) Confidentiality. In the event the filing of any Registration Statement, prospectus or prospectus supplement is deferred pursuant to Section 5.15(e), or Seller's ability to trade is suspended pursuant to Section 5.15(e), by approving this Agreement and the consummation of the transactions contemplated hereby, and/or participating in the Transactions and receiving the benefits thereof, including the right to receive the consideration payable in connection with the Transactions, Seller agrees to treat such information confidentially and to not make public such information.

(h) Furnishing Information.

(i) Promptly after each Issuance Date (and in any event not less than 15 Business Days after such Issuance Date), Seller shall deliver to Parent, a fully completed and executed selling stockholder questionnaire, in substantially the form attached as Exhibit H (the "**Selling Stockholder Questionnaire**").

(ii) Seller shall not use any free writing prospectus (as defined in Rule 405) in connection with the sale of Registrable Securities without the prior written consent of Parent.

(iii) It shall be a condition precedent to the obligations of Parent to take any action pursuant to this Section 5.15 that the Seller shall furnish to Parent such information regarding themselves, the Registrable Securities held by them and the intended method of disposition of such securities as shall be reasonably required to effect the registered offering of their Registrable Securities, including executed Selling Stockholder Questionnaires requested in connection with any Issuance Date.

(i) Rule 144. With a view to making available the ability of Seller to rely upon Rule 144, Parent shall, for so long as Seller owns any Registrable Securities, (A) make and keep public information regarding Parent available, as those terms are understood and defined in Rule 144, (B) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required to be filed by Parent under the Securities Act and the Exchange Act; and (C) furnish, unless otherwise available at no charge by access electronically to the SEC's EDGAR filing system, to Seller who holds Registrable Securities promptly upon request (1) a copy of the most recent annual or quarterly report of Parent, and (2) such other reports and documents of Parent so filed with the SEC as Seller may reasonably request in availing itself of any rule or regulation of the SEC allowing Seller to sell any such securities without registration.

(j) Registration Statement Indemnification.

(i) Parent will indemnify and hold harmless each Seller Indemnitee against any Losses and Liabilities (or actions in respect thereof) to which he may become subject under the Securities Act or otherwise, insofar as such claims, Losses and Liabilities (or actions in respect thereof) arise out of or are based upon any untrue or alleged untrue statement of a material fact contained in any Registration Statement, prospectus, preliminary prospectus, free writing prospectus (as defined in Rule 405 under the Securities Act or any successor rule thereto) or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, preliminary prospectus or free writing prospectus, in light of the circumstances under which they were made) not misleading; and shall reimburse Seller Indemnitees for any reasonable legal or other expenses reasonably incurred by them in connection with investigating or defending any such claims, Losses and Liabilities (or actions in respect thereof); *provided*, *however*, that Parent shall not be required to provide indemnification pursuant to this Section 5.15(j)(i): (A) where the claims, Losses and Liabilities (or actions in respect thereof) are caused by or contained in any information furnished in writing to Parent by Seller (or its representative) or approved by Seller (or its Representative) expressly for use therein; (B) where the claims, Losses and Liabilities (or actions in respect thereof) are caused by Seller's failure to deliver a copy of such Registration Statement, prospectus, preliminary prospectus, free writing prospectus (as defined in Rule 405 under the Securities Act or any successor rule thereto) or any amendments or supplements thereto (if the same was required by applicable Law to be so delivered); or (C) where the claims, Losses and Liabilities (or actions in respect thereof) relate to offers or sales effected by or on behalf of Seller "by means of" (as defined in Rule 159A) a "free writing prospectus" (as such term is defined in Rule 405) that was not authorized in writing by Parent. This indemnity shall be in addition to any liability Parent may otherwise have.

(ii) Seller will indemnify and hold harmless the Parent and Acquisition Sub, each legal counsel and each underwriter, broker or other Person acting on behalf of the holders of Registrable Securities and each Affiliate who controls (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act) any of the foregoing Persons against all claims, Losses and Liabilities (or actions in respect thereof) resulting from (A) Seller's failure to comply with the prospectus delivery requirements of the Securities Act, or (B) any untrue or alleged untrue statement of material fact contained in a Registration Statement, prospectus, preliminary prospectus, free writing prospectus (as defined in Rule 405 under the Securities Act or any successor rule thereto) or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, preliminary prospectus or free writing prospectus, in light of the circumstances under which they were made) not misleading, but only to the extent that such untrue statement or omission is in writing and was either provided by Seller (or its representative) or approved by Seller (or its Representative) expressly for use in any Registration Statement, prospectus, preliminary prospectus, free writing prospectus or amendment or supplement thereto; and shall reimburse such Persons for any legal or other expenses reasonably incurred by any of them in connection with investigating or defending any such claims, Losses and Liabilities (or actions in respect thereof). This indemnity shall be in addition to any liability Seller may otherwise have, and shall, for the avoidance of doubt not be subject to Article VII.

**Section 5.16 Trading Restrictions**.

(a) Seller agrees that for so long as it or any of its Affiliates holds any of the outstanding shares of Parent Common Stock issued pursuant to this Agreement it shall not, directly or indirectly, (i) sell, transfer or otherwise dispose of any such shares if such sale, transfer or other disposition would exceed 10% of the average daily trading volume of Parent Common Stock, as reported on Nasdaq, for the 10 consecutive Trading Days ending on the Trading Day immediately preceding such sale, transfer or other disposition, and (ii) pledge, loan, margin or otherwise use as collateral for any obligations of Seller or any of its Affiliates any such shares of Parent Common Stock having an aggregate value in excess of 30% of the then-current value of such shares based on the closing price of Parent Common Stock, as reported on Nasdaq, for the Trading Day immediately prior to the date on which such shares are so pledged, loaned, margined or otherwise used as collateral to secure any obligations of Seller or any of its Affiliates.

(b) From and after the Closing and until such time as Seller no longer holds any shares of Parent Common Stock issued pursuant to this Agreement, , Seller shall be required to deliver (or cause its broker, stock representative, registered representative, or other similar representative, as applicable, to deliver) to Purchaser, on each Trading Day, copies of trading statements of Seller and its Affiliates for the immediately preceding Trading Day with respect to any shares of Parent Common Stock sold, transferred, pledged, loaned, margined or otherwise used as collateral by Seller on such immediately preceding Trading Day, evidencing compliance with this Section 5.16.

**Section 5.17 USPTO Registrations**. Seller acknowledges that it has made all necessary filings with the USPTO for recordation purposes to complete the IP Registration Updates and, upon receipt from the USPTO of notices of recordation issued thereby evidencing that the IP Registration Updates have been completed, agrees that it will provide such notices of recordation to Purchaser.

**Section 5.18 Accrued Accounts Receivable**. Purchaser covenants and agrees to pay to Seller, within five (5) days of receipt of such amounts, any and all amounts received from Amazon for earnings accrued to the Acquired Amazon Accounts prior to the Closing Date.

**Section 5.19 Access to Retained Business**. From and after the Closing and until the Option Exercise Date,

(a) Seller shall, and shall cause its Affiliates to, preserve and keep all books and records relating to the Retained Business and the Retained Business Assets, in a manner consistent with Seller's record retention policies in effect as of immediately prior to the Closing (which Seller hereby confirms are commercially reasonable policies that have complied and will comply in all material respects with all applicable Laws and Contracts), or as may be required by applicable Law; and

(b) except as may be prohibited by Law, Seller shall, and shall cause its Affiliates to, upon reasonable notice, (i) permit Purchaser and its Representatives to have reasonable access during normal business hours to (A) those portions of Seller's facilities containing the Retained Business Assets and (B) the Retained Business Assets and (ii) permit Purchaser to make such inspections as it may reasonably require and furnish Purchaser with all such information relating to the Retained Business as Purchaser may from time to time reasonably request; *provided* that such access shall be subject to the following conditions: (1) Purchaser shall provide Seller with at least five Business Days' prior notice of any such access; (2) such access is reasonably required by Purchaser in connection with the transactions contemplated hereunder (including the exercise of the Purchase Option and diligence review of the Retained Business) and does not unreasonably interfere with the normal operations of Seller or its Affiliates or the Retained Business; (3) Purchaser shall not unduly interfere with the operation of the business conducted at such facilities; (4) Purchaser covenants and agrees that it shall, at its sole cost and expense, (x) promptly repair any damage to such facilities arising from or caused by such access, (y) restore such facilities to substantially the same condition as existed prior to such access, and (z) be solely responsible for any personal injury or property Losses incurred by any of them directly arising or resulting from such access; and (5) neither Seller nor any of its Affiliates shall be required to violate any obligation of confidentiality to which Seller or any of its Affiliates is subject or to waive any privilege which any of them may possess in discharging their obligations pursuant to this Section 5.19.

## ARTICLE VI
## CLOSING DELIVERABLES

**Section 6.1 Seller's Closing Deliverables**. At the Closing, Seller shall execute and cause to be delivered, and Purchaser shall have received, Seller's Closing Deliverables.

**Section 6.2 Purchaser's Closing Deliverables**. At the Closing, Purchaser shall execute and cause to be delivered, and Seller shall have received, Purchaser's Closing Deliverables.

## ARTICLE VII
## INDEMNIFICATION

**Section 7.1 Survival**.

(a) The representations, warranties, covenants and agreements contained herein shall survive the Closing. The indemnification obligations under Section 7.2 with respect to breaches of representations and warranties contained in this Agreement or any certificate delivered pursuant to this Agreement shall survive the Closing and continue until the date that is 18 months after the Closing Date.

(b) The indemnification obligations under Section 7.2 with respect to breaches of covenants and agreements contained in this Agreement or any certificate delivered pursuant to this Agreement shall survive the Closing and continue until 60 days after the statute of limitations (giving effect to any waiver, mitigation or extension thereof) applicable to the subject matter of such covenants and agreements bars all claims with respect to such subject matter.

(c) Notwithstanding anything to the contrary contained herein, if written notice of any claim for indemnification hereunder has been delivered in accordance herewith prior to the expiration of the applicable period set forth above, the indemnification obligations hereunder shall continue with respect to such claim until the final resolution and satisfaction of such claim in accordance with the provisions of this Article VII, and Seller and the Sole Voting Member (together, the "**Seller Indemnifying Parties**") shall indemnify the Purchaser Indemnified Parties in accordance with this Article VII.

**Section 7.2 Indemnification by Seller and the Sole Voting Member**. From and after the Closing, and subject to the terms of this Agreement, the Seller Indemnifying Parties shall, jointly and severally, indemnify, defend and hold harmless the Purchaser Indemnified Parties from and against, and pay or reimburse the Purchaser Indemnified Parties for, any and all Losses relating to, imposed upon, suffered or incurred by any Purchaser Indemnified Party by reason of, resulting from or arising out of:

(a) any inaccuracy in or breach of any of the representations or warranties of Seller and Founder contained in this Agreement or any certificate delivered pursuant to this Agreement;

(b) any breach by Seller, the Sole Voting Member or Founder of any of their respective covenants or agreements contained in this Agreement or any certificate delivered pursuant to this Agreement; and

(c) any Excluded Liability.

**Section 7.3 Indemnification Procedure.**

(a) If any Purchaser Indemnified Party receives notice of the assertion of any claim or of the commencement of any Proceeding by any Person who is not a Party or an Affiliate of a Party (a "**Third Party Claim**") against such Purchaser Indemnified Party, with respect to which the Seller Indemnifying Parties are or may be required to provide indemnification under this Agreement, the Purchaser Indemnified Party shall give written notice regarding such Third Party Claim to Seller within 30 days after learning of such Third Party Claim, *provided* that the failure to so notify Seller shall not relieve Seller of its obligations under this Article VII except to the extent (and only to the extent) that Seller incurs greater costs by reason of such failure, and will not relieve Seller from any other obligation that they may have to a Purchaser Indemnified Party other than under this Article VII. For purposes of this Article VII, any references to the Purchaser Indemnified Party shall, if the context so applies or if Purchaser so elects, be deemed to refer to Parent on behalf of the applicable Purchaser Indemnified Party. For purposes of this Article VII, any references to Seller (except provisions relating to an obligation to make payment) shall be deemed to refer to Seller on behalf of the applicable Seller Indemnifying Party.

(b) Seller shall be entitled to participate in the defense of such Third Party Claim at Seller's expense (which expenses shall not be applied against any indemnity limitation herein). Seller at its option shall be entitled to assume the defense thereof (subject to the limitations set forth below) by (i) delivering written notice to the Purchaser Indemnified Party of their election to assume the defense of such Third Party Claim within 15 days of receipt of notice from the Purchaser Indemnified Party, (ii) appointing a nationally recognized and reputable counsel reasonably acceptable to the Purchaser Indemnified Party to be the lead counsel in connection with such defense and (iii) entering into a written agreement with the Purchaser Indemnified Party that Seller shall be obligated to pay and satisfy any Losses which may arise with respect to such Third Party Claim and provides evidence of their ability to satisfy such obligation, in each case, in form and substance reasonably satisfactory to the Purchaser Indemnified Party. If Seller does not expressly elect to assume the defense of such Third Party Claim within the time period and otherwise in accordance with the preceding sentence, the Purchaser Indemnified Party shall have the sole right to assume the defense of and to settle such Third Party Claim.

(c) If Seller has assumed the defense of a Third Party Claim in accordance with the terms hereof, the Purchaser Indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose, and the fees and expenses of such separate counsel shall be borne by the Purchaser Indemnified Party other than any fees and expenses of such separate counsel (i) that are incurred prior to the date Seller assumes control of such defense, (ii) if the Purchaser Indemnified Party reasonably shall have concluded (upon advice of its counsel) that there may be one or more legal defenses available to such Purchaser Indemnified Party that are not available to Seller, or (iii) if Seller may have different, conflicting, or adverse legal positions or interests from the Purchaser Indemnified Party with respect to such Third Party Claim.

(d) Notwithstanding anything to the contrary contained herein, Seller shall not be entitled to control the defense of a Third Party Claim (and the Purchaser Indemnified Party shall be entitled to maintain or assume control of the defense of such Third Party Claim, at Seller's sole expense) if (i) the Third Party Claim relates to or involves any criminal or quasi criminal Proceeding, (ii) the Third Party Claim could reasonably be expected to materially and adversely affect the Purchaser Indemnified Party (as determined by the Purchaser Indemnified Party in good faith) other than as solely a result of money damages, (iii) the Third Party Claim seeks an injunction or other equitable relief against the Purchaser Indemnified Party, (iv) the Third Party Claim involves Taxes (which shall be governed exclusively by Section 5.1(a)), (v) there exists or would, or could reasonably be expected to, exist a conflict of interest that would make it inappropriate in the judgment of the Purchaser Indemnified Party for the same counsel to represent both the Purchaser Indemnified Party and Seller, (vi) the Purchaser Indemnified Party elects to pursue one or more defenses or counterclaims available to it that are inconsistent with one or more of those that are being pursued by Seller in respect of such Third Party Claim or any litigation relating thereto, (vii) the Third Party Claim involves a material customer or material supplier of the Business, Acquisition Sub or any other Purchaser Indemnified Party, (viii) the Third Party Claim relates to any Intellectual Property, or (ix) Seller fails to vigorously defend the Third Party Claim.

(e) If Seller shall control the defense of any Third Party Claim, Seller shall obtain the prior written consent of the Purchaser Indemnified Party before entering into any settlement of, consenting to the entry of any judgment with respect to or ceasing to defend such Third Party Claim if (i) pursuant to or as a result of such settlement, consent or cessation, injunctive or other equitable relief will be imposed against the Purchaser Indemnified Party, or a finding or admission of any violation of Law would be made by any Purchaser Indemnified Party, or such settlement, consent or cessation could otherwise reasonably be expected to interfere with or adversely affect the business, operations or assets of the Purchaser Indemnified Party, or (ii) such settlement or judgment does not expressly and unconditionally release the Purchaser Indemnified Party from all Liabilities and obligations with respect to such Third Party Claim.

(f) Notwithstanding the provisions of Section 8.10, Seller hereby consents to the nonexclusive jurisdiction of any court in which a Proceeding in respect of a Third Party Claim is brought against any Purchaser Indemnified Party for purposes of any claim that a Purchaser Indemnified Party may have under this Agreement with respect to such Proceeding or the matters alleged therein and agrees that process may be served on Seller with respect to such claim anywhere.

(g) Seller shall not be entitled to require that any Proceeding be made or brought against any other Person before a Proceeding is brought or claim is made against it hereunder by the Purchaser Indemnified Party.

(h) If any Purchaser Indemnified Party has a claim against Seller hereunder that does not involve a Third Party Claim being asserted against or sought to be collected from such Purchaser Indemnified Party, the Purchaser Indemnified Party shall deliver notice of such claim with reasonable promptness to Seller, *provided* that the failure to so notify Seller shall not relieve Seller of its obligations under this Article VII except to the extent (and only to the extent) that Seller is actually and materially prejudiced by reason of such failure, and will not relieve Seller from any other obligation that they may have to a Purchaser Indemnified Party other than under this Article VII. If Seller does not notify the Purchaser Indemnified Party within 10 Business Days following its receipt of such notice that Seller disputes its Liability to the Purchaser Indemnified Party hereunder, such claim specified by the Purchaser Indemnified Party in such notice shall be conclusively deemed a Liability of Seller hereunder and Seller shall pay the amount of such Liability to the Purchaser Indemnified Party on demand.

(i) If Seller agrees that it has an indemnification obligation under this Article VII but asserts that it is obligated to pay a lesser amount than that claimed by the Purchaser Indemnified Party, Seller shall pay such lesser amount promptly to the Purchaser Indemnified Party, without prejudice to or waiver of the Purchaser Indemnified Party's claim for the difference.

**Section 7.4 Certain Limitations**.

(a) Basket for Losses of the Purchaser Indemnified Parties. Seller shall not be liable under Section 7.2(a) unless the aggregate Losses incurred by the Purchaser Indemnified Parties with respect to all matters for which indemnification is to be provided under Section 7.2(a) exceed $300,000 (the "**Basket Amount**"). If and when such Basket Amount is met, then Seller will be liable under Section 7.2(a) for all such Losses from the first dollar thereof.

(b) Caps on Losses of the Purchaser Indemnified Parties. The aggregate amount required to be paid by Seller under Section 7.2(a), other than with respect to any inaccuracies in or breaches of the Fundamental Representations, shall not exceed $9,000,000 (the "**General Cap**"). The aggregate amount required to be paid by Seller under Section 7.2(a) with respect to inaccuracies in or breaches of the Fundamental Representations shall not exceed the Purchase Price.

(c) Exceptions to Basket and Cap. Notwithstanding anything to the contrary contained herein, (i) the limitations set forth in Section 7.4(a) shall not apply to Losses by reason of, resulting from or arising out of any breach of any Fundamental Representation, (ii) the limitations set forth in Section 7.4(a) and Section 7.4(b) shall not apply to Losses by reason of, resulting from or arising out of any claims of fraud, and (iii) no indemnification payment made by any Seller Indemnifying Party by reason of, resulting from or arising out of, any breach of any Fundamental Representation shall be considered in determining whether the Basket Amount or the General Cap has been exceeded.

(d) Payments by Seller in respect of any Loss will be limited to the amount of such Loss that remains after deducting therefrom any third party insurance proceeds, indemnification payments (other than from Seller) and other third party recoveries actually received by the Purchaser Indemnified Party in respect of any such claim, less any related costs and expenses. Notwithstanding the foregoing, in no event will any Purchaser Indemnified Party be required to seek recovery of any such Loss under its insurance policies or from any other Person.

**Section 7.5 Materiality Qualifiers**. Notwithstanding anything to the contrary contained herein, for purposes of determining (a) whether a breach of a representation or warranty exists for purposes of this Agreement or any certificate delivered pursuant to this Agreement, (b) the amount of Losses arising from such a breach for which the Purchaser Indemnified Parties are entitled to indemnification under this Agreement and (c) whether the Basket Amount has been exceeded, each such representation and warranty shall be read without giving effect to any qualification that is based on materiality, including the words "material," "material adverse effect," "in any material respect" and other uses of the word "material" or words of similar meaning (and shall be treated as if such words were deleted from such representation or warranty).

**Section 7.6 Indemnification as Sole Remedy**. Following the Closing, except as set forth in Section 5.1 (Agreements Regarding Tax Matters), Section 5.12(e) (Rule 3-05B Fee), and Section 8.12 (Specific Performance), the indemnification provided for in this Article VII shall be the sole and exclusive remedy and recourse for any breach of this Agreement. Notwithstanding the foregoing or anything else in this Agreement to the contrary, (a) in the case of fraud, the Purchaser Indemnified Parties, as applicable, shall have all remedies available under this Agreement or otherwise at Law without giving effect to any of the limitations or waivers contained herein, and (b) nothing herein shall limit any Party's right to seek and obtain equitable remedies with respect to any covenant or agreement contained in any Transaction Document.

**Section 7.7 Investigation**. Notwithstanding anything to the contrary contained herein, if the Transactions are consummated, the Purchaser Indemnified Parties expressly reserve the right to seek indemnity or other remedy for any Losses arising out of or relating to any breach of any representation, warranty or covenant contained herein, notwithstanding (a) any investigation by, disclosure to or knowledge of Purchaser or any of its Affiliates or the directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of Purchaser or any of its Affiliates in respect of any fact or circumstances that reveals the occurrence of any such breach, whether before or after the execution and delivery hereof or (b) Parent's waiver of any condition to the Closing or participation in the Closing.

**Section 7.8 Satisfaction of Indemnification Claims**. Subject to Section 5.11, the Purchaser Indemnified Parties shall be entitled to seek recovery for satisfaction of claims for indemnification (including claims in respect of Fundamental Representations) directly from Seller or the Sole Voting Member. If any amount owed under this Article VII is not paid within 10 days of Seller and the Purchaser Indemnified Parties agreeing such amount is due or upon a final adjudication determined by a court of competent jurisdiction that such amount is due (either, a "**Final Determination**"), Purchaser may, in its sole discretion, in addition to all other remedies it may have, recover some or all of such amount by setting off such amount against any amounts then due and payable by Purchaser or any of its Affiliates to Seller or any their Affiliates under the Transaction Documents or any other agreement with Seller. In each case, the exercise of such right to set off shall not constitute a breach of any Purchaser Indemnified Party's obligations under the Transaction Documents or any other agreement with Seller, and the exercise or failure to exercise such right to set off shall not constitute an election of remedies or limit any Purchaser Indemnified Party in any manner in the enforcement of any other remedies that may be available to such Purchaser Indemnified Party.

**Section 7.9 Tax Treatment of Payments**. All indemnification payments made pursuant to this Agreement shall be treated by Purchaser and Seller, to the extent permitted by Law, as an adjustment to the Purchase Price for income Tax purposes.

## ARTICLE VIII
## MISCELLANEOUS

**Section 8.1 Notices**. All notices and other communications made pursuant to or under this Agreement shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) as of the date transmitted when transmitted by electronic mail, (c) one Business Day after deposit with a nationally recognized overnight courier service, or (d) three Business Days after the mailing if sent by registered or certified mail, postage prepaid, return receipt requested. All notices and other communications under this Agreement shall be delivered to the addresses set forth below, or such other address as such Party may have given to the other Parties by notice pursuant to this Section 8.1 (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereinafter maintain):

| | |
|---|---|
| If to Seller, Sole Voting Member or Founder: | Healing Solutions, LLC<br>4703 W. Brill St.<br>Suite 101<br>Phoenix, AZ 85043<br>E-Mail: [...***...]<br>Attention: Jason R. Hope |

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| with a copy to (which shall not constitute notice): | Squire Patton Boggs<br>1 E. Washington St.<br>Suite 2700<br>Phoenix, AZ 85004<br>E-Mail: [...***...]<br>Attention: Brian A. Cabianca |
| If to Purchaser: | Mohawk Group Holdings, Inc.<br>37 E. 18th St., 7th Floor<br>New York, NY 10003<br>E-Mail: [...***...]<br>Attention: Christopher Porcelli, Associate General Counsel |
| with a copy to (which shall not constitute notice): | Paul Hastings LLP<br>1117 S California Ave,<br>Palo Alto, CA 94304<br>E-Mail: [...***...]<br>Attention: Jeff Hartlin |

**Section 8.2 Expenses**. Except as otherwise provided herein, all fees and expenses incurred in connection with or related to the Transaction Documents and the Transactions shall be paid by the Party incurring such fees or expenses, whether or not such transactions are consummated.

**Section 8.3 Entire Agreement**. All references in this Agreement or the Ancillary Agreements shall include all Exhibits and Schedules hereto. This Agreement and the Ancillary Agreements constitute the entire agreement of the Parties relating to the subject matter hereof and thereof and supersede all prior agreements or understandings between the Parties with respect to such subject matter.

**Section 8.4 No Third-Party Beneficiaries**. This Agreement shall inure exclusively to the benefit of and be binding upon the Parties, any Person entitled to indemnification under Article VII with respect to the provisions therein, and their respective successors, permitted assigns, executors and legal representatives. Nothing in this Agreement, express or implied, is intended to confer on any Person (other than the Parties or their respective successors and permitted assigns, any Person entitled to indemnification under Article VII with respect to the provisions therein) any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**Section 8.5 Assignments**. This Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns, but will not be assignable or delegable by any Party, by operation of Law or otherwise, without the prior written consent of the other Parties; *provided*, *however*, that nothing in this Agreement shall or is intended to limit the ability of Purchaser to assign its rights or delegate its responsibilities, liabilities and obligations under this Agreement, in whole or in part, without the consent of Seller (a) to any Affiliate of Purchaser, (b) in connection with a change of control of Acquisition Sub or Parent or (c) in the event of a sale of all or substantially all of the assets of Acquisition Sub or Parent. Any attempted assignment in violation of this Section 8.5 shall be void *ab initio*.

**Section 8.6 Amendment; Waiver**. This Agreement may be amended, modified or waived only by the written agreement of the Parties. No failure or delay of any Party to exercise any right or remedy given to such Party under this Agreement or otherwise available to such Party or to insist upon strict compliance by any other Party with its obligations hereunder and no single or partial exercise of any such right or power shall constitute a waiver of any Party's right to demand exact compliance with the terms hereof. Any written waiver shall be limited to those items specifically waived therein and shall not be deemed to waive any future breaches or violations or other non-specified breaches or violations unless, and to the extent, expressly set forth therein.

**Section 8.7 Agreement Controls**. In the event that a provision of any Ancillary Agreement is inconsistent with, conflicts with or contradicts any term of this Agreement, the terms of this Agreement shall prevail.

**Section 8.8 Severability**. If any term or provision of this Agreement is held invalid, illegal or unenforceable in any respect under any applicable Law, the validity, legality and enforceability of all other terms and provisions of this Agreement will not in any way be affected or impaired. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

**Section 8.9 Governing Law**. This Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation, inducement to enter and/or performance of this Agreement (whether related to breach of contract, tortious conduct or otherwise and whether now existing or hereafter arising) shall be governed by, the internal Laws of the State of Delaware, without giving effect to any Law that would cause the Laws of any jurisdiction other than the State of Delaware to be applied. Purchaser shall cause the Purchaser Indemnified Parties, to comply with the foregoing as though such Purchaser Indemnified Parties were a Party to this Agreement.

**Section 8.10 Consent to Jurisdiction; Service of Process; Waiver of Jury Trial**.

(a) Each Party agrees that any Proceeding arising out of or relating to this Agreement or any transaction contemplated hereby shall be brought exclusively in any state or federal court located in New York County, State of New York and each of the Parties hereby submits to the exclusive jurisdiction of such courts for itself and with respect to its property, generally and unconditionally, for the purpose of any such Proceeding. A final judgment in any such Proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each Party agrees not to commence any Proceeding arising out of or relating to this Agreement or the transactions contemplated hereby except in the courts described above (other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in New York as described above), irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in any such court, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Proceeding brought in any such court has been brought in an inconvenient forum or does not have jurisdiction over any Party. Each Party agrees that service of any process, summons, notice or document by U.S. registered mail to such Party's respective address set forth herein shall be effective service of process for any such Proceeding.

(b) EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, STATUTE OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF. EACH PARTY FURTHER WAIVES ANY RIGHT TO SEEK TO CONSOLIDATE ANY PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER PROCEEDING IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED OR WARRANTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.10.

**Section 8.11 Admissibility into Evidence**. All offers of compromise or settlement among the Parties or their officers, directors, managers, employees, attorneys, accountants, consultants, financial advisors or other agents in connection with the attempted resolution of any dispute under this Agreement shall be deemed to have been delivered in furtherance of a settlement and shall be exempt from discovery and production and shall not be admissible in evidence (whether as an admission or otherwise) in any Proceeding for the resolution of such dispute.

**Section 8.12 Specific Performance**. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the Parties shall be entitled to enforce specifically the provisions of this Agreement, including obtaining an injunction or injunctions to prevent breaches or threatened breaches of this Agreement, in any court designated to resolve disputes concerning this Agreement (or, if such court lacks subject matter jurisdiction, in any appropriate state or federal court), this being in addition to any other remedy to which such Party is entitled at Law or in equity. Each Party further agrees not to assert and waives (a) any defense in any action for specific performance that a remedy at Law would be adequate and (b) any requirement under any Law to post security or provide indemnity as a prerequisite to obtaining equitable relief.

**Section 8.13 Other Remedies**. Except to the extent set forth otherwise in this Agreement, all remedies under this Agreement expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or at Law or in equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy.

**Section 8.14 Rules of Construction**. The following rules of construction shall govern the interpretation of this Agreement: (a) all references to Articles, Sections, Exhibits or Schedules are to Articles, Sections, Exhibits or Schedules in this Agreement; (b) each accounting term not otherwise defined in this Agreement has the meaning assigned to it in accordance with GAAP; (c) unless the context otherwise requires, words in the singular or plural include the singular and plural, and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter; (d) whenever the words “include,” “includes” or “including” are used in this Agreement they shall be deemed to be followed by the words “but not limited to;” (e) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not simply mean “if;” (f) references to any statute, rule, regulation or form (including in the definition thereof) shall be deemed to include references to such statute, rule, regulation or form as amended, modified, supplemented or replaced from time to time (and, in the case of any statute, include any rules and regulations promulgated under such statute), and all references to any section of any statute, rule, regulation or form include any successor to such section; (g) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is referenced in beginning the calculation of such period will be excluded (for example, if an action is to be taken within two days after a triggering event and such event occurs on a Tuesday, then the action must be taken on or prior to Thursday); if the last day of such period is a non-Business Day, the period in question will end on the next succeeding Business Day; (h) time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement; (i) the subject headings of Articles and Sections of this Agreement are included for purposes of convenience of reference only and shall not affect the construction or interpretation of any of its provisions; (j) (i) the terms “hereof,” “herein,” “hereby,” “hereto,” and derivative or similar words refer to this entire Agreement, including the Schedules and Exhibits hereto and (ii) the term “any” means “any and all;” (k) (i) references to “days” means calendar days unless Business Days are expressly specified and (ii) references to “$” mean U.S. dollars; (l) the Parties intend that each representation, warranty, covenant and agreement contained herein shall have independent significance, and if any Party has breached any representation, warranty, covenant or agreement contained herein in any respect, the fact that there exists another representation, warranty, covenant or agreement relating to the same or similar subject matter that the Party has not breached shall

not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, covenant or agreement; (m) all uses of "written" contained in Article III and Article IV shall be deemed to include information transmitted via e-mail, facsimile or other electronic transmission; (n) for purposes of Article III, information shall be deemed to have been "made available" to Purchaser only if such information was posted to the electronic data room hosted by iDeals maintained by Seller under the project name "Healing Solutions" at https://www4.idealsvdr.com/v3/Healing_Solutions/#/documents?path=1612584 in a manner accessible and reviewable by Purchaser at least one Business Days prior to the Closing Date (and not removed therefrom during such one Business Day period); (o) any drafts of this Agreement or any Ancillary Agreement circulated by or among the Parties prior to the final fully executed drafts shall not be used for purposes of interpreting any provision of this Agreement or any Ancillary Agreement, and each of the Parties agrees that no Party or Purchaser Indemnified Party shall make any claim, assert any defense or otherwise take any position inconsistent with the foregoing in connection with any dispute or Proceeding among any of the foregoing or for any other purpose; and (p) the Parties have participated jointly in the negotiation and drafting of this Agreement and the Ancillary Agreements; in the event an ambiguity or question of intent or interpretation arises, this Agreement and the Ancillary Agreements shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement or any Ancillary Agreement and the language used in it will be deemed to be the language chosen by the Parties to express their mutual intent.

**Section 8.15 Counterparts; Deliveries**. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Agreement may be executed by facsimile or electronic (.pdf) signature and a facsimile or electronic (.pdf) signature shall constitute an original for all purposes.

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

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

**PARENT:**

**MOHAWK GROUP HOLDINGS, INC.**

/s/ Fabrice Hamaide

Name: Fabrice Hamaide
Title: Chief Financial Officer

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

**ACQUISITION SUB:**

**TRUWEO, LLC**

/s/ Fabrice Hamaide

Name: Fabrice Hamaide
Title: Chief Financial Officer

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

**SELLER:**

**HEALING SOLUTIONS, LLC**
**A Delaware limited liability company**

/s/ Jason R. Hope

Title: Manager
Name: Jason R. Hope

**FOUNDER**

/s/ Jason R. Hope

Jason R. Hope

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

**SOLE VOTING MEMBER:**

**SUPER TRANSCONTINENTAL HOLDINGS LLC**
**A Delaware limited liability company**

/s/ Jason R. Hope

Title: Manager
Name: Jason R. Hope

**Exhibit 4.1**

**MOHAWK GROUP HOLDINGS, INC.**

**Senior Secured Note due 2023**

THE ISSUANCE AND SALE OF NEITHER THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES THAT MAY BE ISSUABLE PURSUANT TO THIS NOTE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES LAWS. UNTIL THE DATE THAT IS ONE (1) YEAR AFTER THE ISSUE DATE (AS DEFINED ON THE REVERSE OF THIS NOTE), THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION AND PROSPECTUS-DELIVERY REQUIREMENTS OF THE SECURITIES ACT.

**MOHAWK GROUP HOLDINGS, INC.**

**Senior Secured Note due 2023**

Certificate No. A-1

Mohawk Group Holdings, Inc., a Delaware corporation (the "**Company**"), for value received, promises to pay to High Trail Investments ON LLC (the "**Initial Holder**"), or its registered assigns, the principal sum of sixteen million five hundred thousand dollars ($16,500,000) (such principal sum, the "**Principal Amount**") on February 1, 2023, and to pay any outstanding Default Interest thereon, as provided in this Note, in each case as provided in and subject to the other provisions of this Note.

Additional provisions of this Note are set forth on the other side of this Note.

**[*The Remainder of This Page Intentionally Left Blank; Signature Page Follows*]**

**IN WITNESS WHEREOF**, Mohawk Group Holdings, Inc. has caused this instrument to be duly executed as of the date set forth below.

MOHAWK GROUP HOLDINGS, INC.

Date: February 2, 2021

By: _____

Name: Yaniv Sarig
Title: Chief Executive Officer

[Signature Page to Senior Secured Note due 2023, Certificate No. A-1]

**MOHAWK GROUP HOLDINGS, INC.**

**Senior Secured Note due 2023**

This Note (this "**Note**" and, collectively with any Note issued in exchange therefor or in substitution thereof, the "**Notes**") is issued by Mohawk Group Holdings, Inc., a Delaware corporation (the "**Company**"), and designated as its "Senior Secured Notes due 2023."

**Section 1. DEFINITIONS.**

"**Adjusted EBITDA**" means, for any period, net loss plus depreciation and amortization, interest expense, net, income tax expense, stock-based compensation expense and other expense, net, (each as disclosed in the Company's historical financial statements included in its most recent Annual Report on Form 10-K and/or Quarterly Report on Form 10-Q) and non-cash merger and acquisition expenses (as disclosed in the Company's most recent Annual Report on Form 10-K and/or Quarterly Report on Form 10-Q or any other public filing with the Commission); *provided*, that pro forma net income (loss) plus depreciation and amortization, interest expense, net, income tax expense, stock-based compensation expense and other expense, net from the acquisition of assets from 9830 MacArthur, LLC, Reliance Equities Group, LLC and ZN Direct, LLC by Truweo, as disclosed in the Company's public filings with the Commission, shall be included in the calculation of Adjusted EBITDA for the applicable periods.

"**Affiliate**" has the meaning set forth in Rule 144 under the Securities Act.

"**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issue Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a "group" (within the meaning of Section 13(d)(3) of the Exchange Act) together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

"**Authorized Denomination**" means, with respect to the Notes, a Principal Amount thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof, or, if such Principal Amount then-outstanding is less than $1,000, then such outstanding Principal Amount.

"**Available Cash Amount"** means, for any calendar month, the aggregate sum of (i) one million eight hundred thousand dollars ($1,800,000) and (ii) (A) if the Truweo Cash Balance on the last day of such month is greater than the Target Cash Balance, ten million dollars ($10,000,000) or (B), if the Truweo Cash Balance on the last day of such month is less than the Target Cash Balance, two hundred percent (200%) of the Monthly Cash Allowance.

"**Bankruptcy Law**" means Title 11, United States Code, or any similar U.S. federal or state or non-U.S. law for the relief of debtors.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act on behalf of such board.

"**Business Combination Event**" has the meaning set forth in **Section 10**.

"**Business Day**" means any day other than a Saturday, a Sunday or any day on which commercial banks in The City of New York are authorized or required by law or executive order to close or be closed; *provided*, *however*, for clarification, commercial banks in The City of New York shall not be deemed to be authorized or required by law or executive order to close or be closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are open for use by customers on such day.

"**Buy-In**" has the meaning set forth in **Section 5(E)**.

"**Capital Lease**" means, with respect to any Person, any leasing or similar arrangement conveying the right to use any property, whether real or personal property, or a combination thereof, by that Person as lessee that, in conformity with GAAP, is required to be accounted for as a capital lease on the balance sheet of such Person.

"**Capital Lease Obligation**" means, at the time any determination is to be made, the amount of the liability in respect of a Capital Lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

"**Capital Stock**" of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case however designated, the equity of such Person, but excluding any debt securities convertible into such equity.

"**Cash**" means all cash and liquid funds.

"**Cash Equivalents"** means, as of any date of determination, any of the following: (A) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government, or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one (1) year after such date; (B) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one (1) year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from Standard & Poor's Corporation or at least P-1 from Moody's Investors Service; (C) commercial paper maturing no more than one (1) year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from Standard & Poor's Corporation or at least P-1 from Moody's Investors Service; (D) certificates of deposit or bankers' acceptances maturing within one (1) year after such date and issued or accepted by any commercial bank organized under the laws of the United States of America or any State thereof or the District of Columbia that (i) is at least "adequately capitalized"

(as defined in the regulations of its primary federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000; and (E) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (A) and (B) above, (ii) has net assets of not less than $500,000,000, and (iii) has the highest rating obtainable from either Standard & Poor's Corporation or Moody's Investors Service.

"**Collateral**" has the meaning set forth in the Security Agreements.

"**Collateral Agent**" means High Trail Investments SA LLC in its capacity as collateral agent for the Holder and each Other Holder, together with any successor thereto in such capacity.

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Common Stock**" means the common stock, $0.0001 par value per share, of the Company.

"**Company Redemption Base Price**" means, (i) with respect to a redemption of any outstanding Principal Amount of this Note pursuant to **Section 8(A)** prior to October 1, 2021, a cash amount equal to ninety-six percent (96%) of the portion of the Principal Amount of this Note to be repaid, (ii) with respect to a redemption of any outstanding Principal Amount of this Note pursuant to **Section 8(A)** on or after October 1, 2021, but prior to March 1, 2022, a cash amount equal to ninety-eight percent (98%) of the portion of the Principal Amount of this Note to be repaid and (iii) with respect to a redemption of this Note pursuant to **Section 8(A)** on or after March 1, 2022, a cash amount equal to one hundred percent (100%) of the portion of the Principal Amount of this Note to be repaid.

"**Company Redemption Date**" has the meaning set forth in **Section 8(A)**.

"**Company Redemption Price**" means the cash price payable by the Company to redeem this Note in accordance with **Section 8**.

"**Contingent Obligation**" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (A) any Indebtedness or other obligations of another Person, including any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (B) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (C) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

"**Copyright License"** means any written agreement granting any right to use any Copyright or Copyright registration, now owned or hereafter acquired by the Company or in which the Company now holds or hereafter acquires any interest.

**"Copyrights"** means all copyrights, whether registered or unregistered, held pursuant to the laws of the United States, any State thereof, or of any other country.

"**Daily VWAP**" means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading "Bloomberg VWAP" on Bloomberg page "MWK <EQUITY> VAP" (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm selected by the Company). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

"**Default**" means any event that is (or, after notice, passage of time or both, would be) an Event of Default.

"**Default Interest**" has the meaning set forth in **Section 4(B)**.

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

(A) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise (except as a result of a change of control, public equity offering or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control, public equity offering or asset sale event shall be subject to the prior repayment in full of the then outstanding Principal Amount of this Note plus accrued and unpaid Default Interest on this Note);

(B) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock convertible or exchangeable solely at the option of the issuer or a Subsidiary; provided that any such conversion or exchange will be deemed an incurrence of Indebtedness or Disqualified Stock, as applicable); or

(C) is redeemable at the option of the holder thereof, in whole or in part,

(D) in the case of each of clauses (A), (B) and (C), at any point prior to the one hundred eighty-first (181st) day after the Maturity Date.

"**DTC**" means The Depository Trust Company.

"**Eligible Exchange**" means any of The New York Stock Exchange, The NYSE American LLC, The Nasdaq Capital Market, The Nasdaq Global Market or The Nasdaq Global Select Market (or any of their respective successors).

"**Equipment**" means all "**equipment**" as defined in the UCC with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"**Equity Interests**" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including preferred stock or membership interests (however designated, whether voting or non-voting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and including, without limitation, any "equity security" (as that term is defined under Rule 405 promulgated under the Securities Act), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

"**Equity Issuance**" shall mean (a) any issuance or sale by the Company or any of its Subsidiaries of any Equity Interests (including any Equity Interests issued upon exercise or conversion of any Equity Rights) or any Equity Rights, or (b) the receipt by the Company or any of its Subsidiaries of any capital contribution (whether or not evidenced by any Equity Interest issued by the recipient of such contribution), in each case for bona fide capital-raising purposes and other than (i) any issuance of Equity Interests upon the exercise of any Equity Rights outstanding as of the date hereof (which, for avoidance of doubt, shall include the Existing Note) provided, that such issuance is made pursuant to the terms of such Equity Rights in effect on the date hereof and such Equity Rights are not amended to increase the number of such Equity Interests or to decrease the exercise price, exchange price or conversion price of Equity Rights, (ii) Equity Interests issuable upon the exercise of Equity Rights or upon the lapse of forfeiture restrictions on awards made pursuant to an Approved Stock Plan (as defined in the Securities Purchase Agreement) (including Equity Interests withheld by the Company for the purpose of paying on behalf of the holder thereof the exercise price of stock options or for paying taxes due as a result of such exercise or lapse of forfeiture restrictions), (iii) Common Stock issuable upon the exercise of stock options or upon the lapse of forfeiture restrictions on awards made pursuant to, any stock option exchange program of the Company that is approved by the Board of Directors or the compensation committee thereof or the Company's stockholders, whether now in effect or hereafter implemented, or (iv) Equity Interests issuable upon the exercise of Equity Rights issued as consideration in any merger, acquisition, business combination or strategic investment (including any joint venture, marketing, distribution, collaboration, license, strategic alliance or partnership), in connection with any consulting agreement, advisory agreement or independent contractor agreement or in connection with any debt facility established by the Company, including with any commercial bank or venture debt lender.

"**Equity Issuance Amortization Amount**" means, with respect to any Equity Issuance, the Holder's Pro Rata Share of the greater of (i) twenty percent (20%) of the net cash proceeds actually received by the Company and its Subsidiaries from such Equity Issuance (excluding any such net proceeds used by Truweo to acquire all, or substantially all, of the assets of another Person) and (ii) five percent (5%) of the net proceeds received by the Company and its Subsidiaries from such Equity Issuance; provided, that the Equity Issuance Amortization Amount in respect of any individual Equity Issuance, together with the Additional Amortization Amount (as defined in the Existing Note) in respect of such Equity Issuance under the Existing Note, shall not exceed in the aggregate five million five hundred thousand dollars ($5,500,000).

"**Equity Issuance Amortization Payment**" has the meaning set forth in **Section 4(A)(ii)**.

"**Equity Rights**" shall mean, with respect to any Person, any then-outstanding subscriptions, options, warrants, commitments, preemptive rights, convertible debt, or other equity-linked securities or agreements of any kind for the issuance or sale, of any additional Equity Interests of any class, or partnership or other ownership interests of any type in, such Person.

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

"**Event of Default**" has the meaning set forth in **Section 11(A)**.

"**Event of Default Acceleration Amount**" means, with respect to the delivery of a notice pursuant to **Section 11(B)(ii)** declaring this Note to be due and payable immediately on account of an Event of Default, a cash amount equal to one hundred and fifteen percent (115%) of the then outstanding Principal Amount of this Note (or such lesser principal amount accelerated pursuant to such notice) plus accrued and unpaid Default Interest on this Note.

"**Event of Default Notice**" has the meaning set forth in **Section 11(C)**.

"**Event of Default Stock Payment**" has the meaning set forth in **Section 5(C)**.

"**Event of Default Stock Payment Date**" means any date on which the Holder delivers an Event of Default Stock Payment Notice pursuant to **Section 5(C)** hereunder.

"**Event of Default Stock Payment Delivery Date**" has the meaning set forth in **Section 5(C)**.

"**Event of Default Stock Payment Notice**" has the meaning set forth in **Section 5(C)**.

"**Event of Default Stock Payment Price**" means, with respect to any Event of Default Stock Payment Date, an amount equal to eighty percent (80.0%) of the lesser of (i) the Daily VWAP on such Event of Default Stock Payment Date and (ii) the average of the lowest two (2) Daily VWAPs during the ten (10) VWAP Trading Day period ending on such Event of Default Stock Payment Date.

"**Excess Shares**" has the meaning set forth in **Section 7(A)**.

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

"**Existing Note**" means that certain Senior Secured Note issued to High Trail Investments SA LLC by the Company on December 1, 2020, as amended on February 2, 2021.

"**First Lien Credit Agreement**" means the Amended and Restated Credit and Security Agreement, dated November 23, 2018, by and among Mohawk Group Holdings, Inc., Mohawk Group, Inc., certain subsidiaries of Mohawk Group, Inc., MidCap Funding IV Trust and the financial institutions or other entities from time to time parties thereto, as amended, modified, restated, replaced or refinanced from time to time in accordance with the terms of the Intercreditor Agreement.

"**First Lien Indebtedness**" means Indebtedness owing under the First Lien Credit Agreement and other agreements, instruments and documents issued thereunder.

"**Freely Tradable**" means, with respect to any shares of Common Stock issued or issuable pursuant to this Note, that (A) such shares would be eligible to be offered, sold or otherwise transferred by the Holder pursuant to Rule 144, without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice under the Securities Act and without any requirement for registration under any state securities or "blue sky" laws; or (B) such shares are (or, when issued, will be) (i) represented by book-entries at DTC and identified therein by an "unrestricted" CUSIP number; and (ii) not represented by any certificate that bears a legend referring to transfer restrictions under the Securities Act or other securities laws.

"**Fundamental Change**" means any of the following events:

(A) a "person" or "group" (within the meaning of Section 13(d)(3) of the Exchange Act), other than the Company or its Wholly Owned Subsidiaries, or the employee benefit plans of the Company or its Wholly Owned Subsidiaries, files any report with the Commission indicating that such person or group has become the direct or indirect "beneficial owner" (as defined below) of shares of the Company's common equity representing more than fifty percent (50%) of the voting power of all of the Company's then-outstanding common equity;

(B) the consummation of (i) any sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person (other than solely to one or more of the Company's Wholly Owned Subsidiaries); or (ii) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, cash or other property (other than a subdivision or combination, or solely a change in par value, of the Common Stock); *provided*, *however*, that any merger, consolidation, share exchange or combination of the Company pursuant to which the Persons that directly or indirectly "beneficially owned" (as defined below) all classes of the Company's common equity immediately before such transaction directly or indirectly "beneficially own," immediately after such transaction, more than fifty percent (50%) of all classes of common equity of the surviving, continuing or acquiring company or other transferee, as applicable, or the parent thereof, in substantially the same proportions vis-à-vis each other as immediately before such transaction will be deemed not to be a Fundamental Change pursuant to this **clause (B)**;

(C) the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company; or

(D) the Common Stock ceases to be listed on any Eligible Exchange.

For the purposes of this definition, (x) any transaction or event described in both **clause (A)** and in **clause (B)(i)** or **(ii)** above (without regard to the proviso in **clause (B)**) will be deemed to occur solely pursuant to **clause (B)** above (subject to such proviso); and (y) whether a Person is a "**beneficial owner**" and whether shares are "**beneficially owned**" will be determined in accordance with Rule 13d-3 under the Exchange Act.

"**Fundamental Change Base Repurchase Price**" means, with respect to this Note (or any portion of this Note to be repurchased) upon a Repurchase Upon Fundamental Change, a cash amount equal to the then-outstanding Principal Amount of such Note (or portion thereof) to be so repurchased.

"**Fundamental Change Notice**" has the meaning set forth in **Section 6(C)**.

"**Fundamental Change Repurchase Date**" means the date as of which this Note must be repurchased for cash in connection with a Fundamental Change, as provided in **Section 6(B)**.

"**Fundamental Change Repurchase Price**" means the cash price payable by the Company to repurchase this Note (or any portion of this Note) upon its Repurchase Upon Fundamental Change, calculated pursuant to **Section 6(D)**.

"**GAAP**" means generally accepted accounting principles in the United States of America, as in effect from time to time; provided the definitions set forth in this Note and any financial calculations required by thereby shall be computed to exclude any change to lease accounting rules from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance as in effect on the date hereof.

"**Holder**" means the person in whose name this Note is registered on the books of the Company, which initially is the Initial Holder.

The term "**including**" means "including without limitation," unless the context provides otherwise.

"**Indebtedness**" means, indebtedness of any kind, including, without duplication (A) all indebtedness for borrowed money or the deferred purchase price of property or services, including reimbursement and other obligations with respect to surety bonds and letters of credit, (B) all obligations evidenced by notes, bonds, debentures or similar instruments, (C) all Capital Lease Obligations, (D) all Contingent Obligations, and (E) Disqualified Stock.

"**Independent Investigator**" has the meaning set forth in **Section 9(R)**.

"**Initial Holder**" has the meaning set forth in the cover page of this Note.

"**Intellectual Property"** means all of the Company's Copyrights; Trademarks; Patents; Licenses; trade secrets and inventions; mask works; the Company's applications therefor and reissues, extensions, or renewals thereof; and the Company's goodwill associated with any of the foregoing, together with the Company's rights to sue for past, present and future infringement of Intellectual Property and the goodwill associated therewith.

"**Intercreditor Agreement**" means that certain Intercreditor Agreement, dated as of December 1, 2020, as amended on February 2, 2021, among Midcap Funding IV Trust, High Trail Investments SA LLC and the Company.

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

"**Issue Date**" means February 2, 2021.

"**License**" means any Copyright License, Patent License, Trademark License or other license of rights or interests.

"**Lien**" means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, levy, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, against any property, any conditional sale or other title retention agreement, and any lease in the nature of a security interest; provided, that for the avoidance of doubt, licenses, strain escrows and similar provisions in collaboration agreements, research and development agreements that do not create or purport to create a security interest, encumbrance, levy, lien or charge of any kind shall not be deemed to be Liens for purposes of this Note.

"**Market Disruption Event**" means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Maturity Date**" means February 1, 2023.

"**Maximum Percentage**" has the meaning set forth in **Section 7(A)**.

The term "**or**" is not exclusive, unless the context expressly provides otherwise.

"**Monthly Cash Allowance**" means, for any month, the greater of (i) (A) the Truweo Cash Balance on the last day of such month *minus* (B) the highest Truweo Cash Balance on the last day of any prior calendar month; or (ii) zero.

"**Other Holder**" means any person in whose name any Other Note is registered on the books of the Company.

"**Other Notes**" means any Notes that are of the same class of this Note and that are represented by one or more certificates other than the certificate representing this Note.

**"Patent License"** means any written agreement granting any right with respect to any invention covered by a Patent that is in existence or a Patent application that is pending, in which agreement the Company now holds or hereafter acquires any interest.

**"Patents"** means all letters patent of, or rights corresponding thereto, in the United States or in any other country, all registrations and recordings thereof, and all applications for letters patent of, or rights corresponding thereto, in the United States or any other country.

"**Permitted Indebtedness**" means (A) Indebtedness evidenced by this Note or the Existing Note; (B) Indebtedness actually or deemed to be disclosed pursuant to the Securities Purchase Agreement as of the date of the Securities Purchase Agreement (including Liens securing the First Lien Indebtedness); (C) Indebtedness outstanding at any time secured by a Lien described in clause (G) of the defined term "Permitted Liens," provided such Indebtedness does not exceed the cost of the Equipment and related expenses financed with such Indebtedness or in the form of purchase money Indebtedness (whether in the form of a loan or a lease) used solely to acquire equipment used in the ordinary course of business and secured only by such equipment and sale and insurance proceeds in respect thereof; provided that the total amount of Permitted Indebtedness described in this clause (C) may not exceed five hundred thousand dollars ($500,000) in the aggregate; (D) Indebtedness to trade creditors incurred in the ordinary course of business; (E) Indebtedness that also constitutes a Permitted Investment; (F) Subordinated Indebtedness of the Company; (G) reimbursement obligations in connection with letters of credit or similar instruments that are secured by Cash or Cash Equivalents and issued on behalf of the Company or a Subsidiary thereof in an aggregate amount not to exceed one hundred thousand dollars $100,000 at any time outstanding; (H) Contingent Obligations that are guarantees of Indebtedness described in clauses (A) through (N); (I) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Indebtedness existing or arising under any "swap agreement", as defined in Section 101 of the Bankruptcy Code, that is obtained by the Company to provide protection against fluctuations in interest or currency exchange rates, *provided, however,* that such obligations are (or were) entered into by the Company or an Affiliate in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation; (J) Indebtedness in the form of insurance premiums financed through the applicable insurance company; (K) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business; (L) Indebtedness in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards"), in each case, incurred in the ordinary course of business and to the extent such Indebtedness does not exceed $300,000 in the aggregate at any time outstanding; (M) other unsecured Indebtedness of the Company not to exceed forty-five million dollars ($45,000,000) in the aggregate, so long as such Indebtedness does not have (i) a cash interest rate in excess of five percent (5%), (ii) a final maturity date, amortization payment, sinking fund, mandatory redemption or other repurchase obligation or put right at the option of the lender or holder of such Indebtedness earlier than one hundred eighty-one (181) days following the Maturity Date or (iii) any covenants that are more restrictive on the Company in any material respect than the covenants set forth in this Note; and (N) extensions, refinancings and renewals of any items of Permitted Indebtedness (other than any Indebtedness repaid with the proceeds of this Note), *provided* that the principal amount is not increased or the terms modified to impose materially more burdensome terms upon the Company or its Subsidiaries, as the case may be (other

than modifications to Indebtedness owing under the First Lien Credit Agreement in accordance with the terms of the Intercreditor Agreement), and *provided further,* that if the lender of any such proposed extension, refinancing or renewal of Permitted Indebtedness (other than First Lien Indebtedness in accordance with the Intercreditor Agreement) incurred hereunder is different from the lender of the Permitted Indebtedness to be so extended, refinanced or renewed then, in addition to the foregoing proviso, such Permitted Indebtedness shall also not have a final maturity date, amortization payment, sinking fund, mandatory redemption or other repurchase obligation earlier than one hundred eighty-one (181) days following the Maturity Date.

**"Permitted Intellectual Property Licenses"** means Intellectual Property (A) licenses in existence at the Issue Date, including those listed on the Schedules to the Security Agreements, and (B) non-perpetual licenses granted in the ordinary course of business on arm's length terms consisting of the licensing of technology, the development of technology or the providing of technical support which may include licenses with unlimited renewal options solely to the extent such options require mutual consent for renewal or are subject to financial or other conditions as to the ability of licensee to perform under the license; provided such license was not entered into during continuance of a Default or an Event of Default.

**"Permitted Investment"** means: (A) Investments deemed to be disclosed pursuant to the Securities Purchase Agreement, as in effect as of the Issue Date; (B) (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one year from the date of acquisition thereof, (ii) commercial paper maturing no more than one year from the date of creation thereof and currently having a rating of at least A-2 or P-2 from either Standard & Poor's Corporation or Moody's Investors Service, (iii) certificates of deposit issued by any bank headquartered in the United States with assets of at least $5,000,000,000 maturing no more than one year from the date of investment therein, and (iv) money market accounts; (C) Investments accepted in connection with Permitted Transfers; (D) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of the Company's business; (E) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers in the ordinary course of business and consistent with past practice, provided that this clause (E) shall not apply to Investments of the Company in any Subsidiary; (F) Investments consisting of (i) loans not involving the net transfer on a substantially contemporaneous basis of cash proceeds to employees, officers or directors relating to the purchase of capital stock of the Company pursuant to employee stock purchase plans or other similar agreements approved by the Company's Board of Directors and (ii) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, provided that the aggregate of all such loans outstanding may not exceed $250,000 at any time; (G) Investments in Wholly Owned Subsidiaries; (H) Permitted Intellectual Property Licenses; (I) acquisitions by Truweo or any of its Wholly Owned Subsidiaries of all, or substantially all, of the assets of another Person or a majority of the equity interests in another Person, *provided* that no such acquisition will be a "Permitted Investment" if, after giving effect to such acquisition, any Default or Event of Default would exist hereunder; (J) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; (K) Investments consisting of deposit accounts in which the Collateral Agent has received a deposit account control agreement in accordance with the Security Agreements and

Intercreditor Agreement and (L) additional Investments that do not exceed one hundred thousand dollars ($100,000) in the aggregate in any twelve (12) month period. Notwithstanding anything to the contrary herein, except as expressly permitted pursuant to this Note, the transfer, sale, lease, license, loan or conveyance of assets of Truweo to any entity not wholly owned, directly or indirectly by Truweo, shall not be a "Permitted Investment" hereunder.

**"Permitted Liens"** means any and all of the following: (A) Liens in favor of Holder or the Collateral Agent; (B) Liens deemed to be disclosed pursuant to the Securities Purchase Agreement, as in effect as of the Issue Date (including Liens securing the First Lien Indebtedness); (C) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings; provided, that the Company maintains adequate reserves therefor in accordance with GAAP; (D) Liens securing claims or demands of materialmen, artisans, mechanics, carriers, warehousemen, landlords and other like Persons arising in the ordinary course of business; provided, that the payment thereof is not yet required; (E) Liens arising from judgments, decrees or attachments in circumstances which do not constitute a Default or an Event of Default hereunder; (F) the following deposits, to the extent made in the ordinary course of business: deposits under workers' compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations (other than Liens arising under ERISA or environmental Liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds; (G) Liens on Equipment or software or other intellectual property constituting purchase money Liens and Liens in connection with Capital Leases securing Indebtedness permitted in clause (C) of "Permitted Indebtedness"; (H) leasehold interests in leases or subleases and licenses granted in the ordinary course of the Company's business and not interfering in any material respect with the business of the licensor; (I) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due; (J) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets); (K) statutory and common law rights of set-off and other similar rights as to deposits of cash and securities in favor of banks, other depository institutions and brokerage firms; (L) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property; (M) Liens on Cash or Cash Equivalents securing obligations permitted under clause (D) and (G) of the definition of Permitted Indebtedness; and (N) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clauses (C) through (M) above (other than any Indebtedness repaid with the proceeds of this Note); provided, that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced (as may have been reduced by any payment thereon) does not increase.

**"Permitted Transfers"** means (A) dispositions of inventory sold, and Permitted Intellectual Property Licenses entered into, in each case, in the ordinary course of business, (B) dispositions of worn-out, obsolete or surplus property at fair market value in the ordinary course of business; (C) dispositions of accounts or payment intangibles (each as defined in the UCC)

resulting from the compromise or settlement thereof in the ordinary course of business for less than the full amount thereof; (D) transfers consisting of Permitted Investments in Wholly Owned Subsidiaries under clause (G) of Permitted Investments; and (E) other transfers of assets to any Person other than to a joint venture and which have a fair market value of not more than fifty thousand dollars ($50,000) in the aggregate in any twelve (12) month period; *provided*, in each case, that, except as expressly permitted pursuant to this Note, the transfer, sale, lease, license, loan or conveyance of assets of Truweo pursuant to clause (D) above to any entity not wholly owned, directly or indirectly by Truweo, shall not be a "Permitted Transfer" hereunder.

"**Person**" or "**person**" means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Principal Amount**" has the meaning set forth in the cover page of this Note; *provided*, *however*, that the Principal Amount of this Note will be subject to reduction (A) pursuant to **Section 6** and **Section 8** and (B) by an amount equal to the sum of all Equity Issuance Amortization Payments made prior to date of determination of the Principal Amount of the Note then outstanding.

"**Pro Rata Share**" means the result of the outstanding principal amount outstanding under this Note divided by the sum of (A) the aggregate principal amount outstanding under the Existing Note plus (B) the outstanding principal amount outstanding under this Note.

"**Reported Outstanding Share Number**" has the meaning set forth in **Section 7(A)**.

"**Repurchase Upon Fundamental Change**" means the repurchase of any Note by the Company pursuant to **Section 6**.

"**Rule 144**" means Rule 144 promulgated under the Securities Act.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended.

"**Securities Purchase Agreement**" means that certain Securities Purchase Agreement, dated as of February 2, 2021, between the Company and High Trail Investments ON LLC providing for the issuance of this Note.

"**Security Agreements**" means those certain Security Agreements, dated as of December 1, 2020, as amended on February 2, 2021, between the Company and the Collateral Agent.

"**Security Document**" has the meaning set forth in the Security Agreements.

"**Significant Subsidiary**" means, with respect to any Person, any Subsidiary of such Person that constitutes a "significant subsidiary" (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of such Person.

"**Subordinated Indebtedness**" means Indebtedness subordinated to the Notes pursuant to a written agreement between the Holder and the applicable lender in amounts and on terms and conditions satisfactory to the Holder in its sole discretion.

"**Subsidiary**" means, with respect to any Person, (A) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than fifty percent (50%) of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person; and (B) any partnership or limited liability company where (i) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; and (ii) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company.

"**Successor Corporation**" has the meaning set forth in **Section 10(A)**.

"**Target Adjusted EBITDA**" means, (i) with respect to the fiscal quarter ended December 31, 2020, four million dollars ($4,000,000), (ii) with respect to the fiscal quarter ending March 31, 2021, thirteen million dollars ($13,000,000), (iii) with respect to the fiscal quarter ending June 30, 2021, twelve million dollars ($12,000,000) (iv) with respect to the fiscal quarter ending September 30, 2021, ten million dollars ($10,000,000), (v) with respect to the fiscal quarter ending December 31, 2021, sixteen million dollars ($16,000,000), (vi) with respect to the fiscal quarter ending March 31, 2022, nineteen million dollars ($19,000,000), (vii) with respect to the fiscal quarter ending June 30, 2022, twenty-two million dollars ($22,000,000) and (viii) with respect to the fiscal quarter ending September 30, 2022, twenty-four million five hundred thousand dollars ($24,500,000).

"**Target Cash Balance**" means, at any time, the lesser of $8,000,000 or an amount equal to fifty percent (50%) of the Principal Amount outstanding under this Note and the Existing Note at such time.

**"Trademark License"** means any written agreement granting any right to use any Trademark or Trademark registration, now owned or hereafter acquired by the Company or in which the Company now holds or hereafter acquires any interest.

**"Trademarks"** means all trademarks (registered, common law or otherwise) and any applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof.

"**Trading Day**" means any day on which (A) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded; and (B) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then "Trading Day" means a Business Day.

"**Transaction Documents**" has the meaning set forth in the Securities Purchase Agreement.

"**Truweo**" means Truweo, LLC.

"**Truweo Cash Balance**" means, as of any date, the aggregate amount of unrestricted, unencumbered Cash and Cash Equivalents held by Truweo in one or more deposit accounts located in the United States and subject to a Control Agreement (as defined in the Security Agreements) in favor of the Collateral Agent as of 11:59 pm New York City time on such date. Any distributions made by Truweo in accordance with **Section 9(G)** on or prior to such date shall not be included in the Truweo Cash Balance as of such date.

"**UCC**" means the Uniform Commercial Code as the same is, from time to time, in effect in the State of New York.

"**Undelivered Shares**" has the meaning set forth in **Section 5(E)**.

"**VWAP Market Disruption Event**" means, with respect to any date, (A) the failure by the principal U.S. national or regional securities exchange on which the Common Stock is then listed, or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, the principal other market on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (B) the occurrence or existence, for more than one half hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

"**VWAP Trading Day**" means a day on which (A) there is no VWAP Market Disruption Event; provided that the Holder, by notice to the Company, may waive any such VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then "VWAP Trading Day" means a Business Day.

"**Wholly Owned Subsidiary**" of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

"**Withheld Shares**" has the meaning set forth in **Section 7(B)**.

**Section 2. PERSONS DEEMED OWNERS.**

The Holder of this Note will be treated as the owner of this Note for all purposes.

**Section 3. REGISTERED FORM.**

This Note, and any Note issued in exchange therefor or in substitution thereof, will be in registered form, without coupons.

**Section 4. EQUITY ISSUANCE AMORTIZATION PAYMENTS; DEFAULTED INTEREST; MATURITY DATE PAYMENT.**

(A) *Equity Issuance Amortization Payments*.

(i) Within one (1) Business Day following the consummation of any Equity Issuance by the Company or its Subsidiaries that is consummated on or after March 1, 2021, the Equity Issuance Amortization Amount received in respect of such Equity Issuance shall be paid by the Company to the Holder in cash.

(ii) For purposes of this Note, any payment made to the Holder pursuant to **Section 4(A)(i)** shall be referred to as an "**Equity Issuance Amortization Payment**".

(iii) Concurrently with the payment of each Equity Issuance Amortization Payment, the Company shall certify to Holder in writing (i) the amount of the applicable Equity Issuance and (ii) the calculation of the Equity Issuance Amortization Payment with respect to such Equity Issuance (including a certification that such Equity Issuance Amortization Payment was calculated in accordance with the terms hereof); provided, however, that, unless consented to by the Holder in writing, in the event that the extent of such Equity Issuances and Equity Issuance Amortization Payment is such that the information required in such certification would constitute material non-public information regarding the Company, then the Company shall instead publicly disclose such material non-public information on a Current Report on Form 8-K or otherwise, on or prior to 9:00 am, New York City time on the Business Day immediately following the date of payment of such Equity Issuance Amortization Payment.

(B) *Defaulted Interest*. If a Default or Event of Default occurs, then in each case, to the extent lawful, interest ("**Default Interest**") will accrue on the Principal Amount outstanding as of such Default or Event of Default at a rate per annum equal to fifteen percent (15.0%), from, and including, the date of such Default or Event of Default, as applicable, to, but excluding, the date any applicable Default is cured and all outstanding Default Interest has been paid. Default Interest hereunder will be payable in arrears on the first day of each calendar month, will be computed on the basis of a 360-day year comprised of twelve 30-day months and will be in addition to any imputed interest applicable to this Note as a result of an original issue discount.

(C) *Maturity Date Payment*. On the Maturity Date, the Company will pay the Holder an amount in cash equal to the then-outstanding Principal Amount of this Note plus any accrued and unpaid Default Interest on this Note.

**Section 5. METHOD OF PAYMENT; WHEN PAYMENT DATE IS NOT A BUSINESS DAY.**

(A) *Method of Payment*. The Company will pay all cash amounts due under this Note by wire transfer of immediately available funds to the account of the Holder set forth in the Flow of Funds Letter (as defined in the Securities Purchase Agreement) (or, if such Holder provides the Company, at least three (3) Business Days before the date such amount is due, with written notice of an account or address of such Holder within the United States, as applicable, by wire transfer of immediately available funds or check to such account or address set forth in such written notice, as applicable).

(B) *Delay of Payment when Payment Date is Not a Business Day*. If the due date for a payment on this Note as provided in this Note is not a Business Day, then, notwithstanding anything to the contrary in this Note, such payment may be made on the immediately following Business Day and no interest will accrue on such payment as a result of the related delay.

(C) *Event of Default Stock Payments*. If an Event of Default occurs and the Company fails to pay the Event of Default Acceleration Amount when due in accordance with this Note, then the Holder may elect to receive such unpaid portion of the Event of Default Acceleration Amount, entirely or partially, in shares of Common Stock (an "**Event of Default Stock Payment**"), and shall deliver to the Company a written notice of such election stating which portion thereof the Holder has elected to receive in shares of Common Stock (an "**Event of Default Stock Payment Notice**"). On or before the second (2nd) Business Day following the date of delivery of any Event of Default Stock Payment Notice hereunder (the "**Event of Default Stock Payment Delivery Date**"), the Company shall issue and deliver to the Holder, a number of validly issued, fully paid shares of Common Stock equal to the quotient (rounded up to the closest whole number) obtained by dividing the Event of Default Acceleration Amount (or applicable portion thereof) by the Event of Default Stock Payment Price as of the date of delivery of the Event of Default Stock Payment Notice; *provided*, that, if the Company fails to timely issue and deliver to the Holder such shares of Common Stock, then the Holder may revoke its election to receive shares of Common Stock and elect to receive such Event of Default Acceleration Amount (or any portion thereof) in cash at any time prior to delivery of such shares of Common Stock. After the six (6) month anniversary of the Issue Date, any shares of Common Stock issued pursuant to this **Section 5(C)** will be Freely Tradable. Any portion of the Event of Default Acceleration Amount not paid in shares of Common Stock because the Holder did not elect, or effectively revoked its election, to receive shares of Common Stock for such Event of Default Acceleration Amount (or applicable portion thereof) will be paid in cash; provided, that the Holder may deliver multiple Event of Default Stock Payment Notices in accordance with this **Section 5(C)** to the extent that any portion of the Event of Default Acceleration Amount remains unpaid when due in accordance with this Note.

(D) *Status of Common Stock Issued to Holder*. Each share of Common Stock delivered pursuant to this Note will be a newly issued or treasury share and will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any Lien or adverse claim (except to the extent of any Lien or adverse claim created by the action or inaction of the Holder or the Person to whom such share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will cause each share of Common Stock issued pursuant to this Note, when delivered, to be admitted for

listing on such exchange or quotation on such system. After the Holder has held this Note for at least six (6) consecutive months, shares of Common Stock issued pursuant to this Note will be issued in the form of book-entries at the facilities of DTC, identified therein by an "unrestricted" CUSIP number.

(E) *Company Failure to Timely Deliver Event of Default Stock Payments*. If the Company shall fail for any reason or for no reason on or prior to the applicable Event of Default Stock Payment Delivery Date to deliver shares of Common Stock with respect to an Event of Default Stock Payment in accordance with **Section 5(C)** and **Section 5(D)** (such shares to which Holder is entitled being, the "**Undelivered Shares**"), then, in addition to all other remedies available to the Holder, if on or prior to the applicable Event of Default Stock Payment Delivery Date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Undelivered Shares which the Holder anticipated receiving upon such exercise (a "**Buy-In**"), then the Company shall, within five (5) Trading Days after the Holder's request, (i) pay in cash to the Holder the amount, if any, by which (A) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (B) the amount obtained by multiplying (1) the number of Undelivered Shares that the Company was required to deliver to the Holder pursuant to **Section 5(C)** by (2) the price at which the sell order giving rise to such purchase obligation was executed (including brokerage commissions, if any), and (ii) at the option of the Holder, either (x) pay the portion of the Event of Default Acceleration Amount (or applicable portion thereof) for which Holder's election under **Section 5(C)** was not honored in cash or (y) deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to a number of shares deliverable pursuant to **Section 5(C)** with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (i) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, written evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock as required pursuant to the terms hereof. In addition to the foregoing, if the Company fails for any reason to deliver Common Stock to the Holder by the applicable Event of Default Stock Payment Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of shares of Common Stock deliverable pursuant to **Section 5(C)** (based on the Event of Default Stock Payment Price on the applicable Event of Default Stock Payment Delivery Date), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after the Event of Default Stock Payment Delivery Date until such shares of Common Stock are delivered or Holder revokes its election to receive such shares of Common Stock in accordance with **Section 5(C)**.

**Section 6. REQUIRED REPURCHASE OF NOTE UPON A FUNDAMENTAL CHANGE.**

(A) *Repurchase Upon Fundamental Change*. Subject to the other terms of this **Section 6**, if a Fundamental Change occurs, then the Holder will have the right to require the Company to repurchase this Note (or any portion of this Note in an Authorized Denomination) on the Fundamental Change Repurchase Date for such Fundamental Change for a cash purchase price equal to the Fundamental Change Repurchase Price.

(B) *Fundamental Change Repurchase Date*. The Fundamental Change Repurchase Date for any Fundamental Change will be a Business Day of the Holder's choosing that is no more than twenty (20) Business Days after the later of (x) the date the Company delivers to the Holder the related Fundamental Change Notice pursuant to **Section 6(C)**; and (y) the effective date of such Fundamental Change.

(C) *Fundamental Change Notice*. No later than the eighth (8th) Business Day before the occurrence of any Fundamental Change, the Company will send to the Holder a written notice (the "**Fundamental Change Notice**") thereof (provided, however, in no event shall such notice be required prior to the actual public notice of such Fundamental Change), stating the expected date such Fundamental Change will occur. No later than the fifth (5th) Business Day after the date of delivery of the Fundamental Change Notice, the Holder shall notify the Company in writing whether it will require the Company to repurchase this Note and specify the Fundamental Change Repurchase Date.

(D) *Fundamental Change Repurchase Price*. The Fundamental Change Repurchase Price for this Note (or any portion of this Note to be repurchased) upon a Repurchase Upon Fundamental Change following a Fundamental Change is an amount in cash equal to the Fundamental Change Base Repurchase Price for such Fundamental Change plus any accrued and unpaid Default Interest on this Note (or such portion of this Note) to, but excluding, the Fundamental Change Repurchase Date for such Fundamental Change.

(E) *Effect of Repurchase*. If this Note (or any portion of this Note) is to be repurchased upon a Repurchase Upon Fundamental Change, then, from and after the date the related Fundamental Change Repurchase Price is paid in full, this Note (or such portion) will cease to be outstanding.

**Section 7. OWNERSHIP LIMITATIONS.**

(A) *Beneficial Ownership Limitation*. Notwithstanding anything to the contrary contained herein, the Company shall not make any Event of Default Stock Payment in shares of Common Stock, and the Holder shall not have the right to exercise any right to receive the Event of Default Stock Payment in shares of Common Stock, pursuant to **Section 5(C)** hereof, and any such payment shall be null and void and treated as if never made, to the extent that after giving effect to such Event of Default Stock Payment, the Holder together with the other Attribution Parties collectively would beneficially own in the aggregate in excess of 4.99% (the "**Maximum Percentage**") of the number of shares of Common Stock outstanding immediately after giving effect to such Event of Default Stock Payment. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other

Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable with respect to such Event of Default Stock Payment (or applicable portion thereof) with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) payment of the remaining unpaid Event of Default Acceleration Amount owed to the Holder or any of the other Attribution Parties and payable in shares of Common Stock pursuant to **Section 5(C)** hereof and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this **Section 7(A)**. For purposes of this **Section 7(A)**, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of this Note and any Event of Default Stock Payment Notice, in determining the number of outstanding shares of Common Stock the Company may issue pursuant to **Section 5(C)** without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Commission, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent (as defined in the Securities Purchase Agreement) setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives an Event of Default Stock Payment Notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Event of Default Stock Payment would otherwise cause the Holder's beneficial ownership, as determined pursuant to this **Section 7(A)**, to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of shares of Common Stock to be issued pursuant to such Event of Default Stock Payment. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Trading Day confirm in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder pursuant to this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled *ab initio*, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any Other Holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of

Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to issue shares of Common Stock to the Holder pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of the ability to issue shares of Common Stock hereunder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this **Section 7(A)** to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this **Section 7(A)** or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note. The Holder hereby acknowledges and agrees that the Company shall be entitled to rely on the representations and other information set forth in any Event of Default Stock Payment Notice and shall not be required to independently verify whether any issuance of shares of Common Stock pursuant to this Note would cause the Holder (together with the other Attribution Parties) to collectively beneficially own in excess of the Maximum Percentage of the number of shares of Common Stock outstanding after giving effect to such exercise or otherwise trigger the provisions of this **Section 7(A**).

(B) *Stock Exchange Limitations*. Notwithstanding anything to the contrary in this Note, unless the Company obtains a stockholder approval contemplated by Nasdaq Listing Standard Rule 5635(d) with respect to the issuance of shares of Common Stock pursuant to this Note in excess of the limitations imposed by such rule, in no event will the number of shares of Common Stock issuable pursuant to this Note exceed 2,540,885 shares in the aggregate. If any one or more shares of Common Stock are not delivered as a result of the operation of the preceding sentence (such shares, the "**Withheld Shares**"), then (1) on the date such shares of Common Stock are issuable hereunder (after giving effect to any limitations imposed under **Section 7(A)**), the Company will pay to the Holder, in addition to the Event of Default Acceleration Amount then due and unpaid, cash in an amount equal to the product of (x) the number of such Withheld Shares; and (y) the Daily VWAP per share of Common Stock on such Event of Default Stock Payment Date; and (2) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in settlement of a sale by the Holder of such Withheld Shares, the Company will reimburse the Holder for (x) any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection with such purchases and (y) the excess, if any, of (A) the aggregate purchase price of such purchases over (B) the product of (I) the number of such Withheld Shares purchased by the Holder; and (II) the Daily VWAP per share of Common Stock on such date.

**Section 8. COMPANY REDEMPTION OF THIS NOTE.**

(A) *Company Redemption Election*. The Company may redeem all (but not less than all) of the then outstanding Principal Amount of this Note on a date (any such date a "**Company Redemption Date**") to be determined by the Company, for a cash redemption price equal to the Company Redemption Price; provided, that the Company must provide notice thereof at least ten (10) Trading Days prior to any Company Redemption Date and the Company must have, on or prior to 9:00 am, New York City time, on the Trading Day immediately preceding such notice delivery date, publicly disclosed any material, non-public information regarding the Company (including the fact that the Company is redeeming the Note) on a Form 8-K or otherwise; *provided*, *however*, that this **Section 8(A)** will cease to have any force and effect if an Event of Default has occurred and has not been waived by the Required Holders.

(B) *Company Redemption Price*. The Company Redemption Price for this Note to be redeemed pursuant to **Section 8(A)** is an amount in cash equal to the Company Redemption Base Price plus any accrued and unpaid Default Interest on this Note.

(C) *Effect of Redemption*. If this Note is to be redeemed in full pursuant to **Section 8(A)**, then, from and after the date the related Company Redemption Price is paid in full, this Note will cease to be outstanding.

**Section 9. AFFIRMATIVE AND NEGATIVE COVENANTS.**

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

(B) *Corporate Existence.* Subject to **Section 10**, the Company will cause to preserve and keep in full force and effect:

(i) its corporate existence and the corporate existence of its Subsidiaries in accordance with the organizational documents of the Company or its Subsidiaries, as applicable; and

(ii) the material rights (charter and statutory), licenses and franchises of the Company and its Subsidiaries;

*provided*, *however*, that the Company need not preserve or keep in full force and effect any such license or franchise or existence of any of its Subsidiaries if the Board of Directors determines in good faith that (x) the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole; and (y) the loss thereof is not, individually or in the aggregate, materially adverse to the Holder.

(C) *Ranking*. All payments due under this Note (i) shall rank junior to the First Lien Indebtedness to the extent of the value of the Collateral securing the First Lien Indebtedness, (ii) shall rank pari passu with the Existing Note and all Other Notes and (iii) shall rank senior to all indebtedness of the Company (other than the indebtedness described in clauses (i) and (ii)) and any Subordinated Indebtedness.

(D) *Indebtedness; Amendments to Indebtedness*. The Company shall not and shall not permit any Subsidiary to: (a) create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness, other than Permitted Indebtedness; (b) prepay any Indebtedness (other than First Lien Indebtedness) except for (i) by the conversion of Indebtedness into equity securities (other than Disqualified Stock) and the payment of cash in lieu of fractional shares in connection with such conversion, and (ii) a refinancing of the entire amount of such Indebtedness which does not impose materially more burdensome terms upon the Company or its Subsidiaries than exist in such Indebtedness prior to such refinancing, but with a maturity date which is later than one hundred eighty-one (181) days following the Maturity Date; or (c) amend or modify any documents or notes evidencing any Indebtedness (other than amendments or modifications to the First Lien Indebtedness in accordance with the Intercreditor Agreement) in any manner which shortens the maturity date or any amortization, redemption or interest payment date thereof or otherwise imposes materially more burdensome terms upon the Company or its Subsidiaries than exist in such Indebtedness prior to such amendment or modification without the prior written consent of Holder. Notwithstanding anything herein to the contrary, without the prior written consent of the Holder, (i) the Company may not replace or refinance the First Lien Indebtedness or First Lien Credit Agreement unless such replacement or refinancing will be subject to the terms of the Intercreditor Agreement or another intercreditor agreement at least as favorable to the Holder as the existing Intercreditor Agreement and in form and substance reasonably acceptable to the Collateral Agent and (ii) outstanding First Lien Indebtedness may not exceed thirty-five million dollars ($35,000,000) in the aggregate.

(E) *Liens*. The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind on any asset now owned or hereafter acquired, except Permitted Liens.

(F) *Investments*. The Company shall not directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries so to do, other than Permitted Investments; *provided* that the Company may not make any Investment (including a Permitted Investment) or permit any of its Subsidiaries to make any Investment (including a Permitted Investment) if (i) any Event of Default has occurred hereunder or (ii) a Default is continuing with respect to **Section 9(J)**, **Section 11(A)(ii)**, **Section 11(A)(iii)**, **Section 11(A)(ix)**, **Section 11(A)(xii)** or **Section 11(A)(xv)**.

(G) *Distributions.* The Company shall not, and shall not allow any Subsidiary to, (a) repurchase or redeem any class of stock or other Equity Interest other than pursuant to employee, director or consultant repurchase plans or other similar agreements provided under plans approved by the Board of Directors; provided, however, in each case the repurchase or redemption price does not exceed the original consideration paid for such stock or Equity Interest; provided further, that the Company or any Subsidiary may repurchase, receive via forfeiture, withhold or transfer any class of stock or other Equity Interest pursuant to a net exercise of an Equity Right or other convertible security to cover the payment of the exercise price or the payment of withholding taxes associated with the exercise or vesting of equity awards under any equity compensation plan of the Company or repurchases of Common Stock, Equity Right or other convertible security upon an employee's, contractor's or consultant's termination of services, or (b) declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest, except that a Subsidiary may pay dividends or make distributions to the Company or a parent company that is a direct or indirect Wholly Owned Subsidiary of the Company; *provided*, *however*, that, in any calendar month, Truweo shall not make cash dividends or distributions in an aggregate amount in excess of the Available Cash Amount, or (c) lend money

to any employees, officers or directors (except as permitted under clauses (F) of the definition of Permitted Investment), or guarantee the payment of any such loans granted by a third party in excess of fifty thousand dollars ($50,000) in the aggregate or (d) waive, release or forgive any Indebtedness owed by any employees, officers or directors in excess of fifty thousand dollars ($50,000) in the aggregate. Within one (1) Business Day following the date on which the Company files an Annual Report on Form 10-K or Quarterly Report on Form 10-Q with the Commission, the Company will provide the Holder with a written notice setting forth (i) the Truweo Cash Balance on the last day of each calendar month and (ii) the aggregate amount of dividends or distributions made by the Company or any Subsidiary pursuant to this **Section 9(G)** and Section 9(G) of the Existing Note for the period covered by such Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as applicable. Notwithstanding anything herein to the contrary, (i) Truweo may not distribute, transfer, sell, lease, license, loan or convey its assets to the Company or any Wholly Owned Subsidiary of the Company (other than a Wholly Owned Subsidiary of Truweo) and (ii) the Company shall not, and shall not allow any Subsidiary to, declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest if (A) any Event of Default has occurred hereunder and has not been waived by the Required Holders or (B) any Default is continuing with respect to **Section 9(J)**, **Section 11(A)(ii)**, **Section 11(A)(iii)**, **Section 11(A)(ix)**, **Section 11(A)(xii)** or **Section 11(A)(xv)**.

(H) *Transfers*. Except for Permitted Transfers and Permitted Investments, the Company shall not, and shall not allow any Subsidiary to, voluntarily or involuntarily transfer, sell, lease, license, lend or in any other manner convey any equitable, beneficial or legal interest in any material portion of the assets of the Company and its Subsidiaries (taken as a whole) or in any assets of Truweo.

(I) *Taxes*. The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). The Company and its Subsidiaries shall file on or before the due date therefor all personal property tax returns (except where the failure to file would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). Notwithstanding the foregoing, the Company and its Subsidiaries may contest, in good faith and by appropriate proceedings, taxes for which they maintain adequate reserves therefor in accordance with GAAP.

(J) *Minimum Liquidity*.

(i) The Company and its Subsidiaries shall have at all times liquidity calculated as unrestricted, unencumbered Cash and Cash Equivalents in one or more deposit accounts located in the United States and, within thirty (30) days of the Issue Date, subject to a Control Agreement (as defined in the Security Agreements) entered into in favor of the Collateral Agent or a Control Agreement entered into otherwise in accordance with the Security Agreements in a minimum amount equal to ten million dollars ($10,000,000).

(ii) Truweo shall have at all times liquidity calculated as unrestricted, unencumbered Cash and Cash Equivalents in one or more deposit accounts located in the United States and, within thirty (30) days of the Issue Date (or such later date as agreed to by the Collateral Agent in its sole discretion), subject to a Control Agreement (as defined in the Security Agreements) in favor of the Collateral Agent in a minimum amount equal to three million five hundred thousand dollars ($3,500,000).

(iii) On or prior to the first (1st) calendar day of each month, the Company shall provide to the Holder a certification, executed on behalf of the Company by the Chief Financial Officer of the Company, certifying whether or not the Company has satisfied the requirements of **Section 9(J)(i)**, **Section 9(J)(ii)** and **Section 9(G)** during the immediately preceding calendar month. If the Company determines in its sole discretion that such information constitutes material non-public information, then the Company will concurrently disclose such material non-public information on a Current Report on Form 8-K or otherwise.

(K) *Adjusted EBITDA*. As of the last day of each applicable fiscal quarter, the Company and its consolidated Subsidiaries shall have Adjusted EBITDA of not less than Target Adjusted EBITDA for the twelve (12)-month period ending on such day.

(L) *Change in Nature of Business*. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by or publicly contemplated to be conducted by the Company and each of its Subsidiaries on the Issue Date or any business substantially related or incidental thereto.

(M) *Maintenance of Properties, Etc*. The Company shall maintain and preserve, and the Company shall cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful (as determined by the Company in good faith) in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and 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 where the failure to do so would not, individually or in the aggregate, have a material effect on the Company or any Subsidiary).

(N) *Maintenance of Intellectual Property*. The Company will take, and the Company shall cause each of its Subsidiaries to take, all actions necessary or advisable to maintain all of the Intellectual Property Rights (as defined in the Securities Purchase Agreement) of the Company or such Subsidiary that are necessary or material (as determined by the Company in good faith) to the conduct of its business in full force and effect.

(O) *Maintenance of Insurance*. The Company shall maintain, and the Company shall cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated.

(P) *Transactions with Affiliates*. Neither the Company nor any of its Subsidiaries shall 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 (other than the Company or any of its Wholly Owned Subsidiaries), except transactions for fair consideration and on terms no less favorable to it than would be obtainable in a comparable arm's length transaction with a Person that is not an affiliate thereof.

(Q) *Restricted Issuances.* The Company shall not, and shall cause its Subsidiaries not to, directly or indirectly, without the prior written consent of the holders of a majority in aggregate principal amount of the Notes then outstanding, (i) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities or incur any Indebtedness, in each case, that would cause a breach or Default under the Notes or that by its terms would prohibit or restrict the performance of any of the Company's or its Subsidiaries' obligations under the Notes, including without limitation, the payment of interest and principal thereon.

(R) *Independent Investigation*. At the request of the Required Holders (as defined in the Securities Purchase Agreement) at any time the Required Holders have determined in good faith that an Event of Default has occurred and is continuing but the Company has not timely agreed to such determination in writing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Required Holders to investigate as to whether such Event of Default has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such Event of Default has occurred, the Independent Investigator shall notify the Company of such Event of Default and the Company shall deliver written notice to the Holder of such Event of Default. In connection with such investigation, the Independent Investigator may, during normal business hours and upon signing a confidentiality agreement in a form reasonably acceptable to the Company, inspect all contracts, books, records, personnel, offices and other facilities and properties of the Company and its Subsidiaries and, to the extent available to the Company after the Company uses reasonable efforts to obtain them, the records of its accountants (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, any of the Company's officers, directors, key employees and independent public accountants (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries; provided, that the Company's chief executive officer and chief financial officer shall be invited to join any such discussion), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

(S) Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall on or prior to 9:00 am, New York City time on the Business Day immediately following such notice delivery date, publicly disclose such material, non-public information on a Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this **Section 9(S)** shall limit any obligations of the Company, or any rights of the Holder, under the Securities Purchase Agreement.

(T) The Company acknowledges and agrees that the Holder is not a fiduciary or agent of the Company and that the Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by an officer of the Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that the Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

(U) The Company shall cause this Note and any shares of Common Stock issuable pursuant to this Note to be eligible to be offered, sold or otherwise transferred by the Holder pursuant to Rule 144, without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice under the Securities Act and without any requirement for registration under any state securities or "blue sky" law, on and after the date that is six (6) months following the Issue Date. If this Note is to be transferred, the Holder shall notify the Company and surrender this Note to the Company (or provide the Company an affidavit in a form reasonably acceptable to the Company that this Note was lost, stolen or destroyed), whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note, registered as the Holder may request. The Company shall not be obligated to pay any tax which may be payable with respect to any transfer (or deemed transfer) arising in connection with the registration of any certificates for Notes in the name of any Person other than the Holder.

**Section 10. SUCCESSORS.**

The Company will not consolidate with or merge with or into, or (directly, or indirectly through one or more of its Subsidiaries) sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to another Person, other than the Holder or any of its Affiliates (a "**Business Combination Event**"), unless:

(A) the resulting, surviving or transferee Person either (x) is the Company or (y) if not the Company, is a corporation (the "**Successor Corporation**") duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia that expressly assumes (by executing and delivering to the Holder, at or before the effective time of such Business Combination Event, a supplement to this instrument) all of the Company's obligations under this Note; and

(B) immediately after giving effect to such Business Combination Event, no Default or Event of Default will have occurred and be continuing.

At the effective time of any Business Combination Event, the Successor Corporation (if not the Company) will succeed to, and may exercise every right and power of, the Company under this Note with the same effect as if such Successor Corporation had been named as the Company in this Note, and, except in the case of a lease, the predecessor Company will be discharged from its obligations under this Note.

**Section 11. DEFAULTS AND REMEDIES**

(A) *Events of Default*. "**Event of Default**" means the occurrence of any of the following:

(i) a default in the payment when due of the Principal Amount, Equity Issuance Amortization Payment or Fundamental Change Repurchase Price under this Note;

(ii) a default for two (2) Business Days in the payment when due of Default Interest on this Note;

(iii) a default in the Company's obligation to timely deliver a Fundamental Change Notice pursuant to **Section 6(C)**, or a certification with respect to an Equity Issuance Amortization Payment in accordance with the requirements of **Section 4(A)**, and in either case such default continues for three (3) Business Days;

(iv) any failure to timely deliver an Event of Default Notice or a materially false or inaccurate certification as to whether any Event of Default has occurred;

(v) a default in any of the Company's obligations or agreements under this Note or the Transaction Documents (in each case, other than a default set forth in clauses **(i)** – **(iv)** or **(vi)** – **(xvii)** of this **Section 11(A)**), or a breach of any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) of any Transaction Document; *provided*, *however*, that if such default can be cured, then such default shall not be an Event of Default unless the Company has failed to cure such default within ten (10) Business Days after its occurrence;

(vi) any provision of any Transaction Document at any time for any reason (other than pursuant to the express terms thereof) ceases to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof is contested, directly or indirectly, by the Company or any of its Subsidiaries, or a proceeding is commenced by the Company or any of its Subsidiaries or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof;

(vii) [reserved];

(viii) the Company fails to comply with any covenant set forth in **Section 9(D)**, **Section 9(E)**, **Section 9(F)**, **Section 9(G)**, **Section 9(H)**, **Section 9(J)**, **Section 9(K)** or **Section 9(Q)** of this Note; *provided*, that, with respect to **Section 9(J)(i)**, if the Company and its Subsidiaries fail at any time to have liquidity calculated as unrestricted, unencumbered Cash and Cash Equivalents in one or more deposit accounts located in the United States and subject to a Control Agreement (as defined in the Security Agreements) in favor of the Collateral Agent or a Control Agreement entered into otherwise in accordance with the Security Agreements in a minimum amount equal to ten million dollars ($10,000,000), but not less than eight million dollars ($8,000,000), such failure continues for more than one (1) calendar week;

(ix) the suspension from trading or failure of the Common Stock to be trading or listed on an Eligible Exchange for a period of three (3) consecutive Trading Days;

(x) (i) the failure of the Company or any of its Subsidiaries to pay when due or within any applicable grace period any Indebtedness having an individual principal amount in excess of at least one hundred thousand dollars ($100,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, whether such Indebtedness exists as of the Issue Date or is thereafter created, and whether such default has been waived for any period of time or is subsequently cured; (ii) any Event of Default under the Existing Note, or (iii) the occurrence of any breach or default under any terms or provisions of any other Indebtedness of at least one hundred thousand dollars ($100,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such indebtedness, to cause, Indebtedness having an individual principal amount in excess of $100,000 to become or be declared due prior to its stated maturity;

(xi) one or more final 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 at least one hundred thousand dollars ($100,000) (or its foreign currency equivalent) in the aggregate (excluding any amounts covered by insurance pursuant to which the insurer has been notified and has not denied coverage), is rendered against the Company or any of its Subsidiaries and remains 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 ten (10) consecutive Trading Days after entry thereof during which (A) a stay of enforcement thereof is not in effect or (B) the same is not vacated, discharged, stayed or bonded pending appeal;

(xii) (A) the Company fails to timely file its quarterly reports on Form 10-Q or its annual reports on Form 10-K with the Commission in the manner and within the time periods required by the Exchange Act (reports filed in compliance with the time period specified in Rule 12b-25 promulgated under the Exchange Act shall be considered timely for this purpose), or (B) the Company withdraws or restates any such quarterly report or annual report previously filed with the Commission in a manner that results in the Company failing for any reason to satisfy the requirements of Rule 144(c)(1) under the Securities Act, including, without limitation, the failure to satisfy the current public information requirement under Rule 144(c);

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

(xiv) any material damage to, or loss, theft or destruction of, any Collateral (provided that any damage, loss, theft or destruction of the Collateral that reduces the value of such Collateral by one hundred thousand dollars ($100,000) or more shall be deemed to be material), whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than fifteen (15) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of the Company or any Subsidiary, if any such event or circumstance could reasonably be expected to have a Material Adverse Effect (as defined in the Securities Purchase Agreement). For clarity, an Event of Default under this **Section 11(A)(xiv)** will not require any curtailment of revenue;

(xv) the Company fails to remove any restrictive legend on any certificate or any shares of Common Stock issued to the Holder pursuant to any Securities (as defined in the Securities Purchase Agreement) acquired by the Holder under the Securities Purchase Agreement (including this Note) as and when required by such Securities or the Securities Purchase Agreement, unless otherwise then prohibited by applicable federal securities laws and such failure continues for more than five (5) Trading Days;

(xvi) the Company or any of its Significant Subsidiaries, pursuant to or within the meaning of any Bankruptcy Law, either:

(1) commences a voluntary case or proceeding;

(2) consents to the entry of an order for relief against it in an involuntary case or proceeding;

(3) consents to the appointment of a custodian of it or for any substantial part of its property;

(4) makes a general assignment for the benefit of its creditors;

(5) takes any comparable action under any foreign Bankruptcy Law; or

(6) generally is not paying its debts as they become due; or

(xvii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that either:

(1) is for relief against Company or any of its Significant Subsidiaries in an involuntary case or proceeding;

(2) appoints a custodian of the Company or any of its Significant Subsidiaries, or for any substantial part of the property of the Company or any of its Significant Subsidiaries;

(3) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries; or

(4) grants any similar relief with respect to the Company or any of its Significant Subsidiaries under any foreign Bankruptcy Law,

and, in each case under this **Section 11(A)(xvii)**, such order or decree remains unstayed and in effect for at least thirty (30) days.

(B) *Acceleration.*

(i) *Automatic Acceleration in Certain Circumstances*. If an Event of Default set forth in **Section 11(A)(xvi)** or **Section 11(A)(xvii)** occurs with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company), then the then outstanding portion of the Principal Amount of, and all accrued and unpaid Default Interest on, this Note will immediately become due and payable without any further action or notice by any Person.

(ii) *Optional Acceleration*. If an Event of Default (other than an Event of Default set forth in **Section 11(A)(xvi) or Section 11(A)(xvii)** with respect to the Company and not solely with respect to a Subsidiary of the Company) occurs and has not been waived by the Holder, then, the Holder, by notice to the Company, may declare this Note (or any portion thereof) to become due and payable immediately for cash in an amount equal to the Event of Default Acceleration Amount.

(C) *Notice of Events of Default*. Promptly, but in no event later than two (2) Business Days after an Event of Default, the Company will provide written notice of such Event of Default to the Holder (an "**Event of Default Notice**"), which Event of Default Notice shall include (i) a reasonable description of the applicable Event of Default, (ii) the date on which the Default underlying such Event of Default initially occurred and (iii) the date on which the Event of Default occurred.

**Section 12. RANKING.**

All payments due under this Note shall rank (i) effectively junior to all First Lien Indebtedness to the extent of the value of the Collateral securing the First Lien Indebtedness for so long as the Collateral so secures the First Lien Indebtedness in accordance with the terms of the First Lien Indebtedness, (ii) pari passu with the Existing Note and all Other Notes, (iii) effectively senior to all unsecured indebtedness of the Company (including any First Lien Indebtedness to the extent such First Lien Indebtedness is not secured by the Collateral) to the extent of the value of the Collateral securing the Notes for so long as the Collateral so secures the Notes in accordance with the terms hereof and (iv) senior to any Subordinated Indebtedness.

**Section 13. REPLACEMENT NOTES.**

If the Holder of this Note claims that this Note has been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver a replacement Note upon surrender to the Company of such mutilated Note, or upon delivery to the Company of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Company. In the case of a lost, destroyed or wrongfully taken Note, the Company may require the Holder to provide such security or an indemnity that is reasonably satisfactory to the Company to protect the Company from any loss that it may suffer if this Note is replaced.

**Section 14. NOTICES.**

Any notice or communication to the Company will be deemed to have been duly given if in writing and delivered in person or by first class mail (registered or certified, return receipt requested), facsimile transmission, electronic transmission (including e-mail) or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

Mohawk Group Holdings, Inc.
37 East 18th Street, 7th Floor
New York, NY 10003
Attention: Joe Risico
Arturo Rodriguez
Email address: […***…]
[…***…]

The Company, by notice to the Holder, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication to the Holder will be by email to its email address, which initially are as set forth in the Securities Purchase Agreement. The Holder, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

If a notice or communication is mailed in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

**Section 15. SUCCESSORS AND ASSIGNS.**

All agreements of the Company in this Note will bind its successors.

**Section 16. SEVERABILITY.**

If any provision of this Note is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Note will not in any way be affected or impaired thereby.

**Section 17. HEADINGS, ETC.**

The headings of the Sections of this Note have been inserted for convenience of reference only, are not to be considered a part of this Note and will in no way modify or restrict any of the terms or provisions of this Note.

**Section 18. AMENDMENTS**

This Note may not be amended or modified unless in writing by the Company and the Required Holders (as defined in the Securities Purchase Agreement), and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit.

**Section 19. GOVERNING LAW; WAIVER OF JURY TRIAL.**

All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company and each Holder hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude any Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Holder or to enforce a judgment or other court ruling in favor of such Holder. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.

**Section 20. SUBMISSION TO JURISDICTION.**

The Company (A) agrees that any suit, action or proceeding against it arising out of or relating to this Note may be instituted in any U.S. federal court with applicable subject matter jurisdiction sitting in The City of New York; (B) waives, to the fullest extent permitted by applicable law, (i) any objection that it may now or hereafter have to the laying of venue of any such suit, action or proceeding; and (ii) any claim that it may now or hereafter have that any such suit, action or proceeding in such a court has been brought in an inconvenient forum; and (C) submits to the nonexclusive jurisdiction of such courts in any such suit, action or proceeding.

**Section 21. ENFORCEMENT FEES.**

The Company agrees to pay all costs and expenses of the Holder incurred as a result of enforcement of this Note and the collection of any amounts owed to the Holder hereunder (whether in cash, Common Stock or otherwise), including, without limitation, reasonable attorneys' fees and expenses.

* * *

THE SECURITIES REPRESENTED BY THIS WARRANT, AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL IN A FORM REASONABLY SATISFACTORY TO THE ISSUER THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS.

**FORM OF WARRANT**

**MOHAWK GROUP HOLDINGS, INC.**

**WARRANT TO PURCHASE COMMON STOCK**

Warrant No.: HTCS-2
Number of Shares of Common Stock: 469,931
Date of Issuance: February 2, 2021 ("**Issuance Date**")

Mohawk Group Holdings, Inc., a corporation organized under the laws of Delaware (the "**Company**"), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, High Trail Investments ON LLC, the registered holder hereof or its permitted assigns (the "**Holder**"), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, at any time or times on or after the date that is six months following the Issuance Date (the "**Initial Exercisability Date**"), but not after 11:59 p.m., New York time, on the Expiration Date, (as defined below), four hundred sixty nine thousand nine hundred thirty one (469,931) duly authorized, validly issued, fully paid and non-assessable shares of Common Stock (as defined below), subject to adjustment as provided herein (the "**Warrant Shares**"). Except as otherwise defined herein, capitalized terms in this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, this "**Warrant**"), shall have the meanings set forth in Section 19. This Warrant is one of the Warrants to Purchase Common Stock (the "**Warrants**") issued pursuant to that certain Securities Purchase Agreement (the "**Securities Purchase Agreement**"), dated as of February 2, 2021 (the "**Subscription Date**") by and among the Company and the Holder.

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(f)), this Warrant may be exercised by the Holder at any time or times on or after the Initial Exercisability Date, in whole or in part, by delivery (whether via electronic mail or otherwise) of a duly completed and executed written notice, in the form attached hereto as Exhibit A (the "**Exercise Notice**"), of the Holder's election to exercise this Warrant. Within two (2) Trading Days following the delivery of the Exercise Notice, if a registration statement covering the issuance or resale of the applicable Exercise Notice Warrant Shares (as defined below) is available for the issuance or resale, as applicable, of such Exercise Notice Warrant Shares, the Holder shall make payment to the Company of an amount equal to the Exercise Price in effect on the date of such exercise multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the "**Aggregate Exercise Price**") in cash by wire transfer of immediately available funds or, if the provisions of Section 1(d) are applicable, by notifying the Company that this Warrant is being exercised pursuant to a Cashless Exercise (as defined in Section 1(d)). The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder, nor shall any ink-original signature or medallion guarantee (or other type of guarantee or notarization) with respect to any Exercise Notice be required. Execution and delivery of the Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares and the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and this Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Exercise Notice is delivered to the Company. On or before the first (1st) Trading Day following the date on which the Holder has delivered the applicable Exercise Notice, the Company shall transmit by electronic mail a duly executed and completed acknowledgment of confirmation of receipt of the Exercise Notice, in the form attached to the Exercise Notice, to the Holder and the Company's transfer agent (the "**Transfer Agent**"). So long as the Holder delivers the Aggregate Exercise Price (or notice of a Cashless Exercise, if applicable) on or prior to the first (1st) Trading Day following the date on which the Exercise Notice has been delivered to the Company, then on or prior to the earlier of (i) the second (2nd) Trading Day and (ii) the number of Trading Days comprising the Standard Settlement Period, in each case following the date on which the Exercise Notice has been delivered to the Company, or, if the Holder does not deliver the Aggregate Exercise Price (or notice of a Cashless Exercise, if applicable) on or prior to the first (1st) Trading Day following the date on which the Exercise Notice has been delivered to the Company, then on or prior to the first (1st) Trading Day following the date on which the Aggregate Exercise Price (or notice of a Cashless Exercise, if applicable) is delivered (such earlier date, or if later, the earliest day on which the Company is required to deliver Warrant Shares pursuant to this Section 1(a), the "**Share Delivery Date**"), the Company shall (X) provided that the Transfer Agent is participating in The Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program ("**FAST**"), credit such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit / Withdrawal At Custodian system, or (Y) if the Transfer Agent is not participating in FAST, issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise. The Company shall be responsible for all fees and expenses of the Transfer Agent and all fees and expenses with respect to the issuance of Warrant Shares via DTC, if any, including without limitation for same day processing. Upon delivery of the Exercise Notice, the Holder shall be deemed for all corporate purposes to have become the holder of record and beneficial

owner of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder's DTC account or the date of delivery of the certificates evidencing such Warrant Shares, as the case may be. If this Warrant is physically delivered to the Company in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than five (5) Trading Days after any exercise and at its own expense, issue and deliver to the Holder (or its designee) a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares issuable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional Warrant Shares are to be issued upon the exercise of this Warrant, but rather the number of Warrant Shares to be issued shall be rounded to the nearest whole number. The Company shall pay any and all transfer, stamp, issuance and similar taxes, costs and expenses (including, without limitation, fees and expenses of the Transfer Agent) which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant provided, that the Company shall not be required to pay any tax or governmental charge that may be imposed with respect to any applicable withholding or the issuance or delivery of the Warrant Shares to any Person other than the Holder, and no such issuance or delivery shall be made unless and until the Person requesting such issuance has paid to the Company the amount of any such tax, or has established to the satisfaction of the Company that such tax has been paid. The Company's obligations to issue and deliver Warrant Shares in accordance with the terms and subject to the conditions hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof (except for consents and waivers provided pursuant to Section 9), the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination; provided, however, that the Company shall not be required to deliver Warrant Shares with respect to an exercise prior to the Holder's delivery of the Aggregate Exercise Price (or notice of a Cashless Exercise) with respect to such exercise.

(b) Exercise Price. For purposes of this Warrant, "**Exercise Price**" means $25.10 per share, subject to adjustment as provided herein.

(c) Company's Failure to Timely Deliver Securities. If the Company shall fail for any reason or for no reason on or prior to the applicable Share Delivery Date, if (x) the Transfer Agent is not participating in FAST, to issue to the Holder a certificate for the number of shares of Common Stock to which the Holder is entitled and register such Common Stock on the Company's share register or (y) the Transfer Agent is participating in FAST, to credit the Holder's balance account with DTC, for such number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise of this Warrant (such shares to which Holder is entitled being, the "**Exercise Notice Warrant Shares**"), then, in addition to all other remedies available to the Holder, if on or prior to the applicable Share Delivery Date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "**Buy-In**"), then the Company shall, within five (5) Trading Days after the Holder's request, (A) pay in cash to the Holder the

amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue by (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of the Warrant with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, written evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof. As of the Issuance Date, the Company's current transfer agent participates in FAST. In the event that the Company changes transfer agents while this Warrant is outstanding, the Company shall use commercially reasonable efforts to select a transfer agent that participates in FAST. While this Warrant is outstanding, the Company shall request its transfer agent to participate in FAST with respect to this Warrant. In addition to the foregoing rights, (i) if the Company fails to deliver the applicable number of Warrant Shares upon an exercise pursuant to Section 1 by the applicable Share Delivery Date, then the Holder shall have the right to rescind such exercise in whole or in part and retain and/or have the Company return, as the case may be, any portion of this Warrant that has not been exercised pursuant to such Exercise Notice; provided that the rescission of an exercise shall not affect the Company's obligation to make any payments that have accrued prior to the date of such notice pursuant to this Section 1(c) or otherwise. In addition to the foregoing, if the Company fails for any reason to deliver to the Holder the Warrant Shares subject to an Exercise Notice by the second Trading Day following the Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Warrant Shares subject to such exercise (based on the Weighted Average Price of the Common Stock on the date of the applicable Exercise Notice), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after the Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise.

(d) Cashless Exercise. Notwithstanding anything contained herein to the contrary, if a registration statement covering the issuance or resale of the applicable Exercise Notice Warrant Shares is not available for the issuance or resale, as applicable, of such Exercise Notice Warrant Shares, then in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, the Holder may elect to receive upon such exercise the "Net Number" of shares of Common Stock determined according to the following formula (a "**Cashless Exercise**"):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A= the total number of shares with respect to which this Warrant is then being exercised.

B= as applicable: (i) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the date of the applicable Exercise Notice if such Exercise Notice is (1) both executed and delivered pursuant to Section 1(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 1(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(68) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the Weighted Average Price on the Trading Day immediately preceding the date of the applicable Exercise Notice or (z) the Bid Price of the Common Stock as of the time of the Holder's execution of the applicable Exercise Notice if such Exercise Notice is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 1(a) hereof or (iii) the Closing Sale Price of the Common Stock on the date of the applicable Exercise Notice if the date of such Exercise Notice is a Trading Day and such Exercise Notice is both executed and delivered pursuant to Section 1(a) hereof after the close of "regular trading hours" on such Trading Day.

C= the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

If Warrant Shares are issued in such a cashless exercise, the Company acknowledges and agrees that in accordance with Section 3(a)(9) of the Securities Act of 1933, as amended (the "**Securities Act**"), the Warrant Shares shall take on the registered characteristics of the Warrants being exercised, and the holding period of the Warrants being exercised may be tacked on to the holding period of the Warrant Shares. The Company agrees not to take any position contrary to this Section 1(d). Without limiting the rights of a Holder to receive Warrant Shares on a "cashless exercise," and to receive the cash payments contemplated pursuant to Sections 1(c) and 4(b), in no event will the Company be required to net cash settle a Warrant exercise. Any Cashless Exercise of this Warrant shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder by an amount equal to the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a Cashless Exercise and not the number of Warrant Shares actually received by the Holder.

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 11.

(f) Beneficial Ownership Limitation. Notwithstanding anything to the contrary contained herein, the Company shall not effect the exercise of any portion of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant, pursuant to the terms and conditions of this Warrant and any such exercise shall be null and void and treated as if never made, to the extent that after giving effect to such exercise, the Holder together with the other Attribution Parties collectively would beneficially own in the aggregate in excess of 4.99% (the "**Maximum Percentage**") of the number of shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) exercise of the remaining, unexercised portion of this Warrant beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants, including any other Warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 1(f). For purposes of this Section 1(f), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "**1934 Act**"). For purposes of this Warrant, in determining the number of outstanding shares of Common Stock the Holder may acquire upon the exercise of this Warrant without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Securities and Exchange Commission (the "**SEC**"), as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives an Exercise Notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall (i) notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Exercise Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 1(f), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of Warrant Shares to be purchased pursuant to such Exercise Notice (the number of shares by which such purchase is reduced, the "**Reduction Shares**") and (ii) as soon as reasonably practicable, the Company shall return to the Holder any exercise price paid by the Holder for the Reduction Shares. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder and any other Attribution Party since the date as of which

the Reported Outstanding Share Number was reported. In the event that the issuance of Common Stock to the Holder upon exercise of this Warrant results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. As soon as reasonably practicable after the issuance of the Excess Shares has been deemed null and void, the Company shall return to the Holder the exercise price paid by the Holder for the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Warrants that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Warrant in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 1(f) to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 1(f) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Warrant. The Holder hereby acknowledges and agrees that the Company shall be entitled to rely on the representations and other information set forth in any Exercise Notice and shall not be required to independently verify whether any exercise of this Warrant would cause the Holder (together with the other Attribution Parties) to collectively beneficially own in excess of the Maximum Percentage of the number of shares of Common Stock outstanding after giving effect to such exercise or otherwise trigger the provisions of this Section 1(f).

(g) Required Reserve Amount. So long as this Warrant remains outstanding, the Company shall at all times keep reserved for issuance under this Warrant a number of shares of Common Stock at least equal to 100% of the maximum number of shares of Common Stock as shall be necessary to satisfy the Company's obligation to issue shares of Common Stock under the Warrants then outstanding (without regard to any limitations on exercise) (the "**Required Reserve Amount**"); provided that at no time shall the number of shares of Common Stock reserved pursuant to this Section 1(g) be reduced other than in connection with any exercise of Warrants or such other event covered by Section 2(c) below. The Required Reserve Amount (including, without limitation, each increase in the number of shares so reserved) shall be allocated pro rata among the holders of the Warrants based on the number of shares of Common Stock issuable upon exercise of Warrants held by each holder thereof on the Issuance Date (without regard to any limitations on exercise) (the

"**Authorized Share Allocation**"). In the event that a holder shall sell or otherwise transfer any of such holder's Warrants, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Warrants shall be allocated to the remaining holders of Warrants, pro rata based on the number of shares of Common Stock issuable upon exercise of the Warrants then held by such holders thereof (without regard to any limitations on exercise). Each share of Common Stock delivered upon exercise of this Warrant will be a newly issued or treasury share and will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Holder or the Person to whom such share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will cause each share of Common Stock issued upon exercise of this Warrant, when delivered upon such exercise, to be admitted for listing on such exchange or quotation on such system.

(h) Insufficient Authorized Shares. If at any time while this Warrant remains outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance the Required Reserve Amount (an "**Authorized Share Failure**"), then the Company shall promptly take all action reasonably necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for this Warrant then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than ninety (90) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its reasonable best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and the Company's management shall recommend to the Company's board of directors that it recommend to the stockholders that they approve such proposal. Notwithstanding the foregoing, if at any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding shares of Common Stock to approve the increase in the number of authorized shares of Common Stock, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C. In addition to the foregoing, in the event of any Authorized Share Failure that results in the failure of the Company to deliver any shares of Common Stock that would have otherwise been deliverable pursuant to an Exercise Notice (such shares the "**Authorized Shares Failure Shares**"), (1) the Company will promptly pay to the Holder, as liquidated damages and not as a penalty, cash in an amount equal (i) to the product of (x) the number of such Authorized Shares Failure Shares; and (y) the Daily VWAP per share of Common Stock on the date the Holder delivered the applicable Exercise Notice hereunder (or, if such date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day), minus (ii) if such exercise is not a cashless exercise the Aggregate Exercise Price applicable to such Authorized Shares Failure Shares, to the extent not previously paid; and (2) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in settlement of a sale by the Holder of such Authorized Shares Failure Shares, the

Company will reimburse the Holder for (x) any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection with such purchases and (y) the excess, if any, of (A) the aggregate purchase price of such purchases over (B) an amount equal to (i) the product of (I) the number of such Authorized Shares Failure Shares purchased by the Holder; and (II) the Daily VWAP per share of Common Stock on the date the Holder delivered the applicable Exercise Notice hereunder (or, if such date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day), minus (ii) if such exercise is not a cashless exercise the Aggregate Exercise Price applicable to such Authorized Shares Failure Shares, to the extent not previously paid.

(i) Forced Exercise. In the event that the Closing Sale Price per share of Common Stock exceeds two hundred percent (200%) of the Exercise Price for twenty (20) consecutive Trading Days (such period, the "**Forced Exercise Period**"), then the Company may, at its sole discretion, if the Equity Conditions are then satisfied, provide written notice, in the manner required for notices delivered to a Buyer (as defined in the Securities Purchase Agreement) pursuant to the Securities Purchase Agreement, to the Holder requiring the Holder to exercise this Warrant in full (and not in part) (the "**Forced Exercise Notice**") no later than the fifth (5th) Business Day following the last Trading Day of the Forced Exercise Period. The date of exercise with respect to any such forced exercise shall be the date upon which the Company delivers the Forced Exercise Notice to the Holder (the "**Forced Exercise Closing**"). If a registration statement covering the issuance or resale of the Warrant Shares issuable pursuant to the Forced Exercise Notice (the "**Forced Exercise Warrant Shares**") is available for the issuance or resale of the Forced Exercise Warrant Shares, then the forced exercise shall be a cash exercise. If a registration statement covering the issuance or resale of the Forced Exercise Warrant Shares is not available for the issuance or resale, as applicable of such Forced Exercise Warrant Shares, then the forced exercise may be a cash exercise or cashless exercise in accordance with Section 1(d), at the Holder's option. So long as the Holder delivers the Aggregate Exercise Price (or notice of a Cashless Exercise, if applicable) on or prior to the first (1st) Trading Day following the date on which the Forced Exercise Notice has been delivered by the Company, then on or prior to the earlier of (i) the second (2nd) Trading Day and (ii) the number of Trading Days comprising the Standard Settlement Period, in each case following the date on which the Forced Exercise Notice has been delivered by the Company, or, if the Holder does not deliver the Aggregate Exercise Price (or notice of a Cashless Exercise, if applicable) on or prior to the first (1st) Trading Day following the date on which the Forced Exercise Notice has been delivered by the Company, then on or prior to the first (1st) Trading Day following the date on which the Aggregate Exercise Price (or notice of a Cashless Exercise, if applicable) is delivered (such earlier date, or if later, the earliest day on which the Company is required to deliver Warrant Shares pursuant to this Section 1(i), also constituting a Share Delivery Date), the Company shall (X) provided that the Transfer Agent is participating in FAST, credit such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit / Withdrawal At Custodian system, or (Y) if the Transfer Agent is not participating in FAST, issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise. Such forced exercise shall not be required if either (a) the Equity Conditions do not remain satisfied on each Trading Day through the date of the Forced

Exercise Notice or (b) the Closing Bid Price per share of Common Stock does not exceed two hundred percent (200%) of the Exercise Price through the date of such notice. If the Equity Conditions are not satisfied during the Forced Exercise Period through the date of the Forced Exercise Notice solely due to the fact that the forced exercise of this Warrant and the issuance of the Forced Exercise Warrant Shares pursuant to such forced exercise would be limited by Section 1(f), then the Company may, in its sole discretion, provide written notice to the Holder requiring the Holder to exercise this Warrant in part (and not in full) for such number of shares that could be issued in compliance with Section 1(f) such that the Holder together with the other Attribution Parties collectively shall beneficially own in the aggregate the Maximum Percentage of the number of shares of Common Stock outstanding as of the Forced Exercise Closing. Notwithstanding the foregoing, if the average daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the applicable Eligible Market during such Forced Exercise Period (the "**Average DDT Volume**") is less than ten million dollars ($10,000,000) (the "**Minimum Volume**"), then such exercise of this Warrant shall be limited to a number of shares of Common Stock equal to the lesser of (1) product of: (A) the aggregate number of shares of Common Stock originally subject to this Warrant (adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction that has occurred since the Issuance Date) multiplied by (B) the quotient of the Average DDT Volume for such Forced Exercise Period divided by the Minimum Volume, and (2) the aggregate number of shares of Common Stock then subject to this Warrant (adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction that has occurred since the Issuance Date) assuming a cash exercise of the Warrant. The Company may not exercise its right to require the Holder to exercise this Warrant more than once in any thirty (30) day period.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and the number of Warrant Shares shall be adjusted from time to time as follows:

(a) Intentionally omitted.

(b) Voluntary Adjustment by Company. The Company may at any time during the term of this Warrant reduce the then-current Exercise Price to any amount and for any period of time deemed appropriate by the Board of Directors of the Company.

(c) Adjustment Upon Subdivision or Combination of Common Stock. If the Company at any time on or after the Subscription Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of Warrant Shares will be proportionately increased. If the Company at any time on or after the Subscription Date combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of Warrant Shares will be proportionately decreased. Any adjustment under this Section 2(c) shall become effective at the close of business on the date the subdivision or combination becomes effective.

3. RIGHTS UPON DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Section 2 above, if, on or after the Subscription Date and on or prior to the Expiration Date, the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property, options, evidence of indebtedness or any other assets by way of a dividend, spin-off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "**Distribution**"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that to the extent that the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to such extent (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

4. PURCHASE RIGHTS; FUNDAMENTAL TRANSACTIONS.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 2 above, if at any time on or after the Subscription Date and on or prior to the Expiration Date the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issuance or sale of such Purchase Rights (provided, however, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to such extent (and shall not be entitled to beneficial ownership of such Common Stock as a result of such Purchase Right (and beneficial ownership) to such extent) and such Purchase Right to such extent shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right to be held similarly in abeyance) to the same extent as if there had been no such limitation).

(b) Fundamental Transaction. The Company shall not enter into or be party to a Fundamental Transaction unless the Successor Entity assumes in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 4(b), including agreements to deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, which is exercisable for a corresponding number of shares of capital stock equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such adjustments to the number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction). Upon the consummation of each Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for the Company (so that from and after the date of the applicable Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of each Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of this Warrant prior to the applicable Fundamental Transaction, such shares of common stock (or its equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant), as adjusted in accordance with the provisions of this Warrant. Notwithstanding the foregoing, and without limiting Section 1(f) hereof, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 4(b) to permit the Fundamental Transaction without the assumption of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of each Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction but prior to the Expiration Date, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon

the exercise of the Warrant prior to such Fundamental Transaction, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant). The provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Holder. The provisions of this Section 4(b) shall apply similarly and equally to successive Fundamental Transactions and Corporate Events. Notwithstanding the foregoing, in the event of a Change of Control, at the request of the Holder delivered before the 30th day after such Change of Control, the Company (or the Successor Entity) shall purchase this Warrant from the Holder by paying to the Holder, within five (5) Business Days after such request (or, if later, on the effective date of the Change of Control), an amount equal to the Black Scholes Value of the remaining unexercised portion of this Warrant on the effective date of such Change of Control, payable in cash; provided, however, that, if the Change of Control is not within the Company's control, including not approved by the Company's Board of Directors, Holder shall only be entitled to receive from the Company or any Successor Entity, as of the date of consummation of such Change of Control, the same type or form of consideration (and in the same proportion), at the Black Scholes Value of the unexercised portion of this Warrant, that is being offered and paid to the holders of Common Stock of the Company in connection with the Change of Control, whether that consideration be in the form of cash, stock or any combination thereof, or whether the holders of Common Stock are given the choice to receive from among alternative forms of consideration in connection with the Change of Control; provided, further, that if holders of Common Stock are not offered or paid any consideration in such Change of Control, such holders of Common Stock will be deemed to have received common stock of the Successor Entity (which entity may be the Company following such Change of Control) in such Change of Control.

5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation or Bylaws, or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issuance or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all of the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant, and (iii) shall, so long as any of the Warrants are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of the Warrants, the number of shares of Common Stock as shall from time to time be necessary to effect the exercise of the Warrants then outstanding (without regard to any limitations on exercise).

6. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of capital stock of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 6, the Company shall provide the Holder with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. If this Warrant is to be transferred, the Holder shall notify the Company and surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred. The Company shall not be obligated to pay any tax which may be payable with respect to any transfer (or deemed transfer) arising in connection with the registration of any certificates for Warrant Shares or Warrants in the name of any Person other than the Holder.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form (but without the obligation to post a bond) and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant.

8. NOTICES. Whenever notice is required to be given under this Warrant, including, without limitation, an Exercise Notice, unless otherwise provided herein, such notice shall be given in writing, (i) if delivered (a) from within the domestic United States, by first-class registered or certified airmail, or nationally recognized overnight express courier, postage prepaid or electronic mail or (b) from outside the United States, by International Federal Express or electronic mail, and (ii) will be deemed given (A) if delivered by first-class registered or certified mail domestic, three (3) Business Days after so mailed, (B) if delivered by nationally recognized overnight carrier, one (1) Business Day after so mailed, (C) if delivered by International Federal Express, two (2) Business Days after so mailed and (D) at the time of transmission, if delivered by electronic mail to each of the email addresses specified in this Section 8 prior to 5:00 p.m. (New York time) on a Trading Day and (E) the next Trading Day after the date of transmission, if delivered by electronic mail to each of the email addresses specified in this Section 8 on a day that is not a Trading Day or later than 5:00 p.m. (New York time) on any Trading Day, and will be delivered and addressed as follows:

(i) if to the Company, to:

Mohawk Group Holdings, Inc.
37 East 18th Street, 7th Floor
New York, NY 10003
Attention: Yaniv Sarig, President & CEO
Email: […***…]

With a copy (for informational purposes only) to:

Paul Hastings LLP
1117 S. California Avenue
Palo Alto, CA 94304
Telephone: […***…]
Attention: Jeff Hartlin
Email: […***…]

(ii) if to the Holder, at such address or other contact information delivered by the Holder to Company or as is on the books and records of the Company (provided that, with respect to the Holder, such notice may only be delivered via electronic mail),

With a copy (for informational purposes only) to:

Latham & Watkins LLP
12670 High Bluff Drive
San Diego, CA 92130
Telephone: […***…]
Attention: Michael E. Sullivan, Esq.
Email: […***…]

The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) promptly upon any adjustment of the Exercise Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment, (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common Stock, (B) with respect to any grants, issuances or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation and (iii) ten (10) Business Days (or such shorter period as is reasonably practicable under the circumstances if the Company does not have 10 Business Days' prior notice) prior to the consummation of any Fundamental Transaction; provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder but only to the extent the information in such notice constitutes material non-public information regarding the Company. It is expressly understood and agreed that the time of exercise specified by the Holder in each Exercise Notice shall be definitive and may not be disputed or challenged by the Company.

9. AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this Warrant may be amended or waived and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Warrant shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10. GOVERNING LAW; JURISDICTION; JURY TRIAL. This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the

adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that such party is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address set forth with respect to such party in Section 8 above or such other address as such party subsequently delivers to the other party and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude a party hereto from bringing suit or taking other legal action against the other party in any other jurisdiction to collect on its obligations to the other party, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the other party. If either party shall commence an action, suit or proceeding to enforce any provisions of this Warrant, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for their reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

11. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via electronic mail within two (2) Business Days of receipt of the Exercise Notice or other event giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within three (3) Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within two (2) Business Days submit via electronic mail (a) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Company and approved by the Holder or (b) the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause, at its expense, the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error.

12. REMEDIES, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and any other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder or the Company to pursue actual damages for any failure by the other party to comply with the terms of this Warrant. Each of the Company and the Holder

acknowledges that a breach by such party of its obligations hereunder will cause irreparable harm to the other party and that the remedy at law for any such breach may be inadequate. The Company and the Holder therefore agree that, in the event of any such breach or threatened breach, the other party shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

13. TRANSFER. Subject to the transfer conditions referred to in the legend hereon and compliance with Section 7(a), this Warrant and the Warrant Shares may be offered for sale, sold, transferred, pledged or assigned without the consent of the Company.

14. COMPLIANCE WITH THE SECURITIES ACT.

(a) Agreement to Comply with the Securities Act; Legend. The Holder, by acceptance of this Warrant, agrees to comply in all respects with the provisions of this Section 14 and the restrictive legend requirements set forth on the face of this Warrant and further agrees that such Holder shall not offer, sell or otherwise dispose of this Warrant or any Warrant Shares to be issued upon exercise hereof except under circumstances that will not result in a violation of the Securities Act. This Warrant and all Warrant Shares issued upon exercise of this Warrant (unless registered under the Securities Act) shall be stamped or imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS WARRANT, AND THE SECURITIES ISSUABLE UPON EXERCISE THEREOF, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL IN A FORM REASONABLY SATISFACTORY TO THE ISSUER THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS."

(b) Representations of the Holder. In connection with the issuance of this Warrant, the Holder specifically represents, as of the date hereof, to the Company by acceptance of this Warrant as follows:

(1) The Holder is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act. The Holder is acquiring this Warrant and the shares of Common Stock to be issued upon exercise hereof for investment for its own account and not with a view towards, or for resale in connection with, the public sale or distribution of this Warrant or the Warrant Shares, except pursuant to sales registered or exempted under the Securities Act.

(2) The Holder understands and acknowledges that this Warrant and the shares of Common Stock to be issued upon exercise hereof are "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that, under such laws and applicable regulations, such securities may be resold without registration under the Securities Act only in certain limited circumstances. In addition, the Holder represents that it is familiar with Rule 144 under the Securities Act, as presently in effect ("**Rule 144**"), and understands the resale limitations imposed thereby and by the Securities Act.

(3) The Holder acknowledges that it can bear the economic and financial risk of its investment for an indefinite period, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Warrant and the Warrant Shares. The Holder has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Warrant and the business, properties, prospects and financial condition of the Company.

(c) Acknowledgement of the Company. The Company acknowledges and agrees that the Holder may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of this Warrant or the Warrant Shares to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and, if required under the terms of such arrangement, Holder may transfer any pledged or secured Warrant or Warrant Shares to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the Holder's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of this Warrants or any Warrant Shares may reasonably request in connection with a pledge or transfer of this Warrant or any Warrant Shares.

(d) Removal of Legends. This Warrant and the Warrant Shares shall not be required to contain the legend set forth in Section 14(a) above or any other legend (i) following any sale of the Warrant or Warrant Shares pursuant to Rule 144 (assuming the transferor is not an affiliate of the Company), provided that the Holder furnishes the Company with reasonable assurances that such Warrant or Warrant Shares are eligible for sale, assignment or transfer under Rule 144, which shall not include an opinion of the Holder's counsel, (ii) in connection with a sale, assignment or other transfer (other than under Rule 144), provided that the Holder

provides the Company with an opinion of counsel to the Holder, in a generally acceptable form, to the effect that such sale, assignment or transfer of the Warrant or Warrant Shares may be made without registration under the applicable requirements of the Securities Act or (iii) if such legend is not required or customarily included under applicable provisions of the Securities Act (including, without limitation, controlling judicial interpretations and pronouncements issued by the SEC). If a legend is not required pursuant to the foregoing, the Company shall no later than two (2) Business Days (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the date the Holder delivers notice to the Company with respect to this Warrant or any Warrant Shares issued in the form of book-entries or, if applicable, delivers a legended certificate representing Warrant Shares to the Company) following the delivery by the Holder to the Company or the Transfer Agent (with notice to the Company) of notice with respect to this Warrant or any Warrant Shares issued in the form of book-entries or, if applicable, a legended certificate representing any Warrant Shares (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer, if applicable), together with any other deliveries from the Holder as may be reasonably required above in this Section 14(c) (such date, the "**Legend Removal Date**"), as directed by the Holder, either: (A) provided that the Transfer Agent is participating in FAST, credit the applicable number of Warrant Shares to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system or (B) with respect to this Warrant or if the Transfer Agent is not participating in FAST, issue and deliver (via reputable overnight courier) to the Holder, an updated form of this Warrant or a certificate representing Warrant Shares, as applicable, in the case of each of clauses (A) and (B) above, free from all restrictive and other legends, registered in the name of the Holder or its designee. The Company shall be responsible for any transfer agent fees or DTC fees with respect to any issuance of Warrant Shares or the removal of any legends with respect to this Warrant or any Warrant Shares in accordance herewith.

(e) In addition to the Holder's other available remedies hereunder, the Company shall pay to the Holder, in cash, (i) as partial liquidated damages and not as a penalty, for each $1,000 of Warrant Shares (based on the Weighted Average Price of the Common Stock on the date the Holder delivers notice or a legended certificate, as applicable, to the Company or the Transfer Agent with respect to such Warrant Shares pursuant to Section 14(d)) delivered for removal of the restrictive legend and subject to Section 14(d), $10 per Trading Day (increasing to $20 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the Legend Removal Date until such Warrant Shares are delivered without a legend and (ii) if the Company is obligated to remove the restrictive legends pursuant to Section 14(d) but fails to (a) issue and deliver (or cause to be delivered) Warrant Shares to the Holder by the Legend Removal Date that are free from all restrictive and other legends and (b) if after the Legend

Removal Date the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, that the Holder anticipated receiving from the Company without any restrictive legend, then an amount equal to the excess of the Holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) over the product of (A) such number of Warrant Shares that the Company was required to deliver to the Holder by the Legend Removal Date multiplied by (B) the price at which the sell order giving rise to such purchase obligation was executed.

(f) In order to facilitate the Company filing a registration statement covering the issuance or resale of any Warrant Shares issued and issuable upon exercise of this Warrant, the Holder hereby agrees to provide the Company with, following reasonable advance written request by the Company, an executed selling stockholder questionnaire in a form reasonably acceptable to the Holder and the Company as is customary under the circumstances.

15. SEVERABILITY; CONSTRUCTION; HEADINGS. If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s). This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

16. DISCLOSURE. Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Warrant, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its subsidiaries, the Company shall on or prior to 9:00 am, New York City time on the Business Day immediately following such notice delivery date, publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its subsidiaries, the Company so shall

indicate to the Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its subsidiaries. Nothing contained in this Section 16 shall limit any obligations of the Company, or any rights of the Holder, under the Securities Purchase Agreement.

17. ABSENCE OF TRADING AND DISCLOSURE RESTRICTIONS. The Company acknowledges and agrees that the Holder is not a fiduciary or agent of the Company and that the Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by the Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that the Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

18. COUNTERPARTS; ELECTRONIC SIGNATURES. This Warrant may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Warrant delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Warrant. A party's electronic signature (complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) of this Agreement shall have the same validity and effect as a signature affixed by the party's hand.

19. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(b) "**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Subscription Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

(c) "**Bid Price**" means, for any security as of the particular time of determination, the bid price for such security on the Principal Market as reported by Bloomberg as of such time of determination, or, if the Principal Market is not the principal securities exchange or trading market for such security, the bid price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg as of such time of determination, or if the foregoing does not apply, the bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg as of such time of determination, or, if no bid price is reported for such security by Bloomberg as of such time of determination, the average of the bid prices of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC) as of such time of determination. If the Bid Price cannot be calculated for a security as of the particular time of determination on any of the foregoing bases, the Bid Price of such security as of such time of determination shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 11. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(d) "**Black Scholes Value**" means the value of this Warrant based on the Black-Scholes Option Pricing Model obtained from the "OV" function on Bloomberg determined as of the day immediately following the first public announcement of the applicable Change of Control, or, if the Change of Control is not publicly announced, the date the Change of Control is consummated, for pricing purposes and reflecting (i) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of this Warrant as of such date of request, (ii) an expected volatility equal to the greater of 100% and the 100-day volatility obtained from the HVT function on Bloomberg (determined utilizing a 365-day annualization factor) as of the Trading Day immediately following the public announcement of the applicable Change of Control, or, if the Change of Control is not publicly announced, the date the Change of Control is consummated (iii) the underlying price per share used in such calculation shall be the greater of (a) the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Change of Control and (b) the greater of (1) the last Weighted Average Price immediately prior to the announcement of such Change of Control, (2) the Weighted Average Price immediately after the announcement of such Change of Control and (3) the last Weighted Average Price immediately prior to the consummation of such Change of Control, (iv) a remaining option time equal to the time between the date of the public announcement of the applicable Change of Control and the Expiration Date and (v) a zero cost of borrow.

(e) "**Bloomberg**" means Bloomberg Financial Markets.

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

(g) "**Change of Control**" means any Fundamental Transaction other than (i) any reorganization, recapitalization or reclassification of the Common Stock in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, (ii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or (iii) a merger in connection with a bona fide acquisition by the Company of any Person in which (x) the gross consideration paid, directly or indirectly, by the Company in such acquisition is not equal to or greater than 50% of the Company's market capitalization as calculated on the date of the announcement of such merger and the date of the consummation of such merger and (y) such merger does not contemplate a change to the identity of a majority of the board of directors of the Company. Notwithstanding anything herein to the contrary, any transaction or series of transaction that, directly or indirectly, results in the Company or the Successor Entity not having Common Stock or common stock, as applicable, registered under the 1934 Act and listed on an Eligible Market shall be deemed a Change of Control.

(h) "**Closing Sale Price**" means, for any security as of any date, the last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price then the last trade price, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no last trade price is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the OTC Link or on the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 11. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction during the applicable calculation period.

(i) "**Common Stock**" means (i) the Company's Common Stock, par value $0.0001 per share, and (ii) any capital stock into which such Common Stock shall have been changed or any capital stock resulting from a reclassification of such Common Stock.

(j) "**Convertible Securities**" means any capital stock or other security of the Company or any of its subsidiaries (other than Options) that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, shares of Common Stock) or any of its subsidiaries.

(k) "**Daily VWAP**" means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading "Bloomberg VWAP" on Bloomberg page "MWK <EQUITY> VAP" (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm selected by the Company). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

(l) "**Eligible Market**" means The Nasdaq Capital Market, the NYSE American LLC, The Nasdaq Global Select Market, The Nasdaq Global Market or The New York Stock Exchange, Inc.

(m) "**Equity Conditions**" will be deemed to be satisfied as of any date if (1) no Event of Default (as defined in that Senior Secured Note Due 2023 issued by the Company to High Trail Investments ON LLC on February 2, 2021, "the **Note**") shall have occurred and no Default (as defined in the Note) shall have occurred under Section 11 of the Note, other than pursuant to Section 11(A)(v) thereof and (2) all of the following conditions are satisfied as of such date and on each of the twenty (20) previous Trading Days: (A) the shares issuable upon exercise of the Warrants are Freely Tradable; (B) the Holders are not in possession of any material non-public information regarding the Company or any of its subsidiaries; (C) the issuance of such shares will not be limited by Section 1(f) or 1(h); (D) the Company is in compliance with Section 1(g); and (E) no public announcement of a pending, proposed or intended Fundamental Transaction has occurred that has not been abandoned, terminated or consummated.

(n) "**Expiration Date**" means the date that is sixty (60) months after the Issuance Date or, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a "**Holiday**"), the next day that is not a Holiday.

(o) "**Freely Tradable**" means with respect to any shares of Common Stock issued or issuable upon exercise of the Warrants, that (A) such shares would be eligible to be offered, sold or otherwise transferred by a Holder pursuant to Rule 144, without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice under the Securities Act and without any requirement for registration under any state securities or "blue sky" laws; or (B) such shares are (or, when issued, will be) (i) represented by book-entries at The Depository Trust Company or its successor and identified therein by an "unrestricted" CUSIP number; (ii) not represented by any certificate that bears a legend referring to transfer restrictions under the Securities Act or other securities laws; and (iii) listed and admitted for trading, without suspension or material limitation on trading, on an Eligible Market; and (C) no delisting or suspension by such Eligible Market has been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (x) a writing by such Eligible Market or (y) the Company falling below the minimum listing maintenance requirements of such Eligible Market.

(p) "**Fundamental Transaction**" means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its shares of Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding, or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, (iv) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding, or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its shares of Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock not held by all such Subject Entities as of the Subscription Date calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other stockholders of the Company to surrender their Common Stock without approval of the stockholders of the Company, or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the

issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

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

(r) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(s) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person, including such entity whose common stock or equivalent equity security is quoted or listed on an Eligible Market (or, if so elected by the Holder, any other market, exchange or quotation system), or, if there is more than one such Person or such entity, the Person or such entity designated by the Holder or in the absence of such designation, such Person or entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction or Change of Control.

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

(u) "**Principal Market**" means The Nasdaq Capital Market.

(v) **"Standard Settlement Period"** means the standard settlement period, expressed in a number of Trading Days, for the Company's primary trading market or quotation system with respect to the Common Stock that is in effect on the date of receipt of an applicable Exercise Notice.

(w) "**Subject Entity**" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(x) "**Successor Entity**" means one or more Person or Persons (or, if so elected by the Holder, the Company or Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or Change of Control or one or more Person or Persons (or, if so elected by the Holder, the Company or the Parent Entity) with which such Fundamental Transaction or Change of Control shall have been entered into.

(y) "**Trading Day**" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded.

(z) "**Transaction Documents**" means any agreement entered into by and between the Company and the Holder, as applicable, in connection with or pursuant to this Warrant.

(aa) "**VWAP Market Disruption Event**" means, with respect to any date, (A) the failure by the principal U.S. national or regional securities exchange on which the Common Stock is then listed, or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, the principal other market on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (B) the occurrence or existence, for more than one half hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

(bb) "**VWAP Trading Day**" means a day on which (A) there is no VWAP Market Disruption Event; provided that the Holder, by notice to the Company, may waive any such VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then "VWAP Trading Day" means a Business Day.

(cc) "**Weighted Average Price**" means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market during the period beginning at 9:30:01 a.m., New York time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Principal Market publicly announces is the official close of trading), as reported by Bloomberg through its "Volume at Price" function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time (or such other time as such market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as such market publicly announces is the official close of trading), as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the OTC Link or "pink sheets" by OTC Markets Group Inc. (formerly Pink OTC Markets Inc.). If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 11 with the term "Weighted Average Price" being substituted for the term "Exercise Price." All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction during the applicable calculation period.

**[Signature Page Follows]**

**IN WITNESS WHEREOF,** each of the Company and the Holder has caused this Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

**MOHAWK GROUP HOLDINGS, INC.**

By: _____
Name: Yaniv Sarig
Title: Chief Executive Officer

**IN WITNESS WHEREOF,** each of the Company and the Holder has caused this Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

**HIGH TRAIL INVESTMENTS ON LLC**

By: _____
Name: Eric Helenek
Title: Authorized Signatory

**EXHIBIT A**

**EXERCISE NOTICE**

**TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS WARRANT TO PURCHASE COMMON STOCK**

**MOHAWK GROUP HOLDINGS, INC.**

The undersigned holder hereby exercises the right to purchase _____ shares of Common Stock ("**Warrant Shares**") of Mohawk Group Holdings, Inc., a corporation organized under the laws of Delaware (the "**Company**"), evidenced by the attached Warrant to Purchase Common Stock (the "**Warrant**"). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

_____ a "Cash Exercise" with respect to _____ Warrant Shares; and/or

_____ a "Cashless Exercise" with respect to _____ Warrant Shares.

2. Payment of Exercise Price. In the event that the holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the holder shall pay the Aggregate Exercise Price in the sum of $_____ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver to the holder _____ Warrant Shares in accordance with the terms of the Warrant.

4. Maximum Percentage Representation. Notwithstanding anything to the contrary contained herein, this Exercise Notice shall constitute a representation by the Holder of the Warrant submitting this Exercise Notice that, after giving effect to the exercise provided for in this Exercise Notice, such Holder (together with the other Attribution Parties) will not have beneficial ownership of a number of shares of Common Stock in excess of the Maximum Percentage of the total outstanding shares of Common Stock of the Company as determined pursuant to the provisions of Section 1(f) of the Warrant.

Date: _____ __, _____

_____
Name of Registered Holder

By: _____
Name:
Title:

**ACKNOWLEDGMENT**

The Company hereby acknowledges this Exercise Notice and hereby directs [TRANSFER AGENT] to issue the above indicated number of shares of Common Stock on or prior to the applicable Share Delivery Date.

**MOHAWK GROUP HOLDINGS, INC.**

By: _____
Name:
Title:

**Exhibit 4.3**

**AMENDMENT TO SENIOR SECURED NOTE DUE 2022 AND SECURITIES PURCHASE AGREEMENT**

This AMENDMENT TO SENIOR SECURED NOTE DUE 2022 AND SECURITIES PURCHASE AGREEMENT (this "***Amendment***") is made and entered into as of February 2, 2021, by and between Mohawk Group Holdings, Inc., a Delaware corporation (the "***Company***"), and High Trail Investments SA LLC (the "***Holder***").

RECITALS

**WHEREAS**, the Company has issued that certain Senior Secured Note due 2022 (the "***Note***") to the Holder pursuant to that certain Securities Purchase Agreement, dated as of November 30, 2020, by and among the Company and the investors on the Schedule of Buyers attached thereto (the "***Securities Purchase Agreement***") (as the same may be amended from time to time);

**WHEREAS**, the Company and the Holder desire to amend certain provisions of the Note;

**WHEREAS**, pursuant to Section 18 of the Note, the Note may be amended with the written consent of the Company and the Required Holders (as defined in the Securities Purchase Agreement);

**WHEREAS**, as of the date hereof, the Holder constitutes the Required Holders (as defined in the Securities Purchase Agreement);

**WHEREAS**, the Company has proposed to issue to the Holder, and the Holder has proposed to purchase from the Company, a Senior Secured Note in an aggregate initial principal amount of $16,500,000 (the "***$16.5 Million Note***");

**WHEREAS**, pursuant to the $16.5 Million Note, shares of the Company's common stock may become issuable at a price based on the volume-weighted average price of the Company's Common Stock;

**WHEREAS**, Section 4(j) of the Securities Purchase Agreement provides that the Company shall not effect or enter into agreement to effect, any Subsequent Placement (as defined in the Securities Purchase Agreement) involving a Variable Rate Transaction (as defined in the Securities Purchase Agreement);

**WHEREAS**, the issuance of the $16.5 Million Note will constitute a Subsequent Placement and involve a Variable Rate Transaction;

**WHEREAS**, the Holder desires to exempt the issuance of the $16.5 Million Note from Section 4(j) of the Securities Purchase Agreement; and

**WHEREAS**, pursuant to Section 9(e) of the Securities Purchase Agreement, the Securities Purchase Agreement may be amended by an instrument in writing signed by the Company and the Required Holders.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

## ARTICLE I

## AMENDMENT OF NOTE

1.1. Definitions.

1.1.1. The definition of "Additional Amortization Amount" in the Note is hereby amended and restated in its entirety as follows:

> ""**Additional Amortization Amount**" means, with respect to any Equity Issuance, Holder's Pro Rata Share of the greater of (i) twenty percent (20%) of the net cash proceeds actually received by the Company and its Subsidiaries from such Equity Issuance (excluding any such net proceeds used by Truweo to acquire all, or substantially all, of the assets of another Person) and (ii) five percent (5%) of the net proceeds received by the Company and its Subsidiaries from such Equity Issuance; provided, that the Additional Amortization Amount in respect of any individual Equity Issuance, together with the Equity Issuance Amortization Amount (as defined in the New Note) in respect of such Equity Issuance under the New Note, shall not exceed in the aggregate five million five hundred thousand dollars ($5,500,000)."

1.1.2. The definition of "Equity Issuance" in the Note is hereby amended and restated in its entirety as follows:

> ""**Equity Issuance**" shall mean (a) any issuance or sale by the Company or any of its Subsidiaries of any Equity Interests (including any Equity Interests issued upon exercise or conversion of any Equity Rights) or any Equity Rights, or (b) the receipt by the Company or any of its Subsidiaries of any capital contribution (whether or not evidenced by any Equity Interest issued by the recipient of such contribution), in each case for bona fide capital-raising purposes and other than (i) any issuance of Equity Interests upon the exercise of any Equity Rights outstanding as of the date hereof provided, that such issuance is made pursuant to the terms of such Equity Rights in effect on the date hereof and such Equity Rights are not amended to increase the number of such Equity Interests or to decrease the exercise price, exchange price or conversion price of Equity Rights, (ii) Equity Interests issuable upon the exercise of Equity Rights or upon the lapse of forfeiture restrictions on awards made pursuant to an Approved Stock Plan (as defined in the Securities Purchase Agreement) (including Equity Interests withheld by the Company for the purpose of paying on behalf of the holder thereof the exercise price of stock options or for paying taxes due as a result of such exercise or lapse of forfeiture restrictions), (iii) Common

Stock issuable upon the exercise of stock options or upon the lapse of forfeiture restrictions on awards made pursuant to, any stock option exchange program of the Company that is approved by the Board of Directors or the compensation committee thereof or the Company's stockholders, whether now in effect or hereafter implemented, (iv) Equity Interests issuable upon the exercise of Equity Rights issued as consideration in any merger, acquisition, business combination or strategic investment (including any joint venture, marketing, distribution, collaboration, license, strategic alliance or partnership), in connection with any consulting agreement, advisory agreement or independent contractor agreement or in connection with any debt facility established by the Company, including with any commercial bank or venture debt lender, or (v) any issuance of Equity Interests upon the conversion of the New Note."

1.1.3. A new definition of "New Note" is hereby added to the Note after the definition of "Monthly Cash Allowance" and shall read in its entirety as follows:

""**New Note**" means that certain Senior Secured Note issued to High Trail Investments ON LLC by the Company on February 2, 2021."

1.1.4. The definition of "Permitted Indebtedness" in the Note is hereby amended by amending and restating clause (A) of the definition thereof as follows:

"(A) Indebtedness evidenced by this Note or the New Note,"

1.1.5. A new definition of "Pro Rata Share" is hereby added to the Note after the definition of "Principal Amount" and shall read in its entirety as follows:

""**Pro Rata Share**" means the result of the outstanding principal amount outstanding under this Note divided by the sum of (A) the aggregate principal amount outstanding under the New Note plus (B) the outstanding principal amount outstanding under this Note."

1.1.6. The definition of "Target Cash Balance" in the Note is hereby amended and restated in its entirety as follows:

""**Target Cash Balance**" means, at any time, the lesser of $8,000,000 or an amount equal to fifty percent (50%) of the Principal Amount outstanding under this Note and the New Note at such time."

1.2. Section 9(C) of the Note. Section 9(C) of the Note is hereby amended and restated in its entirety to read as follows:

"*Ranking*. All payments due under this Note (i) shall rank junior to the First Lien Indebtedness to the extent of the value of the Collateral securing the First Lien Indebtedness, (ii) shall rank pari passu with the New Note and all Other Notes and (iii) shall rank senior to all indebtedness of the Company (other than the indebtedness described in clauses (i) and (ii)) and any Subordinated Indebtedness."

1.3. Section 9(G) of the Note. Section 9(G) of the Note is hereby amended and restated in its entirety to read as follows:

"*Distributions*. The Company shall not, and shall not allow any Subsidiary to, (a) repurchase or redeem any class of stock or other Equity Interest other than pursuant to employee, director or consultant repurchase plans or other similar agreements provided under plans approved by the Board of Directors; provided, however, in each case the repurchase or redemption price does not exceed the original consideration paid for such stock or Equity Interest; provided further, that the Company or any Subsidiary may repurchase, receive via forfeiture, withhold or transfer any class of stock or other Equity Interest pursuant to a net exercise of an Equity Right or other convertible security to cover the payment of the exercise price or the payment of withholding taxes associated with the exercise or vesting of equity awards under any equity compensation plan of the Company or repurchases of Common Stock, Equity Right or other convertible security upon an employee's, contractor's or consultant's termination of services, or (b) declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest, except that a Subsidiary may pay dividends or make distributions to the Company or a parent company that is a direct or indirect Wholly Owned Subsidiary of the Company; provided, however, that, in any calendar month, Truweo shall not make cash dividends or distributions in an aggregate amount in excess of the Available Cash Amount, or (c) lend money to any employees, officers or directors (except as permitted under clauses (F) of the definition of Permitted Investment), or guarantee the payment of any such loans granted by a third party in excess of fifty thousand dollars ($50,000) in the aggregate or (d) waive, release or forgive any Indebtedness owed by any employees, officers or directors in excess of fifty thousand dollars ($50,000) in the aggregate. Within one (1) Business Day following the date on which the Company files an Annual Report on Form 10-K or Quarterly Report on Form 10-Q with the Commission, the Company will provide the Holder with a written notice setting forth (i) the Truweo Cash Balance on the last day of each calendar month and (ii) the aggregate amount of dividends or distributions made by the Company or any Subsidiary pursuant to this **Section 9(G)** and Section 9(G) of the New Note for the period covered by such Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as applicable. Notwithstanding anything herein to the contrary, (i) Truweo may not distribute, transfer, sell, lease, license, loan or convey its assets to the Company or any Wholly Owned Subsidiary of the Company (other than a Wholly Owned Subsidiary of Truweo) and (ii) the Company shall not, and shall not allow any Subsidiary to, declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest if (A) any Event of Default has occurred hereunder and has not been waived by the Required Holders or (B) any Default is continuing with respect to **Section 9(J)**, **Section 11(A)(ii)**, **Section 11(A)(iii)**, **Section 11(A)(ix)**, **Section 11(A)(xii)** or **Section 11(A)(xv)**."

1.4. Section 11(a)(x) of the Note. Section 11(a)(x) of the Note is hereby amended and restated in its entirety to read as follows:

> "(i) the failure of the Company or any of its Subsidiaries to pay when due or within any applicable grace period any Indebtedness having an individual principal amount in excess of at least one hundred thousand dollars ($100,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, whether such Indebtedness exists as of the Issue Date or is thereafter created, and whether such default has been waived for any period of time or is subsequently cured; (ii) any Event of Default under the New Note, or (iii) the occurrence of any breach or default under any terms or provisions of any other Indebtedness of at least one hundred thousand dollars ($100,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such indebtedness, to cause, Indebtedness having an individual principal amount in excess of $100,000 to become or be declared due prior to its stated maturity;"

1.5. Section 12 of the Note. Section 12 of the Note is hereby amended and restated in its entirety to read as follows:

> "All payments due under this Note shall rank (i) effectively junior to all First Lien Indebtedness to the extent of the value of the Collateral securing the First Lien Indebtedness for so long as the Collateral so secures the First Lien Indebtedness in accordance with the terms of the First Lien Indebtedness, (ii) pari passu with the New Note and all Other Notes, (iii) effectively senior to all unsecured indebtedness of the Company (including any First Lien Indebtedness to the extent such First Lien Indebtedness is not secured by the Collateral) to the extent of the value of the Collateral securing the Notes for so long as the Collateral so secures the Notes in accordance with the terms hereof and (iv) senior to any Subordinated Indebtedness."

## ARTICLE I

## AMENDMENT OF SECURITIES PURCHASE AGREEMENT

2.1. Definition of "Exempt Issuance". The definition of "Exempt Issuance" in Section 4(j) of the Securities Purchase Agreement is hereby amended and restated in its entirety as follows:

> "An "**Exempt Issuance**" means the issuance of (a) Common Stock, options, restricted stock awards, restricted stock units, stock appreciation rights or other equity awards to employees, officers, directors of the Company pursuant to an Approved Stock Plan or any stock or option plan or other agreement duly adopted by: (i) the Board of Directors or the compensation committee thereof and approved by the stockholders of the Company for the purposes of providing compensation for services provided to the Company in their capacity as such, or (ii) the Board of Directors or the compensation committee thereof as an inducement grant in accordance with Nasdaq Listing Rule 5635(c)(4), (b) any securities issued upon the exercise or exchange of or conversion of any Convertible Securities issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities, (c) securities issued as consideration in acquisitions, divestitures, partnerships, licenses, collaborations or strategic transactions approved by the Board of Directors or a majority of the members of a committee of directors established for such purpose, which acquisitions, divestitures, partnerships, licenses, collaborations or strategic transactions can have a Variable Rate Transaction component, provided that any such issuance shall only be to a Person (or to the equity holders of a Person) which is, itself or through its subsidiaries, an operating company or an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, (d) any securities issued to consultants, advisors or independent contractors as compensation for services provided to the Company in their capacity as such, and not for the purpose of raising capital, pursuant to any consulting agreement, advisory agreement or independent contractor agreement approved by the Board of Directors or the compensation committee thereof, or (e) the issuance of that certain Senior Secured Note issued to the Buyer by the Company on February 2, 2021 and the issuance of any shares of Common Stock upon the conversion thereof."

## ARTICLE III

## MISCELLANEOUS

3.1. Rule 144 Holding Period. The Company and the Holder acknowledge and agree that, as set forth in the Securities Purchase Agreement, the Note will continue to have a holding period under Rule 144 promulgated under the Securities Act that will be deemed to have commenced as of December 1, 2020.

3.2. Disclosure of Amendment. No later than 5:30 p.m., New York time, on February 3, 2021, the Company shall file a Current Report on Form 8-K describing all the material terms of the transactions contemplated by this Amendment in the form required by the U.S. Securities Exchange Act of 1934, as amended, and attaching the form of this Amendment (including all attachments, the "***8-K Filing***"). From and after the filing of the 8-K Filing, the Company shall have disclosed all material, nonpublic information (if any) provided to the Holder by the Company or any of its subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Securities Purchase Agreement, this Amendment or the Transaction Documents (as defined in the Securities Purchase Agreement).

3.3. Consents. The Company hereby covenants to obtain all necessary consents from holders of the Company's other outstanding Indebtedness to permit entry into this Amendment without causing an "Event of Default" under such Indebtedness prior to the termination of any applicable cure periods in such Indebtedness.

3.4. Captions. The headings contained in this Amendment are for reference purposes only and shall not affect in any way the meaning or interpretation of this Amendment. Except as otherwise indicated, all references in this Amendment to "Sections" are intended to refer to the Sections or Articles of the Note or Securities Purchase Agreement, as applicable.

3.5. Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Amendment shall be determined in accordance with the provisions of the Securities Purchase Agreement.

3.6. No Other Amendment. Except for the matters expressly set forth in this Amendment, all other terms of the Note are hereby ratified and shall remain unchanged and in full force and effect.

3.7. Counterparts. This Amendment may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party.

3.8. Electronic and Facsimile Signatures. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof. A party's electronic signature (complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) of this Agreement shall have the same validity and effect as a signature affixed by the party's hand.

[Signature Pages Follow]

The parties hereto have executed this Amendment to Senior Convertible Note due 2022 as of the date first written above.

**COMPANY:**

**MOHAWK GROUP HOLDINGS, INC.**

By: /s/ Yaniv Sarig
Name: Yaniv Sarig
Title: Chief Executive Officer

The parties hereto have executed this Amendment to Senior Convertible Note due 2022 as of the date first written above.

**REQUIRED HOLDER:**

**HIGH TRAIL INVESTMENTS SA LLC**

By: /s/ Eric Helenek
Name: Eric Helenek
Title: Authorized Signatory

**Exhibit 4.4**

**AMENDMENT TO WARRANT TO PURCHASE COMMON STOCK**

This AMENDMENT TO WARRANT TO PURCHASE COMMON STOCK (this "***Amendment***") is made and entered into as of February 2, 2021, by and among Mohawk Group Holdings, Inc., a Delaware corporation (the "***Company***"), and High Trail Investments SA LLC (the "***Holder***").

RECITALS

**WHEREAS**, the Company has issued that certain Warrant to Purchase Common Stock (the "***Warrant***"), to the Holder pursuant to that certain Securities Purchase Agreement, dated as of November 30, 2020, by and among the Company and the investors on the Schedule of Buyers attached thereto (the "***Securities Purchase Agreement***") (as the same may be amended from time to time);

**WHEREAS**, the Company and the Holder desire to amend certain provisions of the Warrant; and

**WHEREAS**, pursuant to Section 9 of the Warrant, the Warrant may be amended with the written consent of the Company and the Holder.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

**ARTICLE I**

**AMENDMENT OF WARRANT**

1.1. Section 1(i) of the Warrant. Section 1(i) of the Warrant is hereby amended and restated in its entirety to read as follows:

> "(i) Forced Exercise. In the event that the Closing Sale Price per share of Common Stock exceeds thirty dollars ($30) (appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction during the applicable calculation period) for twenty (20) consecutive Trading Days (such period, the "**Forced Exercise Period**"), then the Company may, at its sole discretion, if the Equity Conditions are then satisfied, provide written notice, in the manner required for notices delivered to a Buyer (as defined in the Securities Purchase Agreement) pursuant to the Securities Purchase Agreement, to the Holder requiring the Holder to exercise this Warrant in full (and not in part) (the "**Forced Exercise Notice**") no later than the fifth ($5^{th}$) Business Day following the last Trading Day of the Forced Exercise Period. The date of exercise with respect to any such forced exercise shall be the date upon which the Company delivers the Forced Exercise Notice to the Holder (the "**Forced Exercise Closing**"). If a registration statement covering the issuance or

resale of the Warrant Shares issuable pursuant to the Forced Exercise Notice (the "**Forced Exercise Warrant Shares**") is available for the issuance or resale of the Forced Exercise Warrant Shares, then the forced exercise shall be a cash exercise. If a registration statement covering the issuance or resale of the Forced Exercise Warrant Shares is not available for the issuance or resale, as applicable of such Forced Exercise Warrant Shares, then the forced exercise may be a cash exercise or cashless exercise in accordance with Section 1(d), at the Holder's option. So long as the Holder delivers the Aggregate Exercise Price (or notice of a Cashless Exercise, if applicable) on or prior to the first (1st) Trading Day following the date on which the Forced Exercise Notice has been delivered by the Company, then on or prior to the earlier of (i) the second (2nd) Trading Day and (ii) the number of Trading Days comprising the Standard Settlement Period, in each case following the date on which the Forced Exercise Notice has been delivered by the Company, or, if the Holder does not deliver the Aggregate Exercise Price (or notice of a Cashless Exercise, if applicable) on or prior to the first (1st) Trading Day following the date on which the Forced Exercise Notice has been delivered by the Company, then on or prior to the first (1st) Trading Day following the date on which the Aggregate Exercise Price (or notice of a Cashless Exercise, if applicable) is delivered (such earlier date, or if later, the earliest day on which the Company is required to deliver Warrant Shares pursuant to this Section 1(i), also constituting a Share Delivery Date), the Company shall (X) provided that the Transfer Agent is participating in FAST, credit such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit / Withdrawal At Custodian system, or (Y) if the Transfer Agent is not participating in FAST, issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise. Such forced exercise shall not be required if either (a) the Equity Conditions do not remain satisfied on each Trading Day through the date of the Forced Exercise Notice or (b) the Closing Bid Price per share of Common Stock does not exceed thirty dollars ($30) (appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction during the applicable calculation period) through the date of such notice. If the Equity Conditions are not satisfied during the Forced Exercise Period through the date of the Forced Exercise Notice solely due to the fact that the forced exercise of this Warrant and the issuance of the Forced Exercise Warrant Shares pursuant to such forced exercise would be limited by Section 1(f), then the Company may, in its sole discretion, provide written notice to the Holder requiring the Holder to exercise this Warrant in part (and not in full) for such number of shares that could be issued in compliance with Section 1(f) such that the Holder together with the other Attribution Parties collectively shall beneficially own in the aggregate the Maximum Percentage of the number of shares of Common Stock outstanding as of the Forced Exercise Closing. Notwithstanding the foregoing, if the average daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the applicable Eligible Market

during such Forced Exercise Period (the "**Average DDT Volume**") is less than ten million dollars ($10,000,000) (the "**Minimum Volume**"), then such exercise of this Warrant shall be limited to a number of shares of Common Stock equal to the lesser of (1) product of: (A) the aggregate number of shares of Common Stock originally subject to this Warrant (adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction that has occurred since the Issuance Date) multiplied by (B) the quotient of the Average DDT Volume for such Forced Exercise Period divided by the Minimum Volume, and (2) the aggregate number of shares of Common Stock then subject to this Warrant (adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction that has occurred since the Issuance Date) assuming a cash exercise of the Warrant. The Company may not exercise its right to require the Holder to exercise this Warrant more than once in any thirty (30) day period."

**ARTICLE II**

**MISCELLANEOUS**

2.1. Rule 144 Holding Period. The Company and the Holder acknowledge and agree that, as set forth in the Securities Purchase Agreement, the Warrant will continue to have a holding period under Rule 144 promulgated under the Securities Act of 1933, as amended, that will be deemed to have commenced as of December 1, 2020.

2.2. Disclosure of Amendment. No later than 5:30 p.m., New York time, on February 3, 2021, the Company shall file a Current Report on Form 8-K describing all the material terms of the transactions contemplated by this Amendment in the form required by the U.S. Securities Exchange Act of 1934, as amended, and attaching the form of this Amendment (including all attachments, the "***8-K Filing***"). From and after the filing of the 8-K Filing, the Company shall have disclosed all material, nonpublic information (if any) provided to the Holder by the Company or any of its subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Securities Purchase Agreement, this Amendment or the Transaction Documents (as defined in the Securities Purchase Agreement).

2.3. Captions. The headings contained in this Amendment are for reference purposes only and shall not affect in any way the meaning or interpretation of this Amendment. Except as otherwise indicated, all references in this Amendment to "Sections" are intended to refer to the Sections of the Warrant.

2.4. Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Amendment shall be determined in accordance with the provisions of the Securities Purchase Agreement.

2.5. No Other Amendment. Except for the matters expressly set forth in this Amendment, all other terms of the Warrant are hereby ratified and shall remain unchanged and in full force and effect.

2.6. Counterparts. This Amendment may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party.

2.7. Electronic and Facsimile Signatures. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof. A party's electronic signature (complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) of this Agreement shall have the same validity and effect as a signature affixed by the party's hand.

[Signature Pages Follow]

The parties hereto have executed this Amendment to Warrant to Purchase Common Stock as of the date first written above.

**COMPANY:**

**MOHAWK GROUP HOLDINGS, INC.**

By: /s/ Yaniv Sarig
Name: Yaniv Sarig
Title: Chief Executive Officer

The parties hereto have executed this Amendment to Warrant to Purchase Common Stock as of the date first written above.

**HOLDER:**

**HIGH TRAIL INVESTMENTS SA LLC**

By: /s/ Eric Helenek
Name: Eric Helenek
Title: Authorized Signatory

# SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (the "**Agreement**"), dated as of February 2, 2021, is by and among Mohawk Group Holdings, Inc., a Delaware corporation with offices located at 37 East 18th Street, 7th Floor, New York, NY 10003 (the "**Company**"), and each of the investors listed on the Schedule of Buyers attached hereto (individually, a "**Buyer**" and collectively, the "**Buyers**").

## RECITALS

A. The Company and each Buyer is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "**1933 Act**"), and Rule 506(b) of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**SEC**") under the 1933 Act.

B. The Company has authorized a new series of Senior Secured Notes in the form attached hereto as **Exhibit A** (the "**Notes**"), which Notes shall under certain circumstances entitle the Buyers to receive shares of the Company's common stock, par value $0.0001 per share (together with any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock, the "**Common Stock**") (such underlying shares of Common Stock issuable pursuant to the terms of the Notes, the "**Note Shares**").

C. The Company has also authorized the issuance of Warrants to purchase Common Stock in the form attached hereto as **Exhibit B** (the "**Warrants**"), (such underlying shares of Common Stock issuable upon exercise of a Warrant, collectively, the "**Warrant Shares**" and, together with the Note Shares, the "**Underlying Shares**").

D. Each Buyer wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, the aggregate principal amount of Notes set forth opposite such Buyer's name in column (3) on the Schedule of Buyers.

E. Each Buyer wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, the Warrants.

F. At the Closing (as defined below), the parties hereto shall execute and deliver Security Agreements, in the form attached hereto as **Exhibit C** (the "**Security Agreements**"), pursuant to which the Company has agreed to grant a security interest to the Collateral Agent (as defined in the Security Agreements), as collateral agent for the holders of the Notes in substantially all of its assets, an intercreditor agreement, in the form attached hereto as **Exhibit D** (the "**Intercreditor Agreement**"), pursuant to which the security interest granted by the Company under the Security Agreements will be subordinated to the liens securing the obligations of the Company under the Senior Credit Agreement (as defined below), the Amendment to Senior Secured Convertible Note due 2022 and Securities Purchase Agreement in the form attached hereto as **Exhibit E** (the "**Note Amendment**") and the Amendment to Warrant to Purchase Common Stock in the form attached hereto as **Exhibit F** (the "**Warrant Amendment**").

G. The Notes, Warrants, Note Shares and Warrant Shares are collectively referred to herein as the "**Securities**."

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each Buyer hereby agree as follows:

**1. PURCHASE AND SALE OF PURCHASED SECURITIES.**

(a) Purchase of Purchased Securities. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, the Company shall issue and sell to each Buyer, and each Buyer severally, but not jointly, agrees to purchase from the Company on the Closing Date (as defined below) the following Securities (collectively, the "**Purchased Securities**"):

(i) the aggregate principal amount of Notes as is set forth opposite such Buyer's name in column (3) on the Schedule of Buyers; and

(ii) a Warrant exercisable for the aggregate number of Warrant Shares as is set forth opposite such Buyer's name in column (5) on the Schedule of Buyers.

(b) Closing. The closing (the "**Closing**") of the purchase of the Purchased Securities by the Buyers shall occur at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022. The date and time of the Closing (the "**Closing Date**") shall be 10:00 a.m., New York time, on the first (1st) Business Day on which the conditions to the Closing set forth in Sections 6 and 7 below are satisfied or waived (or such other date as is mutually agreed to by the Company and each Buyer). As used herein "**Business Day**" means any day other than a Saturday, a Sunday or any day on which commercial banks in The City of New York are authorized or required by law or executive order to close or be closed; provided, however, for clarification, commercial banks in The City of New York shall not be deemed to be authorized or required by law or executive order to close or be closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are open for use by customers on such day.

(c) Securities Purchase Price. The aggregate purchase price for the Purchased Securities to be purchased by each Buyer (the "**Purchase Price**") shall be the amount set forth opposite such Buyer's name in column (7) on the Schedule of Buyers.

(d) Form of Payment for Purchased Securities. On the Closing Date, (i) each Buyer shall pay its respective Purchase Price to the Company for the Purchased Securities to be issued and sold to such Buyer at the Closing set forth opposite such Buyer's name in columns (4) and (6) on the Schedule of Buyers, by wire transfer of immediately available funds in accordance with the Flow of Funds Letter (as defined below) and (ii) the Company shall:

(i) deliver to each Buyer a Note in the aggregate principal amount as is set forth opposite such Buyer's name in column (3) of the Schedule of Buyers, duly executed on behalf of the Company and registered on the books and records of the Company in the name of such Buyer or its designee; and

(ii) deliver to each Buyer a Warrant exercisable for the aggregate number of Warrant Shares as is set forth opposite such Buyer's name in column (5) on the Schedule of Buyers, duly executed on behalf of the Company and registered on the books and records of the Company in the name of such Buyer or its designee.

(e) Purchase Price Allocation. Each Buyer and the Company agree that the Notes and the Warrant constitute an "investment unit" for purposes of Section 1273(c)(2) of the Internal Revenue Code of 1986, as amended (the "**Code**"). The Buyers and the Company mutually agree that the allocation of the issue price of such investment unit between the Notes and the Warrants in accordance with Section 1273(c)(2) of the Code and Treasury Regulation Section 1.1273-2(h) shall be as set forth on the Schedule of Buyers, and neither the Buyers nor the Company shall take any position inconsistent with such allocation in any tax return or in any judicial or administrative proceeding in respect of taxes.

**2. BUYER'S REPRESENTATIONS AND WARRANTIES.**

Each Buyer, severally and not jointly, represents and warrants to the Company with respect to only itself that, as of the date hereof and as of the Closing Date:

(a) Organization; Authority. Such Buyer is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents (as defined below) to which it is a party and otherwise to carry out its obligations hereunder and thereunder.

(b) No Public Sale or Distribution. Such Buyer (i) is acquiring its Purchased Securities, and (ii) upon exercise of, or otherwise in accordance with, its Purchased Securities will acquire the Underlying Shares issuable upon exercise thereof, or otherwise in accordance therewith, in each case, for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof in violation of applicable securities laws, except pursuant to sales registered or exempted under the 1933 Act; provided, however, by making the representations herein, such Buyer does not agree, or make any representation or warranty, to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption from registration under the 1933 Act. Such Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities in violation of applicable securities laws. For purposes of this Agreement, "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any Governmental Entity (as defined below) or any department or agency thereof.

(c) Accredited Investor Status. At the time such Buyer was offered the Securities, it was and, as of the date hereof, such Buyer is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D.

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

(e) Information. Such Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities that have been requested by such Buyer. Such Buyer and its advisors, if any, have had (i) the opportunity to review the Transaction Documents and the SEC Documents (each as defined below) and has been afforded the opportunity to ask such questions of the Company as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Neither such inquiries nor any other due diligence investigations conducted by such Buyer or its advisors, if any, or its representatives shall modify, amend or affect such Buyer's right to rely on the Company's representations and warranties contained herein. Such Buyer understands that its investment in the Securities involves a high degree of risk. Such Buyer acknowledges that it can bear the economic risk and complete loss of its investment in the Securities and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby. Such Buyer did not learn of the investment in the Securities as a result of any general solicitation or general advertising. Such Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities. Such Buyer is not relying upon, and has not relied upon, any statement, representation or warranty made by any person, except for statements, representations and warranties contained in this Agreement, in making its investment or decision to invest in the Company.

(f) No Governmental Review. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(g) Transfer or Resale. Such Buyer understands that: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred by any Buyer or any other holder of such Securities unless (A) subsequently registered thereunder, (B) such Buyer shall have delivered to the Company an opinion of counsel, in a form reasonably acceptable to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) such Buyer provides the Company with reasonable assurance, in form and substance reasonably acceptable to the Company, that such Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A promulgated under the 1933 Act (or a successor rule thereto) (collectively, "**Rule 144**"); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144, and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC promulgated thereunder; provided, that, from and after the date that is six (6) months following the date hereof, at the request of any Buyer, the Company shall, if the Company is then in compliance with Section 4(c) hereof, deliver to such Buyer or the Company's transfer agent, as applicable, an opinion of counsel to the Company, at the Company's expense and in a form reasonably acceptable to such Buyer, that (i) adequate public information with respect to the Company is then available (within the meaning of Rule 144(c)) and (ii) that a sale of the Securities may otherwise be made in accordance with the terms of Rule 144; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. Notwithstanding the foregoing, the Securities may be pledged in connection with a bona fide margin account or other loan or financing arrangement secured by the Securities and such pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Buyer effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document (as defined in Section 3(b)), including, without limitation, this Section 2(g).

(h) Validity; Enforcement. This Agreement, the Security Agreements, the Security Documents (as defined in the Security Agreements), the Note Amendment, and the Warrant Amendment have been duly and validly authorized, executed and delivered on behalf of such Buyer and shall constitute the legal, valid and binding obligations of such Buyer enforceable against such Buyer in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(i) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement, the Security Agreements, the Security Documents, the Note Amendment, and the Warrant Amendment and the consummation by such Buyer of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Buyer, or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Buyer to perform its obligations hereunder.

(j) No Bad Actor Disqualification Event. Such Buyer represents, after reasonable inquiry, that none of the "Bad Actor" disqualifying events described in Rule 506(d)(l)(i) to (viii) under the 1933 Act (a "**Disqualification Event**") is applicable to such Buyer or any of its Rule 506(d) Related Parties (if any). "**Rule 506(d) Related Party**" means a person or entity that is a beneficial owner of such Buyer's securities for purposes of Rule 506(d).

**3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.**

The Company represents and warrants to each of the Buyers that, as of the date hereof and as of the Closing Date:

(a) Organization and Qualification. Each of the Company and each of its Subsidiaries are entities duly organized and validly existing and in good standing (if a good standing concept exists in such jurisdiction) under the laws of the jurisdiction in which they are formed, and have the requisite power and authority to own their properties and to carry on their business as now being conducted. Each of the Company and each of its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing (if a good standing concept exists in such jurisdiction) in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect (as defined below). As used in this Agreement, "Material Adverse Effect" means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof) or financial condition of the Company or its Subsidiaries, taken as a whole, (ii) the transactions contemplated hereby or in any of the other Transaction Documents or any other agreements or instruments entered into in connection herewith or therewith or (iii) the authority or ability of the Company or any of its Subsidiaries to perform any of their respective obligations under any of the Transaction Documents. Other than the Persons (as defined below) set forth on Schedule 3(a), the Company has no significant Subsidiaries within the meaning of Rule 1-02(w) of Regulation S-X. "**Subsidiaries**" means any Person in which the Company, directly or indirectly, (I) owns any of the outstanding capital stock or holds any equity or similar interest of such Person or (II) controls or operates all or any part of the business, operations or administration of such Person, and each of the foregoing, is individually referred to herein as a "**Subsidiary.**"

(b) Authorization; Enforcement; Validity. The Company has the requisite power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents and to issue the Securities in accordance with the terms hereof and thereof. Each Subsidiary has the requisite power and authority to enter into and perform its obligations under the Transaction Documents to which it is a party. The execution and delivery of this Agreement and the other Transaction Documents by the Company, and the consummation by the Company and its Subsidiaries of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Notes and Warrants, the reservation for

issuance and issuance of the Underlying Shares issuable pursuant to the Warrants and Notes, as applicable), have been duly authorized by the Company's board of directors (the "**Board of Directors**"), and (other than (i) any filings as may be required by any state securities agencies and (ii) a Listing of Additional Shares Notification with the Principal Market (as defined below) (collectively, the "**Required Filings**")) no further filing, consent or authorization is required by the Company, its Subsidiaries, their respective boards of directors or their stockholders or other governing body in connection therewith. This Agreement has been, and the other Transaction Documents to which it is a party will be prior to the Closing, duly executed and delivered by the Company, and each constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law. "**Transaction Documents**" means, collectively, this Agreement, the Notes, the Note Amendment, the Warrants, the Warrant Amendment, the Security Agreements, the Security Documents, the Irrevocable Transfer Agent Instructions (as defined below) and each of the other written agreements and instruments entered into or delivered by any of the parties hereto in connection with the transactions contemplated hereby and thereby, as may be amended from time to time.

(c) Issuance of Securities. The issuance of the Securities is duly authorized and when issued and delivered in accordance with the terms of the Transaction Documents, the Securities shall be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, mortgages, defects, claims, liens, pledges, charges, taxes, rights of first refusal, encumbrances, security interests and other encumbrances (collectively "**Liens**") with respect to the issuance thereof. As of the Closing, the Company shall have reserved from its duly authorized capital stock not less than a number of shares of Common Stock equal to the sum of (x) 100% of the maximum number of shares of Common Stock as shall be necessary to satisfy the Company's obligation to issue shares of Common Stock under the Warrants, plus (y) ten million (10,000,000) shares of Common Stock for any issuance of the Note Shares. Upon issuance in accordance with the Warrants or Notes, as applicable, the Underlying Shares, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights or Liens with respect to the issuance thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. Subject to the accuracy of the representations and warranties of the Buyers in this Agreement, the offer and issuance by the Company of the Securities is exempt from registration under the 1933 Act.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Notes, Warrants and the Underlying Shares and the reservation for issuance of the Underlying Shares) will not (i) result in a violation of the Certificate of Incorporation (as defined below), Bylaws (as defined below), certificate of formation, memorandum of association, articles of association, bylaws or other organizational documents of the Company or any of its Subsidiaries, or any capital stock or other securities of the Company or any of its Subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a

default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, or (iii) assuming the accuracy of the representations and warranties in Section 2, result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations and the rules and regulations of the Nasdaq Capital Market (the **"Principal Market**") and including all applicable foreign, federal and state laws, rules and regulations) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, assuming, with respect to clauses (ii) and (iii) above, the making of the Required Filings and except in the case of clauses (ii) and (iii) above, for such breaches, violations or conflicts as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(e) Consents. Neither the Company nor any Subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with (other than the Required Filings, filings necessary to perfect the Liens granted under the Security Agreements and such consents, authorizations, filings or registrations the absence of which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect), any Governmental Entity or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by the Transaction Documents, in each case, in accordance with the terms hereof or thereof. To the Company's knowledge, other than the Required Filings, all consents, authorizations, orders, filings and registrations which the Company or any Subsidiary is required to obtain pursuant to the preceding sentence have been or will be obtained or effected on or prior to the Closing Date, and neither the Company nor any of its Subsidiaries are aware of any facts or circumstances which might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the registration, application or filings contemplated by the Transaction Documents. The Company is not in violation of the requirements of the Principal Market and has no knowledge of any facts or circumstances which could reasonably lead to delisting or suspension of the Common Stock. "**Governmental Entity**" means any nation, state, county, city, town, village, district, or other political jurisdiction of any nature, federal, state, local, municipal, foreign, or other government, governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), multi-national organization or body; or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature or instrumentality of any of the foregoing, including any entity or enterprise owned or controlled by a government or a public international organization or any of the foregoing.

(f) Acknowledgment Regarding Buyer's Purchase of Securities. The Company acknowledges and agrees that each Buyer is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that no Buyer is (i) an officer or director of the Company or any of its Subsidiaries, (ii) an "affiliate" (as defined in Rule 144) of the Company or any of its Subsidiaries or (iii) to its knowledge, a "beneficial owner" of more than 4.99% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the "**1934 Act**")). The Company further acknowledges that no Buyer is acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar

capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by a Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Buyer's purchase of the Securities. The Company further represents to each Buyer that the Company's and each Subsidiary's decision to enter into the Transaction Documents to which it is a party has been based solely on the independent evaluation by the Company, each Subsidiary and their respective representatives.

(g) No General Solicitation; No Placement Agent. Neither the Company, nor any of its Subsidiaries or affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. Except for A.G.P./Alliance Global Partners, neither the Company nor any of its Subsidiaries has engaged any placement agent or other agent in connection with the offer or sale of the Securities. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, attorney's fees and reasonable and documented out-of-pocket expenses) arising in connection with any claim for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby.

(h) No Integrated Offering. None of the Company, its Subsidiaries or any of their affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Securities under the 1933 Act, whether through integration with prior offerings or otherwise, or cause this offering of the Securities to require approval of stockholders of the Company in connection with the offering of the Securities for purposes of the 1933 Act or under any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated for quotation. None of the Company, its Subsidiaries, their affiliates nor any Person acting on their behalf has taken or will take any action or steps that would require registration of the issuance of any of the Securities under the 1933 Act or cause the offering of any of the Securities to be integrated with other offerings of securities of the Company.

(i) Dilutive Effect. The Company understands and acknowledges that the number of Underlying Shares will increase in certain circumstances. The Company further acknowledges that its obligation to issue the Underlying Shares pursuant to the terms of the Notes in accordance with this Agreement is absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company.

(j) Application of Takeover Protections. The Company and its Board of Directors have taken or will take prior to the Closing Date all necessary action, if any, in order to render inapplicable any control share acquisition, interested stockholder, business combination, poison pill, stockholder rights plan or other similar anti-takeover provision under the Certificate of Incorporation, Bylaws or other organizational documents or the laws of the jurisdiction of its incorporation which is or could become applicable to any Buyer as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and any Buyer's ownership of the Securities.

(k) Financial Statements. Except as set forth on Schedule 3(k), during the one (1) year prior to the date hereof, the Company has timely filed all reports, schedules, forms, proxy statements, statements and other documents required to be filed by it with the SEC (other than Section 16 ownership filings) pursuant to the reporting requirements of the 1934 Act (reports filed in compliance with the time period specified in Rule 12b-25 promulgated under the 1934 Act shall be considered timely for this purpose) (all of the foregoing filed prior to the date hereof and all exhibits and appendices included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**SEC Documents**"). The Company has delivered or has made available to the Buyers or their respective representatives true, correct and complete copies of each of the SEC Documents not available on the EDGAR system. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the SEC Documents complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such financial statements have been prepared in accordance with generally accepted accounting principles ("**GAAP**"), consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate). No other information provided by or on behalf of the Company to any of the Buyers which is not included in the SEC Documents (including, without limitation, information referred to in Section 2(e) of this Agreement or in the disclosure schedules to this Agreement) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading, in the light of the circumstance under which they are or were made. The Company is not currently contemplating to amend or restate any of the financial statements (including, without limitation, any notes or any letter of the independent accountants of the Company with respect thereto) included in the SEC Documents (the "**Financial Statements**"), nor is the Company currently aware of facts or circumstances which would require the Company to amend or restate any of the Financial Statements, in each case, in order for any of the Financials Statements to be in material compliance with GAAP and the rules and regulations of the SEC. The Company has not been informed by its independent accountants that they recommend that the Company amend or restate any of the Financial Statements or that there is any need for the Company to amend or restate any of the Financial Statements.

(l) Absence of Certain Changes. Since the date of the Company's most recent audited financial statements contained in a Form 10-K, there has been no Material Adverse Effect. Since the date of the Company's most recent audited financial statements contained in a Form 10-K, except as set forth on Schedule 3(l), neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, outside of the ordinary course of business, (iii) made any capital expenditures, individually or in the aggregate, outside of the ordinary course of business or (iv) made any revaluation of any of their respective assets, including, without limitation, writing down the value of capitalized inventory or writing off notes or accounts receivable or any sale of assets other than in the ordinary course of business.

(m) Insolvency. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up, nor does the Company or any Subsidiary have any knowledge or reason to believe that any of their respective creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so. The Company and its Subsidiaries, on a consolidated basis, are not as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at the Closing, will not be Insolvent (as defined below). For purposes of this Section 3(m), "**Insolvent**" means, (i) with respect to the Company and its Subsidiaries, on a consolidated basis, (A) the present fair saleable value of the Company's and its Subsidiaries' assets is less than the amount required to pay the Company's and its Subsidiaries' total Indebtedness (as defined below), (B) the Company and its Subsidiaries are unable to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company and its Subsidiaries intend to incur or believe that they will incur debts that would be beyond their ability to pay as such debts mature; and (ii) with respect to the Company and each Subsidiary, individually, (A) the present fair saleable value of the Company's or such Subsidiary's (as the case may be) assets is less than the amount required to pay its respective total Indebtedness, (B) the Company or such Subsidiary (as the case may be) is unable to pay its respective debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company or such Subsidiary (as the case may be) intends to incur or believes that it will incur debts that would be beyond its respective ability to pay as such debts mature.

(n) Regulatory Permits. During the period since June 12, 2019, (i) the Common Stock has been listed or designated for quotation on the Principal Market, (ii) trading in the Common Stock has not been suspended by the SEC or the Principal Market and (iii) the Company has received no communication, written or oral, from the SEC or the Principal Market regarding the suspension or delisting of the Common Stock from the Principal Market. The Company and each of its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not reasonably be likely to have, individually or in the aggregate, a Material Adverse Effect, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

(o) Foreign Corrupt Practices. Neither the Company, any of the Company's Subsidiaries, nor any director, officer, employee thereof, nor, to the Company's knowledge, any agent or any other person acting for or on behalf of the foregoing (individually and collectively, a "**Company Affiliate**") have violated the U.S. Foreign Corrupt Practices Act or any other applicable anti-bribery or anti-corruption laws (individually and collectively, "**Anti-Corruption Laws**"), nor, to the Company's knowledge, has any Company Affiliate offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, to any officer, employee or any other person acting in an official capacity for any Governmental Entity to any political party or official thereof or to any candidate for political office (individually and collectively, a "**Government Official**") or to any person under circumstances where such Company Affiliate knew or was aware of a high probability that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any Government Official, for the purpose of:

(i) (A) influencing any act or decision of such Government Official in his/her official capacity, (B) inducing such Government Official to do or omit to do any act in violation of his/her lawful duty, (C) securing any improper advantage, or (D) inducing such Government Official to influence or affect any act or decision of any Governmental Entity, or

(ii) assisting the Company or its Subsidiaries in obtaining or retaining business for or with, or directing business to, the Company or its Subsidiaries.

Neither the Company nor any of its Subsidiaries will use, directly or indirectly, any part of the proceeds of the offering in any manner that would constitute a violation of Anti-Corruption Laws.

(p) Sarbanes-Oxley Act. The Company and each of its Subsidiaries is in material compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002, as amended, and any and all applicable rules and regulations promulgated by the SEC thereunder.

(q) Transactions With Affiliates. Except as set forth on Schedule 3(q), during the past two (2) years, no current or former employee, partner, director, officer or shareholder (direct or indirect) of the Company or its Subsidiaries, or any associate, or, to the knowledge of the Company, any affiliate of any thereof, or any relative with a relationship no more remote than first cousin of any of the foregoing, is presently, or has ever been, (i) a party to any transaction with the Company or its Subsidiaries (including any contract, agreement or other arrangement providing for the furnishing of services by, or rental of real or personal property from, or otherwise requiring payments to, any such director, officer or shareholder or such associate or affiliate or relative Subsidiaries (other than for ordinary course services as employees, officers or directors of the Company or any of its Subsidiaries)) or (ii) the direct or indirect owner of an interest in any corporation, firm, association or business organization which is a competitor, supplier or customer of the Company or its Subsidiaries (except for a passive investment (direct or indirect) in less than 5% of the common stock or ordinary shares, as applicable, of a company whose securities are traded on or quoted through an Eligible Market (as defined below)), nor does any such Person receive income from any source other than the Company or its Subsidiaries which relates to the business of the Company or its Subsidiaries or should properly accrue to the Company or its Subsidiaries. Except as set forth on Schedule 3(q), no employee, officer, shareholder or director of the Company or any of its Subsidiaries or member of his or her immediate family is indebted to the Company or its Subsidiaries, as the case may be, nor is the

Company or any of its Subsidiaries indebted (or committed to make loans or extend or guarantee credit) to any of them, other than (i) for payment of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on behalf of the Company or its Subsidiaries, as the case may be, and (iii) for other standard employee benefits made generally available to all employees or executives (including share option agreements outstanding under any share option plan approved by the Board of Directors of the Company).

(r) Equity Capitalization.

(i) Authorized and Outstanding Capital Stock. As of the date hereof, the authorized capital stock of the Company consists of (A) 500,000,000 shares of Common Stock, of which, 27,077,444 are issued and outstanding and 29,920,657 shares are reserved for issuance pursuant to Convertible Securities (as defined below) (other than the Notes and Warrants) exercisable or exchangeable for, or convertible into, shares of Common Stock, and (B) 10,000,000 shares of Preferred Stock, none of which are issued and outstanding. All of such outstanding shares are duly authorized and have been, or upon issuance will be, validly issued and are fully paid and nonassessable. No shares of Common Stock are held in the treasury of the Company. "**Convertible Securities**" means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock and Options (as defined below)) or any of its Subsidiaries.

(ii) Valid Issuance; Available Shares; Affiliates. Schedule 3(r)(ii) sets forth the number of shares of Common Stock that are (A) reserved for issuance pursuant to Convertible Securities (other than the Warrants and Notes) and (B) as of the date set forth therein, owned by Persons who are "affiliates" (as defined in Rule 405 of the 1933 Act and calculated based on the assumption that only officers, directors and holders of at least 10% of the Company's issued and outstanding Common Stock are "affiliates" without conceding that any such Persons are "affiliates" for purposes of federal securities laws) of the Company or any of its Subsidiaries. To the Company's knowledge, except as set forth on Schedule 3(r)(ii), no Person owns 10% or more of the Company's issued and outstanding shares of Common Stock (calculated based on the assumption that all Convertible Securities, whether or not presently exercisable or convertible, have been fully exercised or converted (as the case may be) taking account of any limitations on exercise or conversion (including "blockers") contained therein without conceding that such identified Person is a 10% stockholder for purposes of federal securities laws).

(iii) Existing Securities; Obligations. Except as set forth on Schedule 3(r)(iii): (A) none of the Company's or any Subsidiary's shares, interests or capital stock is subject to preemptive rights or any other similar rights or Liens suffered or permitted by the Company or any Subsidiary; (B) other than stock options and restricted stock awarded to employees, directors and consultants of the Company under equity incentive plans adopted by the Board of Directors of the Company and described in the SEC Documents, there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible

into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares, interests or capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries; (C) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act; (D) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (E) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; and (F) neither the Company nor any Subsidiary has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement.

(iv) Organizational Documents. The Company has furnished to the Buyers true, correct and complete copies of the Company's Certificate of Incorporation, as amended and as in effect on the date hereof (the "**Certificate of Incorporation**") and the Company's bylaws, as amended and as in effect on the date hereof (the "**Bylaws**"), and the terms of all Convertible Securities and the material rights of the holders thereof in respect thereto.

(s) Indebtedness and Other Contracts. Except as set forth on Schedule 3(s), neither the Company nor any of its Subsidiaries (i) has any outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound, in an aggregate amount in excess of $1,000,000, (ii) has any financing statements securing obligations in any amounts filed against the Company or any of its Subsidiaries or with respect to any of their respective assets; (iii) is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (iv) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries have any liabilities or obligations required to be disclosed in the SEC Documents which are not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company's or its Subsidiaries' respective businesses consistent with past practices and which, individually or in the aggregate, do not or could not have a Material Adverse Effect. For purposes of this Agreement: (x) "**Indebtedness**" of any Person means, without duplication, (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, "capital leases" in accordance with GAAP) (other than trade payables entered into in the ordinary course of business consistent with past practice), (C) all reimbursement or payment obligations with

respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; and (y) "**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(t) Litigation. There is no material action, suit, arbitration, proceeding, or, to the Company's knowledge, inquiry or investigation before or by the Principal Market, any court, public board, other Governmental Entity, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, the Common Stock or any of the Company's or its Subsidiaries' officers or directors, whether of a civil or criminal nature or otherwise, in their capacities as such, except as set forth in Schedule 3(t). To the knowledge of the Company, no director, officer or employee of the Company or any of its Subsidiaries has willfully violated 18 U.S.C. §1519 or engaged in spoliation in reasonable anticipation of litigation. Without limitation of the foregoing, except as set forth in Schedule 3(t), there has not been, and to the knowledge of the Company, there is not pending, contemplated or anticipated, any inquiry or investigation by the SEC involving the Company, any of its Subsidiaries or any current or former director or officer of the Company or any of its Subsidiaries. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the 1933 Act or the 1934 Act. After reasonable inquiry of its officers (as defined in Rule 16a-1(f) promulgated under the 1934 Act) and members of its Board of Directors, the Company is not aware of any fact which might result in or form the basis for any such action, suit, arbitration, investigation, inquiry or other proceeding. Neither the Company nor any of its Subsidiaries is subject to any order, writ, judgment, injunction, decree, determination or award of any Governmental Entity.

(u) Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged. Except as set forth in Schedule 3(u), neither the Company nor any of its Subsidiaries has been refused any insurance coverage sought or applied for, and neither the Company nor any of its Subsidiaries has any reason to believe that it will be unable to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(v) Employee Relations. Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or employs any member of a union. The Company and its Subsidiaries believe that their relations with their employees are good. No executive officer (as defined in Rule 501(f) promulgated under the 1933 Act) or other key employee of the Company or any of its Subsidiaries has notified the Company or any such Subsidiary that such officer intends to leave the Company or any such Subsidiary or otherwise terminate such officer's employment with the Company or any such Subsidiary. To the knowledge of the Company, no executive officer or other key employee of the Company or any of its Subsidiaries is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer or other key employee (as the case may be) does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in material compliance with all applicable federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(w) Title. Each of the Company and its Subsidiaries holds good title to, or a valid leasehold interest in, all real property, leases in real property, facilities or other interests in real property owned or held by the Company or any of its Subsidiaries that is material to the business of the Company (the "**Real Property**"). None of the Company or any of its Subsidiaries owns any Real Property. Any Real Property held under lease by the Company or any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere in any material respect with the use made and proposed to be made of such property and buildings by the Company or any of its Subsidiaries.

(x) Fixtures and Equipment. Each of the Company and its Subsidiaries (as applicable) has good title to, or a valid leasehold interest in, the tangible personal property, equipment, improvements, fixtures, and other personal property and appurtenances that are necessary for the Company and its Subsidiaries to conduct their respective businesses (the "**Fixtures and Equipment**"). The Fixtures and Equipment are structurally sound, are in good operating condition and repair, are adequate for the uses to which they are being put, are not in need of maintenance or repairs except for ordinary, routine maintenance and repairs and are sufficient for the conduct of the Company's and/or its Subsidiaries' businesses (as applicable) in the manner as conducted prior to the Closing. Except as set forth on Schedule 3(x), each of the Company and its Subsidiaries owns all of its Fixtures and Equipment free and clear of all Liens except for (i) Liens for current taxes not yet due or taxes being contested in good faith by appropriate proceedings and for which adequate reserves have been established, (ii) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto and (iii) Liens securing obligations under the Senior Credit Agreement.

(y) Intellectual Property Rights. The Company and its Subsidiaries own or possess adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, original works of authorship, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor ("**Intellectual Property Rights**") necessary to conduct their respective businesses as now conducted. The Company does not have any knowledge of any infringement by the Company or its Subsidiaries of Intellectual Property Rights of others. There is no claim, action or proceeding being made or brought, or to the knowledge of the Company or any of its Subsidiaries, being threatened, against the Company or any of its Subsidiaries regarding its Intellectual Property Rights, except where such claim, action or proceeding is not reasonably likely to result in a Material Adverse Effect. Except as set forth on Schedule 3(y), neither the Company nor any of its Subsidiaries has received any notice alleging any such infringement or claim, action or proceeding.

(z) Environmental Laws. (i) The Company and its Subsidiaries (A) are in compliance with any and all Environmental Laws (as defined below), (B) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (C) are in compliance with all terms and conditions of any such permit, license or approval where, except in each of the foregoing clauses (A), (B) and (C), where the failure to so comply or having such permits, licenses or other approval would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The term "**Environmental Laws**" means all federal, state, local or foreign laws or regulations relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous materials, substances or wastes (collectively, "**Hazardous Materials**") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of, or exposure to, Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(i) No Hazardous Materials:

(A) to the Company's knowledge, have been disposed of or otherwise released from any Real Property of the Company or any of its Subsidiaries in violation of any Environmental Laws; or

(B) to the Company's knowledge, are present on, over, beneath, in or upon any Real Property or any portion thereof in quantities that would constitute a violation of any Environmental Laws or in quantities, a manner or location that would reasonably be expected to require remedial action pursuant to any Environmental Laws. No prior use by the Company or any of its Subsidiaries of any Real Property has occurred that violates any Environmental Laws, which violation would have a Material Adverse Effect on the business of the Company or any of its Subsidiaries.

(ii) To the Company's knowledge, neither the Company nor any of its Subsidiaries knows of any other Person that has stored, treated, recycled, disposed of or otherwise located on any Real Property any Hazardous Materials, including, without limitation, such substances as asbestos and polychlorinated biphenyls.

(iii) To the knowledge of the Company, none of the Real Property is on any federal or state "Superfund" list or Comprehensive Environmental Response, Compensation and Liability Information System ("**CERCLIS**") list or any state environmental agency list of sites under consideration for CERCLIS, nor subject to any environmental related Liens.

(iv) Neither the Company nor its Subsidiaries is subject to any pending or, to the knowledge of the Company and its Subsidiaries, threatened claim or proceeding to any Environmental Laws, except for any claims or proceeding that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(aa) Tax Status. The Company and each of its Subsidiaries (i) has timely made or filed all foreign, federal and state income and all other material tax returns, reports and declarations required by any jurisdiction to which it is subject through the date of this Agreement or have requested extensions thereof (except where the failure to file would not, individually or in the aggregate, have a Material Adverse Effect) and (ii) has timely paid all material taxes and other governmental assessments and charges shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and for which reserves required by GAAP have been created in the financial statements of the Company or for cases in which the failure to pay would not have a Material Adverse Effect. There is no tax deficiency that has been determined adversely to the Company or any of its Subsidiaries which has had a Material Adverse Effect, nor does the Company or its Subsidiaries have any knowledge or notice of any tax deficiency which could reasonably be expected to be determined adversely to the Company or its Subsidiaries and which could reasonably be expected to have a Material Adverse Effect.

(bb) Internal Accounting and Disclosure Controls. Except as set forth in Schedule 3(bb), the Company and each of its Subsidiaries maintains internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the 1934 Act) that is effective to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. Except as set forth in Schedule 3(bb), the Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the 1934 Act) that are

effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. Except as set forth in Schedule 3(bb), since the filing of the Annual Report on Form 10-K for the year ended December 31, 2019, neither the Company nor any of its Subsidiaries has received any notice or correspondence from any accountant, Governmental Entity or other Person relating to any potential material weakness or significant deficiency in any part of the internal controls over financial reporting of the Company or any of its Subsidiaries.

(cc) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company or any of its Subsidiaries and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its 1934 Act filings and is not so disclosed or that otherwise could be reasonably likely to have a Material Adverse Effect.

(dd) Investment Company Status. The Company is not, and upon consummation of the sale of the Securities and the application of the proceeds thereof, will not be, an "investment company," or a company controlled by an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(ee) Acknowledgement Regarding Buyers' Trading Activity. It is understood and acknowledged by the Company that (i) following the public disclosure of the transactions contemplated by the Transaction Documents, in accordance with the terms thereof, none of the Buyers have been asked by the Company or any of its Subsidiaries to agree, nor has any Buyer agreed with the Company or any of its Subsidiaries, to desist from effecting any transactions in or with respect to (including, without limitation, purchasing or selling, long and/or short) any securities of the Company, or "derivative" securities based on securities issued by the Company or to hold any of the Securities for any specified term; (ii) any Buyer, and counterparties in "derivative" transactions to which any such Buyer is a party, directly or indirectly, presently may have a "short" position in the Common Stock which was established prior to such Buyer's knowledge of the transactions contemplated by the Transaction Documents; (iii) each Buyer shall not be deemed to have any affiliation with or control over any arm's length counterparty in any "derivative" transaction; and (iv) each Buyer may rely on the Company's obligation to timely deliver shares of Common Stock as and when required pursuant to the Transaction Documents for purposes of effecting trading in the Common Stock of the Company. The Company further understands and acknowledges that following the public disclosure of the transactions contemplated by the Transaction Documents pursuant to the 8-K Filing (as defined below) one or more Buyers may engage in hedging and/or trading activities (including, without limitation, the location and/or reservation of borrowable shares of Common Stock) at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value and/or number of the Underlying Shares deliverable with respect to the Securities are being determined and such hedging and/or trading activities (including, without limitation, the location and/or reservation of borrowable shares of Common Stock), if any, can

reduce the value of the existing stockholders' equity interest in the Company both at and after the time the hedging and/or trading activities are being conducted. The Company acknowledges that such aforementioned hedging and/or trading activities do not constitute a breach of this Agreement, the Notes, the Warrants or any other Transaction Document or any of the documents executed in connection herewith or therewith.

(ff) Manipulation of Price. Neither the Company nor any of its Subsidiaries has, and, to the knowledge of the Company, no Person acting on their behalf has, directly or indirectly, (i) taken any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company or any of its Subsidiaries to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company or any of its Subsidiaries or (iv) paid or agreed to pay any Person for research services with respect to any securities of the Company or any of its Subsidiaries.

(gg) U.S. Real Property Holding Corporation. Neither the Company nor any of its Subsidiaries is, or has ever been, and so long as any of the Securities are held by any of the Buyers, shall become, a U.S. real property holding corporation within the meaning of Section 897 of the Code, and the Company and each Subsidiary shall so certify upon any Buyer's request.

(hh) Transfer Taxes. All stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the issuance, sale and transfer of the Securities to be sold to each Buyer hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with; provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any Underlying Shares pursuant to the Warrants or Notes, as applicable, in a name other than that of the Buyer of such Warrants or Notes, and the Company shall not be required to issue or deliver such Underlying Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

(ii) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries is subject to the Bank Holding Company Act of 1956, as amended (the "**BHCA**") and to regulation by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**"). Neither the Company nor any of its Subsidiaries owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(jj) Shell Company Status. The Company is not, and has never been, an issuer identified in, or subject to, Rule 144(i).

(kk) Illegal or Unauthorized Payments; Political Contributions. Neither the Company nor any of its Subsidiaries nor, to the best of the Company's knowledge (after reasonable inquiry of its officers and directors), any of the officers, directors, employees, agents or other representatives of the Company or any of its Subsidiaries or affiliates, has, directly or indirectly, made or authorized any payment, contribution or gift of money, property, or services, whether or not in contravention of applicable law, (i) as a kickback or bribe to any Person or (ii) to any political organization, or the holder of or any aspirant to any elective or appointive public office to influence official action or secure an improper advantage, except for personal political contributions not involving the direct or indirect use of funds of the Company or any of its Subsidiaries.

(ll) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in material compliance with the USA Patriot Act of 2001 and all other applicable U.S. and non-U.S. anti-money laundering laws and regulations.

(mm) Sanctions. None of the Company, any of its Subsidiaries or any director, officer, employee or, to the knowledge of the Company and its Subsidiaries, agent or other person acting for or on behalf of the foregoing is the subject or target of any economic or financial sanctions imposed, administered or enforced by the United States (including the U.S. Department of the Treasury Office of Foreign Assets Control and the U.S. Department of State) or other relevant sanctions authority (collectively, "**Sanctions**" and each such Person, a "**Sanctioned Person**"). The operations of the Company and its Subsidiaries are, and have been conducted within the past five (5) years, in compliance with applicable Sanctions. Neither the Company nor any of its Subsidiaries will, directly or indirectly, use any part of the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, to fund or facilitate any dealings or transactions with, involving or for the benefit of any Sanctioned Person, or otherwise in any manner that would constitute or give rise to a violation of any Sanctions by any Person (including any Person participating in the offering, whether as buyer, underwriter, advisor, investor or otherwise).

(nn) Management. During the past five year period, no current or former officer or director, to the knowledge of the Company, has been the subject of:

(i) a petition under bankruptcy laws or any other insolvency or moratorium law or the appointment by a court of a receiver, fiscal agent or similar officer for such Person, or any partnership in which such person was a general partner at or within two years before the filing of such petition or such appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of the filing of such petition or such appointment;

(ii) a conviction in a criminal proceeding or a named subject of a pending criminal proceeding (excluding traffic violations that do not relate to driving while intoxicated or driving under the influence);

(iii) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining any such person from, or otherwise limiting, the following activities:

(1) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the United States Commodity Futures Trading Commission or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(2) Engaging in any particular type of business practice; or

(3) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of securities laws or commodities laws;

(iv) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any authority barring, suspending or otherwise limiting for more than sixty (60) days the right of any such person to engage in any activity described in the preceding sub paragraph, or to be associated with persons engaged in any such activity;

(v) a finding by a court of competent jurisdiction in a civil action or by the SEC or other authority to have violated any securities law, regulation or decree and the judgment in such civil action or finding by the SEC or any other authority has not been subsequently reversed, suspended or vacated; or

(vi) a finding by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding has not been subsequently reversed, suspended or vacated.

(oo) Stock Option Plans. Each stock option granted by the Company was granted (i) in accordance with the terms of the applicable stock option plan of the Company and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. To the Company's knowledge, no stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no policy or practice of the Company to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(pp) Cybersecurity. The information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases used or owned by, or leased or licensed to, the Company or any of its Subsidiaries (collectively, "**IT Systems**") are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company and its Subsidiaries as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants. The Company and its Subsidiaries have implemented and maintained commercially

reasonable physical, technical and administrative controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data, including "Personal Data," used in connection with their businesses. "**Personal Data**" means (i) a natural person's name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver's license number, passport number, credit card number, bank information, or customer or account number; (ii) any information which would qualify as "personally identifying information" under the Federal Trade Commission Act, as amended; (iii) "personal data" as defined by the European Union General Data Protection Regulation ("**GDPR**") (EU 2016/679); (iv) any information which would qualify as "protected health information" under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively, "**HIPAA"**); and (v) any other piece of information that allows the identification of such natural person, or his or her family, or permits the collection or analysis of any data related to an identified person's health or sexual orientation. There have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same. The Company and its Subsidiaries are presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification.

(qq) Compliance with Data Privacy Laws. The Company and its Subsidiaries are, and at all prior times were, in material compliance with all applicable state and federal data privacy and security laws and regulations, including without limitation HIPAA, and the Company and its Subsidiaries have taken commercially reasonable actions to prepare to comply with, and since May 25, 2018, have been and currently are in compliance with, the GDPR (EU 2016/679) (collectively, the "**Privacy Laws**"). To ensure compliance with the Privacy Laws, the Company and its Subsidiaries have in place, comply with, and take appropriate steps reasonably designed to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling, and analysis of Personal Data (the "**Policies**"). The Company and its Subsidiaries have at all times made all disclosures to users or customers required by applicable laws and regulatory rules or requirements, and none of such disclosures made or contained in any Policy have, to the knowledge of the Company, been inaccurate or in violation of any applicable laws and regulatory rules or requirements in any material respect. Neither the Company nor any Subsidiary: (i) has received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any Privacy Law; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law.

(rr) No Disqualification Event. With respect to Securities to be offered and sold hereunder in reliance on Rule 506(b) under the 1933 Act ("**Regulation D Securities**"), none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering contemplated hereby, or, to the Company's knowledge, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the 1933 Act) connected with the Company in any capacity at the time of sale (each, an "**Issuer Covered Person**" and, together, "**Issuer Covered Persons**") is subject to any Disqualification Event, except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Buyers a copy of any disclosures provided thereunder.

(ss) Other Covered Persons. The Company is not aware of any Person that has been or will be paid (directly or indirectly) remuneration for solicitation of Buyers or potential purchasers in connection with the sale of any Regulation D Securities.

(tt) Margin Stock . The application of the proceeds received by the Company from the issuance, sale and delivery of the Notes as described in the Transaction Documents will not violate Regulation T, U or X of the Board of Governors of the Federal Reserve system or any other regulation of such Board of Governors.

(uu) Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided any of the Buyers or their agents or counsel with any information that constitutes or could reasonably be expected to constitute material, non-public information concerning the Company or any of its Subsidiaries, other than the existence of the transactions contemplated by this Agreement and the other Transaction Documents. The Company understands and confirms that each of the Buyers will rely on the foregoing representations in effecting transactions in securities of the Company. All disclosure provided to the Buyers regarding the Company and its Subsidiaries, their businesses and the transactions contemplated hereby, including the schedules to this Agreement, furnished by or on behalf of the Company or any of its Subsidiaries is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. All of the written information furnished after the date hereof by or on behalf of the Company or any of its Subsidiaries to each Buyer pursuant to or in connection with this Agreement and the other Transaction Documents, taken as a whole, will be true and correct in all material respects as of the date on which such information is so provided and will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that no Buyer makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.

(vv) No Additional Agreements. The Company does not have any agreement or understanding with any Buyer with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.

**4. COVENANTS.**

(a) Commercially Reasonable Efforts. Each Buyer shall use its commercially reasonable efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 6 of this Agreement. The Company shall use commercially reasonable efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 7 of this Agreement.

(b) Blue Sky. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to, qualify the Securities for sale to the Buyers at the Closing pursuant to this Agreement under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to the Buyers on or prior to the Closing Date. Without limiting any other obligation of the Company under this Agreement, the Company shall timely make all filings and reports relating to the offer and sale of the Securities required under all applicable securities laws (including, without limitation, all applicable federal securities laws and all applicable "Blue Sky" laws), and the Company shall comply with all applicable foreign, federal, state and local laws, statutes, rules, regulations and the like relating to the offering and sale of the Securities to the Buyers.

(c) Reporting Status. Until the earlier of (i) the date upon which the Buyers shall have sold all of the Securities and (ii) the one-year anniversary of the termination of the Notes and full exercise or expiration of the Warrants (the "**Reporting Period**"), the Company shall timely file all reports required to be filed with the SEC pursuant to the 1934 Act (reports filed in compliance with the time period specified in Rule 12b-25 promulgated under the 1934 Act shall be considered timely for this purpose), and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require or otherwise permit such termination.

(d) Use of Proceeds. The Company will use the net proceeds from the sale of the Securities to fund the acquisition of the assets of Healing Solutions, LLC, a Delaware limited liability company.

(e) Financial Information. The Company agrees to send the following to each Buyer during the Reporting Period (i) unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, within one (1) Business Day after the filing thereof with the SEC, a copy of its Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, any Current Reports on Form 8-K and any registration statements (other than on Form S-8 or Form S-4) or amendments filed pursuant to the 1933 Act, (ii) unless the following are either filed with the SEC through EDGAR or are otherwise widely disseminated via a recognized news release service (such as PR Newswire), on the same day as the release thereof, facsimile copies of all press releases issued by the Company or any of its Subsidiaries and (iii) unless the following are filed with the SEC through EDGAR, copies of any notices and other information made available or given to the stockholders of the Company generally, contemporaneously with the making available or giving thereof to the stockholders.

(f) Listing. The Company shall promptly secure the listing or designation for quotation (as the case may be) of all of the Underlying Shares upon each national securities exchange and automated quotation system, if any, upon which the Common Stock is then listed or designated for quotation (as the case may be) (subject to official notice of issuance) and shall maintain such listing or designation for quotation (as the case may be) of all Underlying Shares from time to time issuable under the terms of the Transaction Documents on such national securities exchange or automated quotation system. The Company shall maintain the Common Stock's listing or authorization for quotation (as the case may be) on the Principal Market, The New York Stock Exchange, the NYSE American, the Nasdaq Global Market or the Nasdaq Global Select Market (each, an "**Eligible Market**"). Neither the Company nor any of its Subsidiaries shall take any action which could be reasonably expected to result in the delisting or suspension of the Common Stock on an Eligible Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(f).

(g) Fees. The Company shall pay for the reasonable and documented out-of-pocket due diligence and legal fees and expenses actually incurred by the Buyers in connection with the structuring, documentation, negotiation, and closing of the transactions contemplated by the Transaction Documents (and the enforcement thereof by the Buyers), including, without limitation, all actual, reasonable and documented legal fees and disbursements of Latham & Watkins LLP, counsel to the lead Buyer, and due diligence and regulatory filings in connection therewith (the "**Transaction Expenses**") and such Transaction Expenses, to the extent they have not already been paid to the Buyer, may be withheld by the lead Buyer from its Purchase Price at the Closing. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, transfer agent fees, The Depository Trust Company ("**DTC**") fees or broker's commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, actual, reasonable and documented attorneys' fees and actual, reasonable and documented out-of-pocket expenses) arising in connection with any claim relating to any such payment; provided, however that the Company shall not be obligated to hold any Buyer harmless against any liability, loss or expense resulting from any dispute solely among any Buyers or from any gross negligence or willful misconduct of any Buyer or any Persons engaged by any Buyer. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Securities to the Buyers.

(h) Pledge of Securities. Notwithstanding anything to the contrary contained in this Agreement, the Company acknowledges and agrees that the Securities may be pledged by a Buyer in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Buyer effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document, including, without limitation, Section 2(g) hereof; provided that a Buyer and its pledgee shall be required to comply with the provisions of Section 2(g) hereof in order to effect a sale, transfer or assignment of Securities to such pledgee. The Company hereby agrees to execute and deliver such documentation as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by a Buyer.

(i) Disclosure of Transactions and Other Material Information.

(i) Disclosure of Transaction. The Company shall, on or before 5:30 p.m., New York time, on the date of this Agreement, issue a press release (the "**Press Release**") reasonably acceptable to the Buyers disclosing the material terms of the transactions contemplated by the Transaction Documents. No later than 5:30 p.m., New York time, on February 3, 2021, the Company shall file a Current Report on Form 8-K describing all the material terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act and attaching all the material Transaction Documents (the "**8-K Filing**"). From and after the filing of the 8-K Filing, the Company shall have disclosed all material, non-public information (if any) provided to any of the Buyers by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the issuance of the Press Release, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and any of the Buyers or any of their affiliates, on the other hand, shall terminate.

(ii) Limitations on Disclosure. Other than as required under the Transaction Documents (but subject to any other disclosure obligations of the Company with respect thereto), the Company shall not, and the Company shall cause each of its Subsidiaries and each of its and their respective officers, directors, employees and agents not to, provide any Buyer with any material, non-public information regarding the Company or any of its Subsidiaries from and after the date hereof unless prior thereto such Buyer shall have consented in writing to the receipt of such information and agreed with the Company to keep such information confidential. If any material, non-public information is required to be provided by the Company or any of its Subsidiaries to any Buyer pursuant to the Transaction Documents, the Company shall obtain each Buyer's prior written consent prior to providing such information to such Buyer, and if any Buyer fails to provide such written consent, the Company shall not be deemed to be in breach of any of the Transaction Documents as a result of the failure to provide such information. To the extent that the Company delivers any material, non-public information to a Buyer without such Buyer's prior written consent in breach of the foregoing sentence, the Company hereby covenants and agrees that such Buyer shall not have any duty of confidentiality with respect to, or a duty not to trade on the basis of, such material, non-public information, provided that the Buyer shall remain subject to applicable law. Subject to the foregoing, neither the Company, its Subsidiaries nor any Buyer shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, the Company shall be entitled, without the prior approval of any Buyer, to make the Press Release and any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing and (ii) as is required by applicable law and regulations (provided that in the case of clause (i) above, each Buyer shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). Without the prior written consent of the applicable Buyer (which may be granted or withheld in such

Buyer's sole discretion), the Company shall not (and shall cause each of its Subsidiaries and affiliates to not) disclose the name of such Buyer in any filing, announcement, release or otherwise, except in the 8-K Filing and as otherwise may be required by applicable law or regulations. Notwithstanding anything contained in this Agreement to the contrary and without implication that the contrary would otherwise be true, the Company expressly acknowledges and agrees that no Buyer shall have (unless expressly agreed to by a particular Buyer after the date hereof in a written definitive and binding agreement executed by the Company and such particular Buyer (it being understood and agreed that no Buyer may bind any other Buyer with respect thereto)), any duty of confidentiality with respect to, or a duty not to trade on the basis of, any material, non-public information regarding the Company or any of its Subsidiaries.

(j) Additional Issuance of Securities.

(i) So long as any Warrants or Notes remain outstanding, the Company will not, without the prior written consent of the Required Holders (as defined below), issue any Warrants or Notes (other than to the Buyers as contemplated hereby) and the Company shall not issue any other securities that would cause a breach or default under the Notes or Warrants. In addition, so long as any Warrants or Notes remain outstanding, the Company and each Subsidiary shall be prohibited from effecting, or entering into an agreement to effect, any Subsequent Placement (as defined below) involving a Variable Rate Transaction. "**Variable Rate Transaction**" means a transaction in which the Company or any Subsidiary (i) issues or sells any Convertible Securities either (A) at a conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such Convertible Securities, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such Convertible Securities or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock, other than pursuant to a customary "weighted average" anti-dilution provision or customary adjustments for stock splits, stock dividends, stock combinations, recapitalizations and similar events or (ii) enters into any agreement whereby the Company or any Subsidiary may sell securities at a future determined price (other than standard and customary "preemptive" or "participation" rights); provided that, for avoidance of doubt (x) the entry into any "at-the-market" offering within the meaning of Rule 415(a)(4) of the Securities Act (an "**ATM Issuance**") whereby the Company or any Subsidiary may sell securities at a future determined price (other than standard and customary "preemptive" or "participation" rights) and any issuance of any securities pursuant thereto, or (y) the entry into any agreement to effect any issuance by the Company of Common Stock or Convertible Securities (or a combination of units thereof) involving a Variable Rate Transaction that constitutes an Exempt Issuance (as defined below) and any issuance of any securities pursuant thereto, shall not be considered a "Variable Rate Transaction". An "**Exempt Issuance**" means the issuance of (a) Common Stock, options, restricted stock awards, restricted stock units, stock appreciation rights or other equity awards to employees, officers, directors of the Company pursuant to an Approved Stock Plan or any stock or option plan or other agreement duly adopted by: (i) the Board of Directors or the compensation committee thereof and approved by the

stockholders of the Company for the purposes of providing compensation for services provided to the Company in their capacity as such, or (ii) the Board of Directors or the compensation committee thereof as an inducement grant in accordance with Nasdaq Listing Rule 5635(c)(4), (b) any securities issued upon the exercise or exchange of or conversion of any Convertible Securities issued and outstanding on the date of this Agreement (including, for avoidance of doubt, the Existing Note (as defined below), as amended by the Note Amendment), provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities, (c) securities issued as consideration in acquisitions, divestitures, partnerships, licenses, collaborations or strategic transactions approved by the Board of Directors or a majority of the members of a committee of directors established for such purpose, which acquisitions, divestitures, partnerships, licenses, collaborations or strategic transactions can have a Variable Rate Transaction component, provided that any such issuance shall only be to a Person (or to the equity holders of a Person) which is, itself or through its subsidiaries, an operating company or an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, or (d) any securities issued to consultants, advisors or independent contractors as compensation for services provided to the Company in their capacity as such, and not for the purpose of raising capital, pursuant to any consulting agreement, advisory agreement or independent contractor agreement approved by the Board of Directors or the compensation committee thereof.

(ii) Each Buyer shall be entitled to obtain injunctive relief against the Company and its Subsidiaries to preclude any issuance prohibited by this Section 4(j), which remedy shall be in addition to any right to collect damages.

(k) Reservation of Shares. So long as any of the Warrants or Notes remain outstanding, the Company shall at all times keep reserved for issuance pursuant to the Warrants and Notes, a number of shares of Common Stock at least equal to the sum of (x) 100% of the maximum number of shares of Common Stock as shall be necessary to satisfy the Company's obligation to issue shares of Common Stock under the Warrants then outstanding, plus (y) ten million (10,000,000) shares of Common Stock for issuance upon any issuance of the Note Shares (collectively, the "**Required Reserve Amount**"); provided that at no time shall the number of shares of Common Stock reserved pursuant to this Section 4(k) be reduced other than in connection with any exercise of the Warrants or conversion of the Notes or any stock combination, reverse stock split or other similar transaction. The Required Reserve Amount (including, without limitation, each increase in the number of shares so reserved) shall be allocated pro rata among the holders of the Warrants and the Notes based on the number of shares of Common Stock issuable upon exercise of Warrants held by each holder thereof on the date of issuance of the Warrants (without regard to any limitations on exercise) and upon conversion of the Notes held by each holder thereof on the date of issuance of the Notes (without regards to any limitations on conversion) (collectively, the "**Authorized Share Allocation**"). In the event that a holder shall sell or otherwise transfer any of such holder's Warrants or Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share

Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Warrants or Notes shall be allocated to the remaining holders of Warrants and Notes, pro rata based on the number of shares of Common Stock issuable upon exercise of the Warrants and Notes then held by such holders thereof (without regard to any limitations on exercise or conversion). If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company's obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, obtain stockholder approval (if required) of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

(l) Compliance with Laws. None of the Company or any of its Subsidiaries shall violate any law, ordinance or regulation of any Governmental Entity, except where such violations would not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect.

(m) Passive Foreign Investment Company. The Company shall conduct its business, and shall cause its Subsidiaries to conduct their respective businesses, in such a manner as will ensure that the Company will not be deemed to constitute a passive foreign investment company within the meaning of Section 1297 of the Code.

(n) Restriction on Redemption and Cash Dividends. So long as any of the Notes are outstanding, except as otherwise permitted under the Notes, the Company shall not, directly or indirectly, redeem, or declare or pay any cash dividend or distribution on, any securities of the Company without the prior express written consent of the Required Holders (other than as required by the Notes or as required by the terms thereof as in effect on the date hereof); provided, however, that such written consent shall not be required for any repurchases, forfeitures, withholdings or transfers of securities pursuant to a net exercise of a Convertible Security to cover the payment of the exercise prices or the payment of withholding of taxes associated with the exercise or vesting of equity awards under any equity compensation plan of the Company or repurchases of Common Stock or upon an employee's, contractor's or consultant's termination of services.

(o) Corporate Existence. So long as any Notes or Warrants remain outstanding, the Company shall not be party to any Fundamental Change (as defined in the Notes) or a Fundamental Transaction (as defined in the Warrants) unless the Company is in compliance with the applicable provisions governing Fundamental Changes set forth in the Notes and the applicable provisions governing Fundamental Transactions set forth in the Warrants.

(p) Exercise Procedures. The form of exercise notice included in the Warrants and the terms of the Notes, as applicable, set forth the totality of the procedures required of the Buyers in order to exercise the Warrants or receive shares of Common Stock pursuant to the Notes, as applicable. Except as set forth in Section 5(c), no additional legal opinion, other information or instructions shall be required of the Buyers to exercise their Warrants or receive

shares of Common Stock pursuant to the Notes, as applicable. The Company shall honor exercises of the Warrants or an election by a Buyer to receive shares of Common Stock pursuant to the Notes, and shall deliver the Underlying Shares in accordance with the terms, conditions and time periods set forth in the Warrants and Notes, as applicable. Except as explicitly set forth in the Warrants or Notes, no legal opinion, information or instructions shall be required of the Buyers to receive Underlying Shares pursuant to the Warrants or Notes.

(q) Regulation M. The Company will not take any action prohibited by Regulation M under the 1934 Act, in connection with the distribution of the Securities contemplated hereby.

(r) General Solicitation. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act) or any person acting on behalf of the Company or such affiliate will solicit any offer to buy or offer to sell the Securities by means of any form of general solicitation or general advertising within the meaning of Regulation D, including: (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio; and (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(s) Integration. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act), or any person acting on behalf of the Company or such affiliate will sell, offer for sale, or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the 1933 Act) which will be integrated with the sale of the Securities in a manner which would require the registration of the Securities under the 1933 Act or require stockholder approval under the rules and regulations of the Principal Market and the Company will take all action that is appropriate or necessary to assure that its offerings of other securities will not be integrated for purposes of the 1933 Act or the rules and regulations of the Principal Market, with the issuance of Securities contemplated hereby.

(t) Right to Participate. Until the later of (x) the 18-month anniversary of the Closing Date, and (y) the date the Note is fully repaid the Company will not, directly or indirectly, offer, sell, grant any option to purchase, or otherwise dispose of (or announce any offer, sale, grant or any option to purchase or other disposition of) any of its or any Subsidiaries' debt, equity or equity equivalent securities, including without limitation any debt, preferred stock or other instrument or security (any such offer, sale, grant, disposition or announcement being referred to as a "**Subsequent Placement**"), unless the Company shall have first complied with this Section 4(t).

(A) The Company shall deliver to each Buyer an irrevocable written notice (the "**Offer Notice**") of any proposed or intended issuance or sale or exchange (the "**Offer**") of the securities being offered (the "**Offered Securities**") in a Subsequent Placement, which Offer Notice shall (v) include any offering documents and definitive documentation in connection with such Offer, (w) identify and describe the Offered Securities, (x) describe the price and other terms upon which they are to be issued, sold or exchanged, and the number or amount of the Offered Securities to be issued, sold or exchanged, (y) identify the persons or entities to which or with which the Offered Securities are to be offered, issued, sold or exchanged and (z) offer to issue and sell to or exchange with such Buyers up to an aggregate of forty percent (40%) of the Offered

Securities (unless such Offered Securities consist solely of the Common Stock of the Company or any of its Subsidiaries, in which case such amount shall be up to an aggregate of ten percent (10%) of the Offered Securities), allocated among such Buyers based on such Buyer's pro rata portion of the aggregate principal amount of Notes purchased hereunder (the "**Basic Amount**"). The terms and conditions upon which any Offer of the Offered Securities shall be made shall be identical for each Buyer. For the avoidance of doubt, each Buyer hereby acknowledges that any Offer Notice may constitute or contain material, non-public information, and each Buyer hereby consents to the receipt of any Offer Notice and any material, non-public information that may be included in an Offer Notice. If a Buyer notifies the Company that it does not consent to the receipt of an Offer Notice and any material, non-public information that may be included in an Offer Notice, then such Buyer shall be deemed to have waived its right to participate in such Subsequent Placement, and the Company shall be deemed to have complied with this Section 4(t).

(B) To accept an Offer, in whole or in part, such Buyer must deliver a written notice to the Company prior to the end of the second (2nd) Trading Day after such Buyer's receipt of the Offer Notice (the "**Offer Period**"), setting forth the portion of such Buyer's Basic Amount that such Buyer, or an affiliate of such Buyer that it designates, elects to purchase (the "**Notice of Acceptance**"). Notwithstanding anything to the contrary contained herein, if the Company desires to modify or amend the terms and conditions of the Offer prior to the expiration of the Offer Period, the Company may deliver to the Buyers a new Offer Notice and the Offer Period shall expire at the end of the second (2nd) Trading Day following such Buyer's receipt of such new Offer Notice.

(C) The Company shall have two (2) Business Days from the expiration of the Offer Period above to offer, issue, sell or exchange all or any part of such Offered Securities as to which a Notice of Acceptance has not been given by the Buyers (the "**Refused Securities**") pursuant to a definitive agreement (the "**Subsequent Placement Agreement**"), but only upon terms and conditions (including, without limitation, prices and interest rates) that are not more favorable to the acquiring Person or Persons or less favorable to the Company than those set forth in the Offer Notice and to publicly announce (a) the execution of such Subsequent Placement Agreement and (b) either (x) the consummation of the transactions contemplated by such Subsequent Placement Agreement or (y) the termination of such Subsequent Placement Agreement, which shall be filed with the SEC on a Current Report on Form 8-K with such Subsequent Placement Agreement and any documents contemplated therein filed as exhibits thereto.

(D) In the event the Company shall propose to sell less than all the Refused Securities (any such sale to be in the manner and on the terms specified in Section 4(t)(C) above), then each Buyer may, at its sole option and in its sole discretion, reduce the number or amount of the Offered Securities specified in its Notice of Acceptance to an amount that shall be not less than the number or amount of the Offered Securities that such Buyer or its designee elected to purchase pursuant to Section 4(t)(B) above multiplied by a fraction, (i) the numerator of which shall be the number or amount of Offered Securities the Company actually proposes to issue, sell or exchange (including

Offered Securities to be issued or sold to Buyers or their designees pursuant to Section 4(t)(C) above prior to such reduction, but giving effect to the Refused Securities that the Company has determined not to issue, sell or exchange) and (ii) the denominator of which shall be the original amount of the Offered Securities. In the event that any Buyer so elects to reduce the number or amount of Offered Securities specified in its Notice of Acceptance, the Company may not issue, sell or exchange more than the reduced number or amount of the Offered Securities unless and until such securities have again been offered to the Buyers in accordance with Section 4(t)(A) above.

(E) Upon the closing of the issuance, sale or exchange of all or less than all of the Refused Securities, the Buyers or their designees shall acquire from the Company, and the Company shall issue to the Buyers, the number or amount of Offered Securities specified in the Notices of Acceptance, as reduced pursuant to Section 4(t)(D) above if the Buyers have so elected, upon the terms and conditions specified in the Offer. Notwithstanding anything to the contrary contained in this Agreement, if the Company does not consummate the closing of the issuance, sale or exchange of all or less than all of the Refused Securities, within two (2) Business Days of the expiration of the Offer Period, the Company shall issue to the Buyers or their designees, the number or amount of Offered Securities specified in the Notice of Acceptance, as reduced pursuant to Section 4(t)(D) above if the Buyers have so elected, upon the terms and conditions specified in the Offer. The purchase by the Buyers of any Offered Securities is subject in all cases to the preparation, execution and delivery by the Company and the Buyers of a purchase agreement relating to such Offered Securities reasonably satisfactory in form and substance to the Buyers and their respective counsel.

(F) Any Offered Securities not acquired by the Buyers or other persons in accordance with Section 4(t)(C) above may not be issued, sold or exchanged until they are again offered to the Buyers under the procedures specified in this Section 4(t).

(G) The Company and the Buyers agree that if any Buyer elects to participate in the Offer, (x) neither the Subsequent Placement Agreement with respect to such Offer nor any other transaction documents related thereto shall include any term or provisions whereby any Buyer shall be required to agree to any restrictions in trading as to any securities of the Company owned by such Buyer prior to such Subsequent Placement and (y) the Buyers or their designees shall be entitled to the same registration rights provided to other investors in the Subsequent Placement. In addition, the Company and each Buyer agree that, in connection with a Subsequent Placement, the transaction documents related to the Subsequent Placement shall include a requirement for the Company to issue a widely disseminated press release by 9:30 a.m. (New York City time) on the Trading Day of execution of the transaction documents in such Subsequent Placement (or, if the date of execution is not a Trading Day, or if the time of execution is after 4:00 p.m. (New York City time) on a Trading Day, on the immediately following Trading Day) that discloses the material terms of the transactions contemplated by the transaction documents in such Subsequent Placement.

(H) Notwithstanding anything to the contrary in this Section 4(t) and unless otherwise agreed to by the Buyers, the Company shall either confirm in writing to the Buyers that the transaction with respect to the Subsequent Placement has been abandoned or shall publicly disclose its intention to issue the Offered Securities, in either case in such a manner such that such Buyer will not be in possession of any material, non-public information, by the second (2nd) Trading Day following the date of delivery of the Offer Notice. If by such second (2nd) Trading Day no public disclosure regarding a transaction with respect to the Offered Securities has been made, and no notice regarding the abandonment of such transaction has been received by the Buyers, such transaction shall be deemed to have been abandoned and the Buyers shall not be deemed to be in possession of any material, nonpublic information with respect to the Company. Should the Company decide to pursue such transaction with respect to the Offered Securities, the Company shall provide each Buyer with another Offer Notice and each Buyer will again have the right of participation set forth in this Section 4(t). The Company shall not be permitted to deliver to the Buyers, in any 30-day period, more than: (a) one such Offer Notice with respect to which the Offered Securities consist solely of the Common Stock of the Company or any of its Subsidiaries, and (b) one such Offer Notice with respect to which the Offered Securities consist of any securities other than Common Stock of the Company or any of its Subsidiaries, in each case other than the Offer Notices contemplated by the last sentence of Section 4(t)(B) of this Agreement, and in no event may the delivery of an Offer Notice with respect to a second Offer of Offered Securities during any 30-day period be made to the Buyers unless either (1) such second Offer Notice is delivered concurrently with the first Offer Notice or (2) there is a gap of at least (2) Trading Days between when the Buyers have been cleansed (or deemed cleansed) of material non-public information regarding the Company resulting from the first Offer Notice.

(I) The restrictions contained in this Section 4(t) shall not apply in connection with any of the following: (t) Options or Convertible Securities issued under any Approved Stock Plan, (u) the issuance of Common Stock upon the exercise of Options or warrants, the settlement or vesting of restricted stock units, stock appreciation rights or restricted stock awards (including shares of Common Stock withheld by the Company for the purpose of paying on behalf of the holder thereof the exercise price of stock options or for paying taxes due as a result of such exercise or lapse of forfeiture restrictions), or the conversion of outstanding preferred stock or other outstanding Convertible Securities which are outstanding on the Closing Date or granted pursuant to an Approved Stock Plan after the Closing Date, provided, that such issuance of Common Stock upon exercise of such Options or Convertible Securities is made pursuant to the terms of either: (I) such Approved Stock Plan or (II) such Options or Convertible Securities in effect on the Closing Date and, in the case of (II), such Options or Convertible Securities are not amended, modified or changed on or after the Closing Date to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities, (v) any borrowings or extensions of credit under the Amended and Restated Credit and Security Agreement, dated November 23, 2018 (as amended, restated, refinanced or replaced from time to time, the "**Senior Credit Agreement**"), by and among Mohawk Group Holdings, Inc., Mohawk Group, Inc., certain subsidiaries of Mohawk Group, Inc., MidCap Funding X Trust and the financial institutions or other entities from time to time parties thereto, and any refinancing permitted by the Intercreditor Agreement of the Senior Credit Agreement with a new

revolving credit facility, (w) Options issued pursuant to, or Common Stock issuable upon the exercise of Options or upon the lapse of forfeiture restrictions on awards made pursuant to, any stock option exchange program of the Company, whether now in effect or hereafter implemented that is approved by the Board of Directors or the compensation committee thereof or the Company's stockholders, (x) Common Stock issued pursuant to an ATM Issuance (other than an ATM Issuance in which a single investor or group of investors purchases in excess of five million dollars ($5,000,000) in the aggregate of the Common Stock or warrants exercisable for Common Stock), (y) the issuance of promissory notes as consideration in any merger, acquisition, business combination or strategic investment (including any joint venture, marketing, distribution, collaboration, license, strategic alliance or partnership), provided, that such promissory note is not issued primarily for the purpose of raising capital, or (z) the issuance of Common Stock or any securities convertible into, or exercisable or exchangeable for, Common Stock, and the issuance of any Common Stock as a result of the conversion, exercise or exchange of any such securities, as consideration in any merger, acquisition, business combination or strategic investment (including any joint venture, marketing, distribution, collaboration, license, strategic alliance or partnership), or to consultants, advisors or independent contractors as compensation for services provided to the Company in their capacity as such, and not for the purpose of raising capital, pursuant to any consulting agreement, advisory agreement or independent contractor agreement approved by the Board of Directors or the compensation committee thereof. For purposes of this Section 4(t), (i) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities and (ii) "**Approved Stock Plan**" means any stock option plan or employee benefit plan or any stock or option plan or other agreement which has been approved by the Board of Directors of the Company prior to the date hereof, or any stock option plan or employee benefit plan or any stock or option plan or other agreement which is approved by: (A) the Board of Directors or the compensation committee thereof and the stockholders of the Company after the date hereof, or (B) the Board of Directors or the compensation committee thereof as inducement grants in accordance with Nasdaq Listing Rule 5635(c)(4) after the date hereof, pursuant to which shares of Common Stock, options to purchase Common Stock and other incentive equity awards may be issued to any employee, officer, consultant or director for services provided to the Company in their capacity as such.

(J) Notwithstanding the foregoing, the Company shall not be required to provide an Offer hereunder to the Buyers and the Buyers shall have no right to participate in a Subsequent Placement hereunder at any time during which the Buyers, the 2020 Buyers (as defined below) or any affiliate of the Buyers or the 2020 Buyers have a right under that certain Securities Purchase Agreement, dated as November 30, 2020, by and among the Company, and each of the investors listed on the Schedule of Buyers (the "**2020 Buyers**") attached thereto (the "**2020 Securities Purchase Agreement**") to participate in any Subsequent Placement (as defined in 2020 Securities Purchase Agreement). For avoidance of doubt, in no event shall the amount of Offered Securities that the Company is required to offer to the Buyers and the 2020 Buyers on an aggregate, combined basis exceed forty percent (40%) of the Offered Securities (unless such Offered Securities consist solely of the Common Stock of the Company or any of its Subsidiaries, in which case such amount shall be up to an aggregate of ten percent (10%) of the Offered Securities).

(u) Rule 144. The Company shall cause the Securities and any shares of Common Stock issuable pursuant to the Warrants or Notes to be eligible to be offered, sold or otherwise transferred by the Buyers pursuant to Rule 144 under the Securities Act, without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice under the Securities Act and without any requirement for registration under any state securities or "blue sky" law, on and after the date that is six (6) months following the Closing Date.

(v) Press Releases. Except for issuance of the Press Release and/or the 8-K Filing, the Company shall not, and shall not permit any of its Subsidiaries to, issue or disseminate to the public (by advertisement, press release or otherwise), submit for publication or otherwise cause or seek to publish any information naming any of the Buyers without the prior written consent of such Buyer; provided that, nothing in the foregoing shall be construed to prohibit the Company from making any submission or filing (i) which it is required to make by applicable law or pursuant to judicial process, (ii) as required by federal securities law in connection with the filing of final Transaction Documents with the SEC, or (iii) to the extent such disclosure is required by law or the Principal Market regulations; provided further, that (i) such filing or submission shall contain only such information as is necessary to comply with applicable law or judicial process and (ii) unless specifically prohibited by applicable law or court order, the Company shall promptly notify the Buyers of the requirement to make such submission or filing and provide the Buyers with a copy thereof.

(w) Amendment to Subordination Agreement. Within 14 days following the Closing Date, the Company shall duly execute and deliver to the Buyers the Amendment to Subordination Agreement, in the form attached hereto as Exhibit I.

**5. REGISTER; TRANSFER AGENT INSTRUCTIONS.**

(a) Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each holder of Securities), a register for the registration of the Securities in which the Company shall record the name and address of the Person in whose name the Securities have been issued (including the name and address of each transferee), the aggregate amount of the Notes and Warrants held by such Person and the number of Warrant Shares issuable pursuant to the terms of the Warrants held by such Person. The Company shall keep the register open and available for inspection of any Buyer or its legal representatives at any reasonable time and from time to time upon reasonable prior notice. This provision shall be construed such that the Securities, Notes, and Warrants are at all times maintained in "registered form" within the meanings of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any Treasury Regulations promulgated thereunder.

(b) Transfer Agent Instructions. The Company shall issue irrevocable instructions to its transfer agent and any subsequent transfer agent (as applicable) (the "**Transfer Agent**") in a form acceptable to each of the Buyers (the "**Irrevocable Transfer Agent Instructions**") to credit shares to each such Buyer's (or its designee's) account at DTC through its Deposit/Withdrawal At Custodian ("**DWAC**") System, provided that the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program ("**FAST**") and the shares are then eligible for transfer through the DWAC System, or, if the Transfer Agent is not participating in FAST or if the shares are not then eligible for transfer through the DWAC system, issue and dispatch by overnight courier to the address as specified in the exercise notice of the Warrant or the notice that a Buyer is electing to receive an Event of Default Stock Payment (as defined in the Note), a certificate, registered in the name of such Buyer or its designee, for the number of Warrant Shares to which the Buyer is entitled pursuant to such exercise or the number of Note Shares to which the Buyer is entitled pursuant to such conversion, for the Underlying Shares in such amounts as specified from time to time by each Buyer to the Company pursuant to the Warrants or Notes, as applicable, and that if such Underlying Shares shall be issued on or after the date that is six (6) months following the Closing Date, and the Company is then in compliance with its obligations under Section 4(c) hereof (or if such Underlying Shares shall be issued on or after the date that is twelve (12) months following the Closing Date, regardless of whether the Company is then in compliance with its obligations under Section 4(c) hereof) such shares shall not bear any legend referring to transfer restrictions under the Securities Act or other securities law. The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 5(b), and stop transfer instructions to give effect to Section 2(g) hereof, will be given by the Company to the Transfer Agent with respect to the Securities, and that the Securities shall otherwise be freely transferable on the books and records of the Company, as applicable, to the extent provided in this Agreement and the other Transaction Documents. If a Buyer effects a sale, assignment or transfer of the Securities in accordance with Section 2(g), the Company shall permit the transfer and shall promptly instruct the Transfer Agent to issue one or more certificates or credit shares to the applicable balance accounts at DTC in such name and in such denominations as specified by such Buyer to effect such sale, transfer or assignment. In the event that such sale, assignment or transfer involves Underlying Shares sold, assigned or transferred pursuant to an effective registration statement or in compliance with Rule 144, the Transfer Agent shall issue such shares to such Buyer, assignee or transferee (as the case may be) without any restrictive legend in accordance with Section 5(d) below. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to a Buyer. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5(b) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5(b), that a Buyer shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required. Any fees (with respect to the Transfer Agent, counsel to the Company or otherwise) associated with the removal of any legends on any of the Securities shall be borne by the Company.

(c) Legends. Each Buyer understands that the Securities have been issued (or will be issued in the case of the Underlying Shares) pursuant to an exemption from registration or qualification under the 1933 Act and applicable state securities laws, and except as set forth herein, the Securities shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

**Note Legend**

THE ISSUANCE AND SALE OF NEITHER THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES THAT MAY BE ISSUABLE PURSUANT TO THIS NOTE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES LAWS. UNTIL THE DATE THAT IS ONE (1) YEAR AFTER THE ISSUE DATE (AS DEFINED ON THE REVERSE OF THIS NOTE), THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION AND PROSPECTUS-DELIVERY REQUIREMENTS OF THE SECURITIES ACT.

**Underlying Shares Legend**

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER, IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

(d) Removal of Legends. Certificates evidencing Securities shall not be required to contain the legend set forth in Section 5(c) above or any other legend (i) while a registration statement covering the resale of such Securities is effective under the 1933 Act, (ii) following any sale of such Securities pursuant to Rule 144 (assuming the transferor is not an affiliate of the Company), provided that a Buyer furnishes the Company with reasonable assurances that such Securities are eligible for sale, assignment or transfer under Rule 144, which shall not include an opinion of Buyer's counsel, (iii) if such Securities are eligible to be sold, assigned or transferred under Rule 144 free of the current public information reporting requirement contained in Rule 144(c)(1), (iv) in connection with a sale, assignment or other transfer (other than under Rule 144), provided that such Buyer provides the Company with an opinion of counsel to such Buyer, in a generally acceptable form, to the effect that such sale, assignment or transfer of the Securities may be made without registration under the applicable requirements of the 1933 Act or (v) if such legend is not required under applicable provisions of the 1933 Act (including, without limitation, controlling judicial interpretations and pronouncements issued by the SEC).

If a legend is not required pursuant to the foregoing, the Company shall no later than two (2) Business Days (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the date such Buyer delivers such legended certificate representing such Securities to the Company) following the delivery by a Buyer to the Company or the Transfer Agent (with notice to the Company) of a legended certificate representing such Securities (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer, if applicable), together with any other deliveries from such Buyer as may be reasonably required above in this Section 5(d) (such date, the "**Legend Removal Date**"), as directed by such Buyer, either: (A) provided that the Transfer Agent is participating in FAST, credit the applicable number of shares of Common Stock to which such Buyer shall be entitled to such Buyer's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system or (B) if the Transfer Agent is not participating in FAST, issue and deliver (via reputable overnight courier) to such Buyer, a certificate representing such Securities that is free from all restrictive and other legends, registered in the name of such Buyer or its designee. The Company shall be responsible for any transfer agent fees or DTC fees with respect to any issuance of Securities or the removal of any legends with respect to any Securities in accordance herewith.

(e) If the Company or the Transfer Agent fails to deliver shares to Buyer or an applicable assignee or transferee (as the case may be) without any restrictive legend in accordance with Section 5(b) or Section 5(d), then in addition to Buyer's other available remedies hereunder, the Company shall pay to Buyer, in cash, (1) as partial liquidated damages and not as a penalty, for each $1,000 of Underlying Shares (based on the Weighted Average Price (as defined in the Warrants) of the Common Stock on the date Buyer delivers notice or a legended certificate, as applicable, to the Company or the Transfer Agent) for which the Company or the Transfer Agent fails to deliver shares without any restrictive legend an amount equal to $10 per Trading Day (increasing to $20 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the Legend Removal Date until such undelivered shares are delivered without a legend; and (2) if the Company is obligated to remove the restrictive legends pursuant to Section 5(d) but fails to (a) issue and deliver (or cause to be delivered) shares to the Buyer by the Legend Removal Date that are free from all restrictive and other legends and (b) if after the Legend Removal Date a Buyer purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in settlement of a sale by the Buyer of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, that the Buyer anticipated receiving from the Company without any restrictive legend, then an amount equal to the excess of the Buyer's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) over the product of (A) such number of shares of Common Stock that the Company was required to deliver to the Buyer by the Legend Removal Date multiplied by (B) the price at which the sell order giving rise to such purchase obligation was executed. For avoidance of doubt, this Section 5(e) shall not be duplicative with any provisions in the Notes or Warrants addressing any failure to deliver shares without restrictive legends.

(f) FAST Compliance. In the event that the Company changes transfer agents while any Notes or Warrants remain outstanding, the Company shall use commercially reasonable efforts to select a transfer agent that participates in FAST.

**6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL THE PURCHASED SECURITIES.**

(a) The obligation of the Company hereunder to issue and sell the Purchased Securities to each Buyer at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Buyer with prior written notice thereof:

(i) Such Buyer shall have executed each of the other Transaction Documents to which it is a party and delivered the same to the Company.

(ii) Such Buyer and each other Buyer shall have delivered to the Company the Purchase Price for the Purchased Securities being purchased by such Buyer at the Closing by wire transfer of immediately available funds in accordance with the Flow of Funds Letter.

(iii) The representations and warranties of such Buyer shall be true and correct in all material respects (except for such representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Closing Date.

**7. CONDITIONS TO EACH BUYER'S OBLIGATION TO PURCHASE THE PURCHASED SECURITIES.**

(a) The obligation of each Buyer hereunder to purchase its Purchased Securities at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for each Buyer's sole benefit and may be waived by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(i) The Company and each Subsidiary (as the case may be) shall have duly executed and delivered to such Buyer each of the Transaction Documents to which it is a party and the Company shall have duly executed and delivered to such Buyer the Purchased Securities set forth across from such Buyer's name on the Schedule of Buyers at the Closing pursuant to this Agreement.

(ii) Such Buyer shall have received the opinion of Paul Hastings LLP, the Company's counsel, dated as of the Closing Date, in the form acceptable to such Buyer.

(iii) The Company shall have delivered to such Buyer a copy of the Irrevocable Transfer Agent Instructions, in the form acceptable to such Buyer, which instructions shall have been delivered to and acknowledged in writing by the Transfer Agent.

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

(v) The Company shall have delivered to such Buyer a certified copy of the Certificate of Incorporation of the Company as certified by the Delaware Secretary of State within ten (10) days of the Closing Date.

(vi) The Company shall have delivered to such Buyer a certificate, in the form acceptable to such Buyer, executed by the Secretary of the Company and dated as of the Closing Date, as to (i) the resolutions consistent with Section 3(b) as adopted by the Company's Board of Directors or a committee thereof in a form reasonably acceptable to such Buyer, (ii) the Certificate of Incorporation of the Company and (iii) the Bylaws of the Company, each as in effect at the Closing.

(vii) The representations and warranties of the Company shall be true and correct in all material respects (except for such representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date) and the Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the Closing Date. Such Buyer shall have received a certificate, duly executed by the Chief Executive Officer or Chief Financial Officer of the Company, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Buyer in the form acceptable to such Buyer.

(viii) The Company shall have delivered to such Buyer a letter from the Transfer Agent certifying the number of shares of Common Stock outstanding on the Closing Date immediately prior to the Closing.

(ix) The Common Stock (A) shall be designated for quotation or listed (as applicable) on the Principal Market and (B) shall not have been suspended, as of the Closing Date, by the SEC or the Principal Market from trading on the Principal Market nor shall suspension by the SEC or the Principal Market have been threatened, as of the Closing Date, either (1) in writing by the SEC or the Principal Market or (2) by falling below the minimum maintenance requirements of the Principal Market.

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

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

(xii) Since the date of execution of this Agreement, no event or series of events shall have occurred that would have or result in a Material Adverse Effect.

(xiii) The Company shall have either (A) obtained approval of the Principal Market to list or designate for quotation (as the case may be) the Warrant Shares and confirmation from the Principal Market that no stockholder vote or other conditions under the rules of the Principal Market shall apply to the sale of the Purchased Securities or the issuance of the Warrant Shares or (B) submitted a Listing of Additional Shares Notification Form with the Principal Trading Market relating to the issuance of the Note, the Warrant and the Warrant Shares as contemplated hereby.

(xiv) Such Buyer shall have received a letter on the letterhead of the Company, duly executed by the Chief Executive Officer or Chief Financial Officer of the Company, setting forth the wire amounts of each Buyer and the wire transfer instructions of the Company (the "**Flow of Funds Letter**").

(xv) The Company shall have delivered to such Buyer the results of a recent lien, bankruptcy and judgment search in each relevant jurisdiction with respect to the Company and its Subsidiaries and such search shall reveal no Liens on any of the Collateral (as such term is defined in the Security Agreements) or other assets of the Company and its Subsidiaries except, in the case of assets other than Collateral, for Permitted Liens (as such term is defined in the Notes) and except for Liens to be discharged on or prior to the Closing Date pursuant to documentation reasonably satisfactory to the Buyer.

(xvi) The Company shall have completed the acquisition of assets pursuant to the agreement attached hereto as **Exhibit H**.

(xvii) The Company shall have delivered to Buyer a duly completed and executed perfection certificate in the form attached hereto as **Exhibit G**.

(xviii) All costs, fees, expenses (including, without limitation, actual, reasonable and documented legal fees and expenses) contemplated hereby to be payable to the Buyers shall have been paid to the extent due and, in the case of expenses of the Buyers that are reimbursable in accordance herewith, invoiced at least one day prior to the Closing Date.

(xix) The Company and its Subsidiaries shall have delivered to such Buyer such other documents, instruments or certificates relating to the transactions contemplated by the Transaction Documents as such Buyer or its counsel may reasonably request.

**8. TERMINATION.**

In the event that the Closing shall not have occurred with respect to a Buyer within five (5) Business Days of the date hereof, then such Buyer shall have the right to terminate its obligations under this Agreement with respect to itself at any time on or after the close of business on such date without liability of such Buyer to any other party; provided, however, (i) the right to terminate this Agreement under this Section 8 shall not be available to such Buyer if the failure of the transactions contemplated by this Agreement to have been consummated by such date is the result of such Buyer's breach of this Agreement and (ii) the abandonment of the sale and purchase of the Purchased Securities shall be applicable only to such Buyer providing such written notice; provided further that no such termination shall affect any obligation of the Company under this Agreement to reimburse such Buyer for the expenses described in Section 4(g) above. Nothing contained in this Section 8 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

**9. MISCELLANEOUS.**

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company and each Buyer hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude any Buyer from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Buyer or to enforce a judgment or other court ruling in favor of such Buyer. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.**

(b) Counterparts; Electronic Signatures. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof. A party's electronic signature (complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) of this Agreement shall have the same validity and effect as a signature affixed by the party's hand.

(c) Headings; Gender; Interpretation. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Agreement instead of just the provision in which they are found. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Schedules and Exhibits mean the Articles and Sections of, and Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder.

(d) Severability; Maximum Payment Amounts. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s). Notwithstanding anything to the contrary contained in this Agreement or any other Transaction Document (and without implication that the following is required or applicable), it is the intention of the parties that in no event shall amounts and value paid by the Company and/or

any of its Subsidiaries (as the case may be), or payable to or received by any of the Buyers, under the Transaction Documents (including without limitation, any amounts that would be characterized as "interest" under applicable law) exceed amounts permitted under any applicable law. Accordingly, if any obligation to pay, payment made to any Buyer, or collection by any Buyer pursuant the Transaction Documents is finally judicially determined to be contrary to any such applicable law, such obligation to pay, payment or collection shall be deemed to have been made by mutual mistake of such Buyer, the Company and its Subsidiaries and such amount shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the applicable law. Such adjustment shall be effected, to the extent necessary, by reducing or refunding, at the option of such Buyer, the amount of interest or any other amounts which would constitute unlawful amounts required to be paid or actually paid to such Buyer under the Transaction Documents. For greater certainty, to the extent that any interest, charges, fees, expenses or other amounts required to be paid to or received by such Buyer under any of the Transaction Documents or related thereto are held to be within the meaning of "interest" or another applicable term to otherwise be violative of applicable law, such amounts shall be pro-rated over the period of time to which they relate.

(e) Entire Agreement; Amendments. This Agreement, the other Transaction Documents and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all other prior oral or written agreements between the Buyers, the Company, its Subsidiaries, their affiliates and Persons acting on their behalf, including, without limitation, any transactions by any Buyer with respect to Common Stock or the Securities, and the other matters contained herein and therein, and this Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein contain the entire understanding of the parties solely with respect to the matters covered herein and therein; provided, however, nothing contained in this Agreement or any other Transaction Document shall (or shall be deemed to) (i) have any effect on any agreements any Buyer has entered into with, or any instruments any Buyer has received from, the Company or any of its Subsidiaries prior to the date hereof with respect to any prior investment made by such Buyer in the Company or (ii) waive, alter, modify or amend in any respect any obligations of the Company or any of its Subsidiaries, or any rights of or benefits to any Buyer or any other Person, in any agreement entered into prior to the date hereof between or among the Company and/or any of its Subsidiaries and any Buyer, or any instruments any Buyer received from the Company and/or any of its Subsidiaries prior to the date hereof, and all such agreements and instruments shall continue in full force and effect. Except as specifically set forth herein or therein, neither the Company nor any Buyer makes any representation, warranty, covenant or undertaking. For clarification purposes, the Recitals are part of this Agreement. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Required Holders, and any amendment to any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable; provided that no such amendment shall be effective to the extent that it (A) applies to less than all of the holders of the Securities then outstanding or (B) imposes any obligation or liability on any Buyer without such Buyer's prior written consent (which may be granted or withheld in such Buyer's sole discretion). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party, provided that the Required Holders may waive any provision of this Agreement, and any

waiver of any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable, provided that no such waiver shall be effective to the extent that it (1) applies to less than all of the holders of the Securities then outstanding (unless a party gives a waiver as to itself only) or (2) imposes any obligation or liability on any Buyer without such Buyer's prior written consent (which may be granted or withheld in such Buyer's sole discretion). No consideration (other than reimbursement of legal fees) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration also is offered to all of the parties to the Transaction Documents and all holders of the Purchased Securities. From the date hereof and while any Purchased Securities are outstanding, the Company shall not be permitted to receive any consideration from a Buyer or a holder of Purchased Securities that is not otherwise contemplated by the Transaction Documents in order to, directly or indirectly, induce the Company or any Subsidiary (i) to treat such Buyer or holder of Purchased Securities in a manner that is more favorable than to other similarly situated Buyers or holders of Purchased Securities, or (ii) to treat any Buyer(s) or holder(s) of Purchased Securities in a manner that is less favorable than the Buyer or holder of Purchased Securities that is paying such consideration; provided, however, that the determination of whether a Buyer has been treated more or less favorably than another Buyer shall disregard any securities of the Company purchased or sold by any Buyer. The Company has not, directly or indirectly, made any agreements with any Buyers relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents. Without limiting the foregoing, the Company confirms that, except as set forth in this Agreement, no Buyer has made any commitment or promise or has any other obligation to provide any financing to the Company, any Subsidiary or otherwise. As a material inducement for each Buyer to enter into this Agreement, the Company expressly acknowledges and agrees that (x) no due diligence or other investigation or inquiry conducted by a Buyer, any of its advisors or any of its representatives shall affect such Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document and (y) unless a provision of this Agreement or any other Transaction Document is expressly preceded by the phrase "Except as disclosed in the SEC Documents" or other similar language, nothing contained in any of the SEC Documents shall affect such Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document. "**Required Holders**" means (I) prior to the Closing Date, each Buyer entitled to purchase Purchased Securities at the Closing and (II) on or after the Closing Date, holders of a majority of the Underlying Shares in the aggregate as of such time issued or issuable hereunder or pursuant to the Warrants or Notes, as applicable.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by electronic mail (provided that such sent email is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's email server that such e-mail could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses and e-mail addresses for such communications shall be:

If to the Company:

Mohawk Group Holdings, Inc.
37 East 18th Street, 7th Floor
New York, NY 10003

Telephone: […***…]
Attention: Yaniv Sarig, President & CEO
E-Mail: […***…]

With a copy (for informational purposes only) to:

Paul Hastings LLP
1117 S. California Avenue
Palo Alto, CA 94304
Telephone: […***…]
Attention: Jeff Hartlin
E-mail: […***…]

If to the Transfer Agent:

Philadelphia Stock Transfer, Inc.
2320 Haverford Road, Suite 230
Ardmore, PA 19003
Telephone: […***…]
Attention: Bob Winterle
E-mail: […***…]

If to a Buyer, to (i) its e-mail address set forth on the Schedule of Buyers, with copies to such Buyer's representatives as set forth on the Schedule of Buyers and (ii) to Eric Helenek, High Trail Capital, 221 River Street, 9th Floor, Hoboken, NJ 07030 (telephone: […***…]).

with a copy (for informational purposes only) to:

Latham & Watkins LLP
12670 High Bluff Drive
San Diego, CA 92130
Telephone: […***…]
Attention: Michael E. Sullivan, Esq.
E-mail: […***…]

or to such other address, e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) electronically generated by the sender's e-mail or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by e-mail or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of any of the Purchased Securities. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Required Holders, including, without limitation, by way of a Fundamental Change (as defined in the Notes) or a Fundamental Transaction (as defined in the Warrants) (unless the Company is in compliance with the applicable provisions governing Fundamental Changes set forth in the Notes and the provisions governing Fundamental Transaction set forth in the Warrants). A Buyer may assign some or all of its rights hereunder in connection with any transfer of any of its Securities without the consent of the Company, provided such assignee agrees in writing to be bound by the provisions hereof that apply to Buyers in which event such assignee shall be deemed to be a Buyer hereunder with respect to such assigned rights; provided further that such Buyer shall provide the Company with notice of the assignment at least two (2) Business Days prior to such assignment.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, other than the Indemnitees referred to in Section 9(k).

(i) Survival. The representations, warranties, agreements and covenants shall survive the Closing. Each Buyer shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification.

(i) In consideration of each Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Buyer and each holder of any Securities and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is

sought), and including actual reasonable and documented attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (i) any misrepresentation or breach of any representation or warranty made by the Company or any Subsidiary in any of the Transaction Documents, (ii) any breach of any covenant, agreement or obligation of the Company or any Subsidiary contained in any of the Transaction Documents or (iii) any cause of action, suit, proceeding or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company or any Subsidiary) or which otherwise involves such Indemnitee that arises out of or results from (A) the execution, delivery, performance or enforcement of any of the Transaction Documents (including, without limitation, any hedging or similar activities in connection therewith), or (B) the status of such Buyer or holder of the Securities either as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents or as a party to this Agreement (including, without limitation, any hedging or similar activities in connection therewith or as a party in interest or otherwise in any action or proceeding for injunctive or other equitable relief); provided, however, that the Company will not be liable in any such case to a Buyer or its related Indemnitees to the extent that any such claim, loss, damage, liability or expense arise primarily out of or is based primarily upon (i) the inaccuracy of any representations and warranties made by such Buyer herein or (ii) the gross negligence or willful misconduct of any Buyer. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

(ii) Promptly after receipt by an Indemnitee under this Section 9(k) of notice of the commencement of any action or proceeding (including, without limitation, any governmental action or proceeding) involving an Indemnified Liability, such Indemnitee shall, if a claim in respect thereof is to be made against any indemnifying party under this Section 9(k), deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnitee; provided, however, that an Indemnitee shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the indemnifying party if: (i) the indemnifying party has agreed in writing to pay such fees and expenses; (ii) the indemnifying party shall have failed promptly to assume the defense of such Indemnified Liability and to employ counsel reasonably satisfactory to such Indemnitee in any such Indemnified Liability; or (iii) the named parties to any such Indemnified Liability (including, without limitation, any impleaded parties) include both such Indemnitee and the indemnifying party, and such Indemnitee shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnitee and the indemnifying party (in which case, if such Indemnitee notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, then the indemnifying party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the indemnifying party), provided further that in the case of clause (iii) above the indemnifying party shall

not be responsible for the actual reasonable and documented fees and expenses of more than one (1) separate legal counsel for such Indemnitee. The Indemnitee shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnitee which relates to such Indemnified Liability. The indemnifying party shall keep the Indemnitee reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent; provided, however, the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnitee, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnitee of a release from all liability in respect to such Indemnified Liability, and such settlement shall not include any admission as to fault on the part of the Indemnitee. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnitee with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnitee under this Section 9(k), except to the extent that the indemnifying party is materially and adversely prejudiced in its ability to defend such action. The indemnification required by this Section 9(k) shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Liabilities are incurred. The indemnity and contribution agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnitees against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

(l) Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty. Each and every reference to share prices, shares of Common Stock and any other numbers in this Agreement that relate to the Common Stock shall be automatically adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions that occur with respect to the Common Stock after the date of this Agreement. Notwithstanding anything in this Agreement to the contrary, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty against, or a prohibition of, any actions with respect to the borrowing of, arrangement to borrow, identification of the availability of, and/or securing of, securities of the Company in order for such Buyer (or its broker or other financial representative) to effect short sales or similar transactions in the future.

(m) Remedies. Each Buyer and in the event of assignment by Buyer of its rights and obligations hereunder, each holder of Securities, shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company recognizes that in the event that it or any Subsidiary fails to perform, observe, or discharge any or all of its or such Subsidiary's (as the case may be) obligations under the Transaction Documents, any remedy at law would be inadequate relief to the Buyers. The Company therefore agrees that the Buyers shall be entitled to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The remedies provided in this Agreement and the other Transaction Documents shall be cumulative and in addition to all other remedies available under this Agreement and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief).

(n) Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever any Buyer exercises a right, election, demand or option under a Transaction Document and the Company or any Subsidiary does not timely perform its related obligations within the periods therein provided, then such Buyer may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company or such Subsidiary (as the case may be), any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

(o) Payment Set Aside; Currency. To the extent that the Company makes a payment or payments to any Buyer hereunder or pursuant to any of the other Transaction Documents or any of the Buyers enforce or exercise their rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred. Unless otherwise expressly indicated, all dollar amounts referred to in this Agreement and the other Transaction Documents are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Agreement and all other Transaction Documents shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Agreement, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation.

(p) Judgment Currency.

(i) If for the purpose of obtaining or enforcing judgment against the Company in connection with this Agreement or any other Transaction Document in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 9(p) referred to as the "**Judgment Currency**") an amount due in U.S. Dollars under this Agreement, the conversion shall be made at the Exchange Rate prevailing on the Business Day immediately preceding:

(1) the date actual payment of the amount due, in the case of any proceeding in the courts of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or

(2) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 9(p)(i)(2) being hereinafter referred to as the "**Judgment Conversion Date**").

(ii) If in the case of any proceeding in the court of any jurisdiction referred to in Section 9(p)(i)(2) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of U.S. Dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(iii) Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Agreement or any other Transaction Document.

(q) Independent Nature of Buyers' Obligations and Rights. The obligations of each Buyer under the Transaction Documents are several and not joint with the obligations of any other Buyer, and no Buyer shall be responsible in any way for the performance of the obligations of any other Buyer under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Buyer pursuant hereto or thereto, shall be deemed to constitute the Buyers as, and the Company acknowledges that the Buyers do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Buyers are in any way acting in concert or as a group or entity, and the Company shall not assert any such claim with respect to such obligations or the transactions contemplated by the Transaction Documents or any matters, and the Company acknowledges that the Buyers are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by the Transaction Documents. The decision of each Buyer to purchase Securities pursuant to the Transaction Documents has been made by such Buyer independently of any other Buyer. Each Buyer acknowledges that no other Buyer has acted as agent for such Buyer in connection with such Buyer making its investment hereunder and that no other Buyer will be acting as agent of such Buyer in connection with monitoring such Buyer's investment in the Securities or enforcing its rights under the Transaction Documents. The Company and each Buyer confirms that each Buyer has independently participated with the Company and its Subsidiaries in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Buyer shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents,

and it shall not be necessary for any other Buyer to be joined as an additional party in any proceeding for such purpose. The use of a single agreement to effectuate the purchase and sale of the Securities contemplated hereby was solely in the control of the Company, not the action or decision of any Buyer, and was done solely for the convenience of the Company and its Subsidiaries and not because it was required or requested to do so by any Buyer. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company, each Subsidiary and a Buyer, solely, and not between the Company, its Subsidiaries and the Buyers collectively and not between and among the Buyers.

(r) Performance Date. If the date by which any obligation under any of the Transaction Documents must be performed occurs on a day other than a Business Day, then the date by which such performance is required shall be the next Business Day following such date.

(s) Enforcement Fees. The Company agrees to pay all reasonable and documented out-of-pocket costs and expenses of the Buyers actually incurred as a result of enforcement of the Transaction Documents and the collection of any amounts owed to the Buyers hereunder (whether in cash, equity or otherwise), including, without limitation, actual reasonable and documented attorneys' fees and expenses.

(t) Collateral Agent.

(i) *Appointment; Authorization.* The Buyers, together with any successors or assigns thereof, hereby irrevocably appoint, designate and authorize High Trail Investments SA LLC as collateral agent to take such action on their behalf under the provisions of the Notes, each Security Document and the Intercreditor Agreement and to exercise such powers and perform such duties as are expressly delegated to it by the terms of each Security Document and the Intercreditor Agreement, together with such powers as are reasonably incidental thereto. The Buyer hereby agrees that the Collateral Agent may also serve as the collateral agent under that certain Senior Secured Note due 2022 issued to the Holder (as defined therein) on December 1, 2020 (the "***Existing Note***") and the Security Documents (for the benefit of the Holder (as defined in the Existing Note)). In the event of any conflict between the directions of the Holder (as defined in the Notes) or the Holder (as defined in the Existing Note), the Collateral Agent shall follow the directions of the Holder and/or Holder (as defined in the Existing Note) holding a majority of the Indebtedness (as defined in the Notes) under the Notes and the Existing Note. In the event that any proceeds under the Security Documents are received by the Collateral Agent, they shall be disbursed to the Holders and the Holder (as defined in the Existing Note) pro rata based on the principal Indebtedness (as defined in the Notes) of the Holder and the Holder (as defined in the Existing Note), unless otherwise agreed by the Holder and the Holder (as defined in the Existing Note). The provisions of this this Section 9(t) are solely for the benefit of the Collateral Agent, and the Company shall not have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any Security Document (or any other similar term) with reference to the Collateral 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. Notwithstanding any provision to the contrary contained elsewhere in the Notes, any Security Document or any other agreement, instrument or document related hereto or thereto, the Collateral Agent shall not have any duty or responsibility except those expressly set forth herein, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into the Notes, any Security Document or any other agreement, instrument or document related hereto or thereto or otherwise exist against the Collateral Agent.

(ii) *Delegation of Duties.* The Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any Security Document or the Intercreditor Agreement by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through its Affiliates (as defined in the Notes), partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives, or the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of any of its Affiliates (collectively, the "**Related Parties**"). The exculpatory provisions of this Section 9(t) shall apply to any such sub-agent and to the Related Parties of the Collateral Agent and any such sub-agent. The Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(iii) *Exculpatory Provisions*.

(A) The Collateral Agent shall not have any duties or obligations except those expressly set forth in the Security Documents and the Intercreditor Agreement, and its duties shall be administrative in nature. Without limiting the generality of the foregoing, the Collateral Agent: (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default (as defined in the Notes) or Event of Default (as defined in the Notes) has occurred and is continuing; (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers; and (iii) shall not, except as expressly set forth in the Security Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Affiliates that is communicated to or obtained by the Collateral Agent or any of its Affiliates in any capacity.

(B) The Collateral Agent shall not be liable for any action taken or not taken by it in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. The Collateral Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Collateral Agent in writing by the Company.

(C) The Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (a) any statement, warranty or representation made in or in connection with the Notes, any Security Document or any other agreement, instrument or document related hereto or thereto, (b) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (c) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (d) the validity, enforceability, effectiveness or genuineness of the Notes, any Security Document or any other agreement, instrument or document related to the Notes or Security Documents, or (e) any failure of the Company or any other party to the Notes, any Security Agreement or any other agreement, instrument or document related to the Notes or Security Documents to perform its obligations thereunder. The Collateral Agent shall not be under any obligation to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, the Notes, any Security Document or any other agreement, instrument or document related to the Notes or Security Documents, or to inspect the properties, books or records of the Company or any Affiliate of the Company.

(iv) *Reliance by Collateral Agent.* The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(v) *Successor Agent.* The Collateral Agent may resign as the Collateral Agent at any time upon ten (10) days' prior notice to the Buyers and the Company. If the Collateral Agent resigns under this Note, the Required Holders shall appoint a successor agent. If no successor agent is appointed prior to the effective date of the resignation of the Collateral Agent, the Collateral Agent may appoint a successor Collateral Agent on behalf of the Buyers after consulting with the Buyers. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Collateral Agent and the term "the Collateral Agent" shall mean such successor agent, and the retiring Collateral Agent's appointment, powers and duties as the Collateral Agent shall be terminated. After the Collateral Agent's resignation hereunder as the Collateral Agent, the provisions of this Section 9(t) shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was the Collateral Agent. If no successor agent has accepted appointment as the Collateral Agent by the date which is thirty (30) days following a retiring Collateral Agent's notice of resignation, a retiring Collateral Agent's resignation shall nevertheless thereupon become effective and the Buyers, shall perform all of the duties of the Collateral Agent hereunder until such time as Required Holders shall appoint a successor agent as provided for above.

(vi) *Non-Reliance on the Collateral Agent.* The Buyers acknowledges that they have, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information as they have deemed appropriate, made their own credit analysis and decision to enter invest in the Notes. The Buyers also acknowledges that they will, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information as they shall from time to time deem appropriate, continue to make their own decisions in taking or not taking action under or based upon the Notes, any Security Document or any related agreement or any document furnished hereunder or thereunder.

(vii) *Collateral Matters.* The Buyers irrevocably authorize the Collateral Agent to release any Lien (as defined in the Notes) granted to or held by the Collateral Agent under any Security Document (i) when all Obligations (as defined in the Security Agreements) have been paid in full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted under the Notes and each other agreement, instrument or document related thereto (it being agreed and understood that the Collateral Agent may conclusively rely without further inquiry on a certificate of an officer of the Company as to the sale or other disposition of property being made in compliance with the Notes and each other agreement, instrument or document related thereto); or (iii) if approved, authorized or ratified in writing by the Buyers. The Collateral Agent shall have the right, in accordance with the Security Documents and the Intercreditor Agreement to sell, lease or otherwise dispose of any Collateral (as defined in the Security Agreements) for cash, credit or any combination thereof, and the Collateral Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and setoff the amount of such price against the Obligations.

(viii) *Reimbursement by Buyers.* To the extent that the Company for any reason fails to indefeasibly pay any amount required under Sections 4(g) or 9(k) to be paid by it to the Collateral Agent (or any sub-agent thereof) or any Related Party of the Collateral Agent (or any sub-agent thereof), the Buyers hereby agree, jointly and severally, to pay to the Collateral Agent (or any such sub-agent) or such Related Party of the Collateral Agent (or any sub-agent thereof), as the case may be, such unpaid amount.

(ix) *Marshaling; Payments Set Aside*. Neither the Collateral Agent nor the Buyers shall be under any obligation to marshal any assets in favor of the Company or any other Person or against or in payment of any or all of the Obligations. To the extent that the Company makes a payment or payments to the Collateral Agent, or the Collateral Agent enforces its Liens (as defined in the Notes) or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Collateral Agent in its discretion) to be repaid to a trustee, receiver or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (i) to the extent of such recovery, the obligation under the Notes intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred and (ii) the Buyers agree to pay to the Collateral Agent upon demand its share of the total amount so recovered from or repaid by the Collateral Agent to the extent paid to the Buyers.

[*signature pages follow*]

**IN WITNESS WHEREOF**, each Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

**COMPANY:**

**MOHAWK GROUP HOLDINGS, INC.**

By: /s/ Yaniv Sarig
Name: Yaniv Sarig
Title: Chief Executive Officer

**IN WITNESS WHEREOF,** each Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

**BUYER:**

**HIGH TRAIL INVESTMENTS ON LLC**

By: /s/ Eric Helenek
Name: Eric Helenek
Title: Authorized Signatory

**SCHEDULE OF BUYERS**

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
|---|---|---|---|---|---|---|---|
| **Buyer** | **Address** | **Aggregate Principal Amount of Notes** | **Aggregate Purchase Price of Notes** | **Aggregate Number of Warrant Shares** | **Warrant Purchase Price** | **Aggregate Purchase Price** | **Legal Representative's Address** |
| High Trail Investments ON LLC | High Trail Capital<br>221 River Street, 9th Floor<br>Hoboken, NJ 07030<br>Attn: Eric Helenek<br>E-Mail: [...***...] | $16,500,000 | $13,570,304 | 469,931 | $ 454,696 | $ 14,025,000 | Latham & Watkins LLP<br>12670 High Bluff Drive<br>San Diego, CA 92130<br>Telephone: [...***...]<br>Attention: Michael E. Sullivan, Esq. |
| **TOTAL** | | $16,500,000 | $13,570,304 | 469,931 | 454,696 | $ 14,025,000 | |

**Exhibit 10.2**

**LIMITED CONSENT AND AMENDMENT NO. 10 TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT**

This LIMITED CONSENT AND AMENDMENT NO. 10 TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (this "**Agreement**") is made as of this 2nd day of February, 2021, by and among MOHAWK GROUP HOLDINGS, INC., a Delaware corporation ("**Parent**"), MOHAWK GROUP, INC., a Delaware corporation ("**Mohawk**"), each of Mohawk's direct and indirect subsidiaries set forth on the signature pages hereto (each being referred to herein individually as a "**Borrower**", and collectively as the "**Borrowers**"), MIDCAP FUNDING IV TRUST, a Delaware statutory trust, as agent (in such capacity and together with its permitted successors and assigns, the "**Agent**"), and the Lenders party hereto constituting the Required Lenders.

**RECITALS**

A. Agent, Lenders and Borrowers are parties to that certain Amended and Restated Credit and Security Agreement, dated as of November 23, 2018 (as amended, modified, supplemented and restated from time to time prior to the date hereof, the "**Existing Credit Agreement**" and as the same is amended hereby and as it may be further amended, modified, supplemented and restated from time to time, the "**Credit Agreement**"), pursuant to which the Lenders have agreed to make certain advances of money and to extend certain financial accommodations to the Borrowers and certain of their Affiliates in the amounts and manner set forth in the Credit Agreement.

B. Borrowers plan to enter into that certain Asset Purchase Agreement, dated as of February 2, 2021 and attached hereto as Exhibit A (the "**Healing Solutions Acquisition Agreement**"), by and among Parent, Truweo, LLC, a Delaware limited liability company and wholly owned subsidiary of Parent, Healing Solutions, LLC, a Delaware limited liability company ("**Seller**"), Jason R. Hope, as founder, and Super Transcontinental Holdings LLC, a Delaware limited liability company, as sole voting member (the "**Healing Solutions Acquisition**").

C. Pursuant to Section 5.7 of the Existing Credit Agreement, the Borrowers are not permitted to acquire or enter into any agreement to acquire any assets other than in the Ordinary Course of Business or as permitted under clause (h) of the definition of Permitted Investments.

D. Borrowers have requested, and Agent and Lenders constituting at least the Required Lenders have agreed, on and subject to the terms and conditions set forth in this Agreement, to, among other things, (i) consent to the Borrowers entering into the Healing Solutions Acquisition Agreement and the consummation of the Healing Solutions Acquisition, (ii) permit the Borrowers to incur additional High Trail Obligations, and (iii) amend certain terms of the Existing Credit Agreement, all in accordance with the terms and subject to the conditions set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, the Lenders and Borrowers hereby agree as follows:

1. **Recitals**. This Agreement shall constitute a Financing Document and the Recitals and each reference to the Credit Agreement, unless otherwise expressly noted, will be deemed to reference the Credit Agreement as amended hereby. The Recitals set forth above shall be construed as part of this Agreement as if set forth fully in the body of this Agreement and capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement (including those capitalized terms used in the Recitals hereto).

2. **Limited Consent**. At the request of and as an accommodation to the Borrowers, subject to the satisfaction of the conditions, including, without limitation, the conditions set forth in Section 6, and in accordance with the terms set forth in this Agreement, Agent and each Required Lender hereby consents to Parent and Truweo, LLC entering into the Healing Solutions Acquisition Agreement and the consummation of the Healing Solutions Acquisition in accordance with the terms of the Healing Solutions Acquisition Agreement. The consents set forth in this Section 2 are effective solely for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (1) be a consent to any amendment, waiver or modification of any other term or condition of the Credit Agreement or of any other Financing Document; (2) prejudice any right that Agent or the Lenders have or may have in the future under or in connection with the Credit Agreement or any other Financing Document; (3) constitute a consent to or waiver of any past, present or future Default or Event of Default or other violation of any provisions of the Credit Agreement or any other Financing Documents, (4) create any obligation to forbear from taking any enforcement action, or to make any further extensions of credit or (5) establish a custom or course of dealing among any of the Credit Parties, on the one hand, or Agent or any Lender, on the other hand.

3. **Amendments to Existing Credit Agreement**. Subject to the terms and conditions of this Agreement, including, without limitation, the conditions to effectiveness set forth in Section 6 below, the Existing Credit Agreement is hereby amended as follows:

(a) The following definitions are hereby added to Section 1.1 of the Existing Credit Agreement in their respective alphabetic order:

"**Healing Solutions Acquisition Agreement**" has the meaning provided in the Tenth Amendment.

"**High Trail 2020 Notes**" means those certain Senior Secured Notes due 2022 issued by Borrowers pursuant to the High Trail Note 2020 Purchase Agreement, as amended by that certain Amendment to Senior Secured Convertible Note Due 2022, dated on or about the Tenth Amendment Effective Date.

"**High Trail 2021 Notes**" means those certain Senior Secured Notes due 2022, issued by the Borrower pursuant to High Trail Note 2021 Purchase Agreement, on or about the Tenth Amendment Effective Date, in an aggregate amount not to exceed $16,500,000.

"**High Trail Note 2020 Purchase Agreement**" means that certain Securities Purchase Agreement, dated as of November 30, 2020, by and among Parent and the buyers from time to time party thereto, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance therewith, with the Intercreditor Agreement and the terms of this Agreement or refinanced or replaced in accordance with the Intercreditor Agreement and the terms of this Agreement.

"**High Trail Note 2021 Purchase Agreement**" means that certain Securities Purchase Agreement, dated on or about the Tenth Amendment Effective Date, by and among Parent and the buyers from time to time party thereto, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance therewith, with the Intercreditor Agreement and the terms of this Agreement or refinanced or replaced in accordance with the Intercreditor Agreement and the terms of this Agreement.

"**Tenth Amendment**" means that certain Limited Consent and Amendment No. 10 to Amended and Restated Credit and Security Agreement, dated as of February 2, 2021, among Borrowers, Agent and Lenders party thereto.

"**Tenth Amendment Effective Date**" means the first date on which all of the conditions set forth in Section 6 of the Tenth Amendment are satisfied.

(b) The definition of "**High Trail Notes**" appearing in Section 1.1 of the Existing Credit Agreement is hereby amended and restated in its entirety as follows:

"**High Trail Notes**" means (a) the High Trail Note 2020 Notes, and (b) the High Trail 2021 Notes.

(c) The definition of "**High Trail Note Documents**" appearing in Section 1.1 of the Existing Credit Agreement is hereby amended and restated in its entirety as follows:

"**High Trail Note Documents**" means the High Trail Note 2020 Purchase Agreement, the High Trail Note 2021 Purchase Agreement, the High Trail Notes, the other "Transaction Documents" (or the equivalent thereof) as defined in the High Trail Note 2020 Purchase Agreement and the other "Transaction Documents" (or the equivalent thereof) as defined in the High Trail Note 2021 Purchase Agreement, all as amended, restated, refinanced, replaced, supplemented or otherwise modified from time to time in accordance therewith and with the Intercreditor Agreement and the terms of this Agreement.

(d) The definition of "**High Trail Note Purchase Agreement**" appearing in Section 1.1 of the Existing Credit Agreement is hereby deleted in its entirety.

(e) The definition of **"Permitted Contingent Obligations**" appearing in Section 1.1 of the Existing Credit Agreement is hereby amended by:

(i) deleting the "and" at the end of clause (j) thereof;

(ii) adding the following new clause (k) in appropriate alphabetical order therein; and

"(k) Contingent Obligations of the Credit Parties in respect of the earnout obligations owed by the Borrowers pursuant to Section 2.9 of the Healing Solutions Acquisition Agreement; and"

(iii) renumbering the existing clause (k) as clause (l) and deleting the reference therein to "(g)" and replacing it with "(k)".

(f) Clause (j) of the definition of "**Permitted Debt**" appearing in Section 1.1 of the Existing Credit Agreement is hereby amended by deleting "$43,000,000" in the second line thereof in its entirety and replacing it with "$59,500,000".

4. **Representations and Warranties; Reaffirmation of Security Interest**. Each Borrower hereby (a) confirms that all of the representations and warranties set forth in the Credit Agreement are true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) with respect to such Borrower as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date, and (b) covenants to perform its respective obligations under the Credit Agreement. Each Borrower confirms and agrees that all security interests and Liens granted to Agent continue in full force and effect, and all Collateral remains free and clear of any Liens, other than Permitted Liens. Nothing herein is intended to impair or limit the validity, priority or extent of Agent's security interests in and Liens on the Collateral. Each Borrower acknowledges and agrees that the Credit Agreement, the other Financing Documents and this Agreement constitute the legal, valid and binding obligation of such Borrower, and are enforceable against such Borrower in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

5. **Costs and Fees.**

(a) In consideration of Agent and Lenders' agreement to enter into this Agreement, Borrowers shall pay, or cause to be paid, to Agent, for the benefit of all Revolving Lenders committed to make Revolving Loans on the Tenth Amendment Effective Date, in accordance with their respective Pro Rata Shares, a fee (the "**Amendment Fee**") in an amount equal to $75,000, which fee is due and payable and non-refundable as of the Tenth Amendment Effective Date and, once paid, is non-refundable. If the Amendment Fee is not paid when due, Borrowers hereby authorize Agent to deduct the unpaid amount of the Amendment Fee from the proceeds of one or more Revolving Loans made under the Credit Agreement.

(b) Borrowers shall be responsible for the payment of all reasonable and documented out-of-pocket costs and fees of Agent's counsel incurred in connection with the preparation of this Agreement and any related documents. If Agent or any Lender uses in-house counsel for any of these purposes, Borrowers further agree that the Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Agent or such Lender for the work performed.

6. **Conditions to Effectiveness.** This Agreement shall become effective as of the date on which Agent has received each agreement, document and instrument set forth in this section, each in form and substance satisfactory to Agent, including the satisfaction of the following conditions precedent, each to the satisfaction of Agent in its sole discretion:

(a) Borrowers shall have delivered to Agent this Agreement, duly executed by an authorized officer (or authorized signatory) of each Borrower;

(b) Agent shall have received an amendment to the Intercreditor Agreement, duly executed by High Trail Agent, Agent and Borrowers;

(c) Agent shall have received a fully executed copy of the Healing Solutions Acquisition Agreement and all other material agreements, documents or instruments pursuant to which the Healing Solutions Acquisition is to be consummated, any schedules to such agreements, documents or instruments and all other material ancillary agreements, instruments and documents to be executed or delivered in connection therewith;

(d) Substantially concurrently with the effectiveness of this Agreement, the Healing Solutions Acquisition has been consummated (i) in all material respects in accordance with the terms of the Healing Solutions Acquisition Agreement and (ii) in accordance with applicable Law (and such parties' delivery of their respective signatures hereto shall be deemed to be its certification thereof);

(e) all of the representations and warranties of Borrowers set forth herein and in the other Financing Documents are true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) with respect to such Borrower as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representations and warranties were true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) on and as of such date (and such parties' delivery of their respective signatures hereto shall be deemed to be its certification thereof);

(f) no Default or Event of Default shall exist under any of the Financing Documents (and such parties' delivery of their respective signatures hereto shall be deemed to be its certification thereof);

(g) executed copies of the High Trail Note 2021 Purchase Agreement, the High Trail 2021 Notes and all consents and amendments required under the terms of the High Trail Note Documents in connection with the Healing Solutions Acquisition and the issuance of the High Trail 2021 Notes, in each case, in form and substance reasonably satisfactory to Agent;

(h) Agent shall have received payment in full of the Amendment Fee in accordance with Section 5 of this Agreement; and

(i) Borrowers shall have delivered such other documents, information, certificates, records, permits, and filings as the Agent may reasonably request, including, without limitation, any agreements, instruments and other documents necessary to ensure that Agent receives a perfected Lien in all of to the extent required by the Credit Agreement.

7. **Release.** In consideration of the agreements of Agent and Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Borrower, voluntarily, knowingly, unconditionally and irrevocably, with specific and express intent, for and on behalf of itself and all of its respective parents, subsidiaries, affiliates, members, managers, predecessors, successors, and assigns, and each of their respective current and former directors, officers, shareholders, agents, and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Releasing Parties**") does hereby fully and completely release, acquit and forever discharge each of Agent, Lenders, and each their respective parents, subsidiaries, affiliates, members, managers, shareholders, directors, officers and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Released Parties**"), of and from any and all actions, causes of action, suits, debts, disputes, damages, claims, obligations, liabilities, costs, expenses and demands of any kind whatsoever, at law or in equity, whether matured or unmatured, liquidated or unliquidated, vested or contingent, choate or inchoate, known or unknown that the Releasing Parties (or any of them) has against the Released Parties or any of them (whether directly or indirectly), based in whole or in part on facts, whether or not now known, existing on or before the date hereof, that relate to, arise out of or otherwise are in connection with: (i) any or all of the Financing Documents or transactions contemplated thereby or any actions or omissions in connection therewith or (ii) any aspect of the dealings or relationships between or among any or all of the Borrowers, on the one hand, and any or all of the Released Parties, on the other hand, relating to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof. Each Borrower acknowledges that the foregoing release is a material inducement to Agent's and Lender's decision to enter into this Agreement and agree to the modifications contemplated hereunder, and has been relied upon by Agent and Lenders in connection therewith.

8. **No Waiver or Novation.** The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided in this Agreement, operate as a waiver of any right, power or remedy of Agent, nor constitute a waiver of any provision of the Credit Agreement, the Financing Documents or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. Nothing herein is intended or shall be construed as a waiver of any existing

Defaults or Events of Default under the Credit Agreement or the other Financing Documents or any of Agent's rights and remedies in respect of such Defaults or Events of Default. This Agreement (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.

9. **Confidentiality.** No Borrower will disclose the contents of this Agreement, the Credit Agreement or any of the other Financing Documents to any third party (other than to such Borrower's current and prospective direct and indirect financing sources, acquirors and holders of Debt of Credit Parties and the Credit Parties' direct and indirect equityholders, and its and their respective attorneys, advisors, directors, managers and officers on a need-to-know basis, as otherwise may be required by law or in connection with the resolution of a dispute brought hereunder involving a Credit Party and any of Agent, any Lender, any Participant or in connection with any public or regulatory filing requirement relating to the Financing Documents) without Agent's prior written consent. Each Borrower agrees to inform all such persons who receive information concerning this Agreement, the Credit Agreement and the other Financing Documents that such information is confidential and may not be disclosed to any other person except as may be required by Law, including to any court or regulatory agency having jurisdiction over such Borrower, any Lender or the Agent.

10. **Affirmation.** Except as specifically amended pursuant to the terms hereof, each Borrower hereby acknowledges and agrees that the Credit Agreement and all other Financing Documents (and all covenants, terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by such Borrower. Each Borrower covenants and agrees to comply with all of the terms, covenants and conditions of the Credit Agreement and the Financing Documents, notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Agent's or any Lender's part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions.

11. **Miscellaneous.**

(a) Reference to the Effect on the Credit Agreement. Upon the effectiveness of this Agreement, each reference in the Credit Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of similar import shall mean and be a reference to the Credit Agreement, as amended by this Agreement. Except as specifically amended above, the Credit Agreement, and all other Financing Documents (and all covenants, terms, conditions and agreements therein), shall remain in full force and effect, and are hereby ratified and confirmed in all respects by each Borrower.

(b) GOVERNING LAW. THIS AGREEMENT AND EACH OTHER FINANCING DOCUMENT, AND ALL MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

(c) Incorporation of Credit Agreement Provisions. The provisions contained in Section 11.6 (Indemnification), Section 12.8 (Submission to Jurisdiction) and Section 12.9 (Waiver of Jury Trial) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

(d) Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(e) Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or by electronic mail delivery of an electronic version (e.g., ..pdf or .tif file) of an executed signature page shall be effective as delivery of an original executed counterpart hereof and shall bind the parties hereto.

(f) Entire Agreement. The Credit Agreement, as amended hereby, and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

(g) Severability. In case any provision of or obligation under this Agreement shall be invalid, illegal or unenforceable in any applicable jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(h) Successors/Assigns. This Agreement shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the parties hereto, subject to the provisions of the Credit Agreement and the other Financing Documents.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, and intending that this document constitute an agreement executed under seal, the undersigned have executed this Agreement under seal as of the day and year first hereinabove set forth.

**AGENT:**

**MIDCAP FUNDING IV TRUST**

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem (SEAL)
Name: Maurice Amsellem
Title: Authorized Signatory

**LENDER:**

**MIDCAP FUNDING IV TRUST**

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem (SEAL)
Name: Maurice Amsellem
Title: Authorized Signatory

[Signatures Continue on Following Page]

**BORROWERS:**

MOHAWK GROUP HOLDINGS, INC.
MOHAWK GROUP, INC.
XTAVA LLC
SUNLABZ LLC
RIF6 LLC
VREMI LLC
HOMELABS LLC
VIDAZEN LLC
URBAN SOURCE LLC
ZEPHYRBEAUTY LLC
DISCOCART LLC
VUETI LLC
PUNCHED LLC
SWEETHOMEDEALZ LLC
KITCHENVOX LLC
HOLONIX LLC
KINETIC WAVE LLC
3GIRLSFROMNY LLC
CHICALLEY LLC
BOXWHALE, LLC

By: /s/ Fabrice Hamaide (SEAL)
Name: Fabrice Hamaide
Title: Chief Financial Officer

AUSSIE HEALTH CO, LLC

By: /s/ Fabrice Hamaide (SEAL)
Name: Fabrice Hamaide
Title: Chief Financial Officer

**Exhibit 10.3**

# LOCK-UP, VOTING AND STANDSTILL AGREEMENT

**THIS LOCK-UP, VOTING AND STANDSTILL AGREEMENT** (as amended, restated, supplemented or otherwise modified in accordance with Section 10.3, this "**Agreement**") is made and entered into as of February 2, 2021 by and between **MOHAWK GROUP HOLDINGS, INC.**, a Delaware corporation (the "**Company**"), and Healing Solutions, LLC, a Delaware limited liability company (the "**Stockholder**").

## RECITALS

**WHEREAS**, pursuant to that certain Asset Purchase Agreement, dated as of even date herewith (the "**Purchase Agreement**"), by and among the Company, Truweo, LLC, a Delaware limited liability company and wholly owned subsidiary of the Company, the Stockholder, Jason R. Hope and, only for the purposes of certain sections thereof, Super Transcontinental Holdings, LLC, the Company issued 1,387,759 shares of its common stock, $0.0001 par value per share (the "**Common Stock**"), to the Stockholder (such shares, together with any Common Stock beneficially owned by the Stockholder prior to the date hereof, being collectively referred to herein as the "**Existing Securities**") for the benefit of the Stockholder thereunder;

**WHEREAS**, as of the date hereof, the Stockholder will file a Schedule 13D or 13G, as applicable, under the U.S. Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), with the U.S. Securities and Exchange Commission (the "**SEC**"), indicating the Stockholder's Beneficial Ownership of the Existing Securities, representing approximately 4.88% of the total outstanding Voting Securities (as defined below) as of the date hereof; and

**WHEREAS**, as a condition to entering into the Purchase Agreement, the Company has required that the Stockholder enter into this Agreement, and the Stockholder, in order to induce the Company to enter into the Purchase Agreement, desires to enter into this Agreement.

**NOW**, **THEREFORE**, in consideration of the foregoing premises and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## AGREEMENT

**1. DEFINITIONS**.

**1.1 Defined Terms**. As used in this Agreement, the following terms shall have the following meanings:

**(a)** "**Affiliate**" and "**Associate**" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Exchange Act.

**(b)** A Person shall be deemed the "**Beneficial Owner**" or to have "**Beneficial Ownership**" of and shall be deemed to "beneficially own" any securities which such Person or any of such Person's Affiliates or Associates is deemed to beneficially own, within the meaning of Rules 13d-3 and 13d-5 of the General Rules and Regulations under the Exchange Act.

Notwithstanding anything in this definition of Beneficial Ownership to the contrary, the phrase, "then outstanding," when used with reference to a Person's Beneficial Ownership of securities of the Company, shall mean the number of such securities then issued and outstanding together with the number of such securities not then actually issued and outstanding which such Person would be deemed the Beneficial Owner hereunder.

**(c)** "**Company Acquisition Transaction**" shall mean (i) the commencement (within the meaning of Rule 14d-2 of the General Rules and Regulations under the Exchange Act) of a tender or exchange offer by a third party for at least fifteen percent (15%) of the then outstanding capital stock of the Company or any direct or indirect Subsidiary of the Company, (ii) the commencement by a third party of a proxy contest with respect to the election of any directors of the Company, (iii) any sale, license, lease, exchange, transfer, disposition or acquisition of any portion of the business or assets of the Company or any direct or indirect Subsidiary of the Company (other than in the ordinary course of business), or (iv) any merger, consolidation, business combination, share exchange, reorganization, recapitalization, restructuring, liquidation, dissolution or similar transaction or series of related transactions involving the Company or any direct or indirect Subsidiary of the Company.

**(d)** "**Group**" shall have the meaning set forth in Section 13(d)(3) of the Exchange Act and Rule 13d-5 of the General Rules and Regulations under the Exchange Act.

**(e)** "**Subsidiary**" of any Person shall mean any corporation or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by such Person.

**(f)** "**Voting Securities**" shall mean the shares of Common Stock; *provided*, *however*, that, "Voting Securities," when used in this Agreement in connection with a specific reference to any Person other than the Company, shall mean the capital stock (or equity interest) with the greatest voting power of such other Person or, if such other Person is a Subsidiary of another Person, the Person or Persons which ultimately control such first-mentioned Person.

**1.2 Capitalized Terms**. All other capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Purchase Agreement.

**2. MATERIAL NON-PUBLIC INFORMATION; REPORTING OBLIGATIONS.**

**2.1** Stockholder acknowledges that it is aware, and will advise each of its representatives who are informed as to the matters that are the subject of the Purchase Agreement and this Agreement, that the United States securities laws may prohibit any person who has received from an issuer material, non-public information from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

**2.2** To the extent that Stockholder is required to do so by applicable Law as result of the Transactions, Stockholder acknowledges and agrees that it shall: (a) be solely responsible for the filing of (i) any Forms 3, 4 and 5 in accordance with Section 16(a) of the Exchange Act and the rules promulgated thereunder and (ii) any Schedule 13D or 13G, as applicable, under the Exchange Act and the rules promulgated thereunder, in each case, in respect of its ownership of a registered class of securities of the Company, and (b) timely file such forms and schedules or amendments thereto with the SEC and any stock exchange or similar authority, as required.

**3. LOCK-UP.**

**3.1** Stockholder hereby agrees that it shall not, and shall not authorize, permit or direct any Affiliate or Associate to, directly or indirectly, (a) sell, pledge, assign, transfer, hypothecate or otherwise dispose of (each a "**Transfer**") any Subject Securities, (b) enter into any swap, hedge, or other agreement or arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Common Stock Beneficially Owned by Stockholder and its Affiliates and Associates, whether any such transaction is to be settled by delivery of Common Stock or such other securities, in cash or otherwise; (c) engage in any short-selling of any Common Stock Beneficially Owned by

Stockholder and its Affiliates and Associates; or (d) publicly announce any intention to do any of the foregoing, in each case at any time during the period commencing on the Closing Date and ending six (6) months thereafter (the "**Lock-Up Period**"). For purposes of this Agreement, the term "**Subject Securities**" means the Existing Securities, including any equity securities issued or issuable directly or indirectly with respect to such Existing Securities by way of any stock dividend or stock split or in connection with a combination of shares, recapitalization, reclassification, merger, amalgamation, arrangement, consolidation or other reorganization.

**3.2** Notwithstanding anything to the contrary in this Agreement, Stockholder may Transfer shares of Common Stock or any securities convertible into or exchangeable or exercisable for Common Stock: (a) as a bona fide gift or gifts; (b) by will or intestacy; (c) to any trust, partnership or limited liability company for the direct or indirect benefit of the Stockholder's equityholders or the immediate family of the Stockholder's equityholders; (d) to a member of the Stockholder's equityholders' immediate family, (e) if such Transfer occurs by operation of law; or (f) to a nominee or custodian of the Stockholder's equityholder or a person or entity to whom a Transfer would be permissible under clauses (a) through (f) above; *provided*, *however*, (i) in case of any such Transfer, it shall be a condition to the Transfer that such donee or transferee execute an agreement stating that such donee or transferee is receiving and holding the Common Stock subject to the lock-up provisions contained in Section 3 of this Agreement and the voting and standstill provisions in Section 4 and Section 5, respectively, of this Agreement, as well as the trading restrictions set forth in Section 5.16 of the Purchase Agreement, (ii) any such Transfer shall not involve a disposition for value, and (iii) the Company shall not have any obligation to file, amend or update any resale prospectus or prospectus supplement that includes the Subject Securities for purposes of reflecting such Transfer.

**3.3** Failure by Stockholder to provide the Company with reasonable evidence of compliance with the lock-up provisions contained in Section 3 of this Agreement within two Business Days of any written request by the Company therefor may result in the withdrawal of any legal opinion rendered by the Company's legal counsel respecting the lawful sale of the Subject Securities, and if any of the Subject Securities then being sold by any Stockholder are being sold in reliance on a Registration Statement, at the option of the Company, such shares of Common Stock may be withdrawn from the Registration Statement. In any such event, "stop transfer" instructions shall be provided to the Company's transfer agent regarding the Subject Securities.

**3.4** Notwithstanding anything to the contrary set forth herein, the Company may, in its sole discretion and in good faith, at any time and from time to time waive any of the conditions or restrictions contained herein to increase the liquidity of Common Stock or if such waiver would otherwise be in the best interests of the development of the public trading market for the Common Stock.

**4. STANDSTILL.**

**4.1 Standstill Provisions**. Commencing on the date of this Agreement and until the date that is six (6) months after the date of this Agreement (the "**Standstill Period**"), the Stockholder agrees, on behalf of itself and its Affiliates and Associates, that for so long as such Persons collectively Beneficially Own any Voting Securities, except pursuant to a negotiated transaction with the Stockholder approved by the board of directors of the Company (the "**Board**"), the Stockholder will not (and will cause its Affiliates and Associates not to), in any manner, directly or indirectly:

**(a)** make, effect, initiate, cause or participate in (i) any acquisition of Beneficial Ownership of any securities of the Company or any securities of any Subsidiary or other Affiliate or Associate of the Company if such acquisition would result in the Stockholder and its Affiliates and Associates collectively Beneficially Owning fifteen percent (15%) or more of the then outstanding Voting Securities, (ii) any Company Acquisition Transaction, (iii) any "solicitation" of "proxies" (as those terms are defined in Rule 14a-1 of the General Rules and Regulations under the Exchange Act) or consents with respect to any securities of the Company or (iv) frustrate or seek to frustrate any Company Acquisition Transaction proposed or endorsed by the Company;

**(b)** recommend, nominate or seek to nominate any Person to the Board or otherwise act, alone or in concert with others, to seek to control or influence the management, the Board or policies or governance of the Company;

**(c)** take any action requires the Company to make a public announcement regarding any of the types of matters set forth in subsection (a) of this Section 4.1;

**(d)** request or propose that the Company (or its directors, officers, employees or agents), directly or indirectly, amend or waive any provision of this Section 4.1, including this subsection (d) or any provisions of Section 3 of this Agreement;

**(e)** demand an inspection of the Company's books and records whether pursuant to Section 220 of the General Corporation Law of the State of Delaware or otherwise;

**(f)** institute, solicit, assist or join any litigation, arbitration or other proceeding against or involving the Company or any of its current or former directors or officers (including derivative actions) other than to enforce the provisions of this Agreement or any rights available to the Stockholder under the Purchase Agreement and the Transaction Documents;

**(g)** agree or offer to take, or encourage or propose (publicly or otherwise) the taking of, any action referred to in subsections (a), (b), (c), (d), (e) or (f) of this Section 4.1;

**(h)** assist, induce or encourage any other Person to take any action referred to in subsections (a), (b), (c), (d), (e) or (f) of this Section 4.1;

**(i)** enter into any discussions, negotiations, agreements, understandings or arrangements with any third party with respect to the taking of any action referred to in subsections (a), (b), (c), (d), (e) or (f) of this Section 4.1; or

**(j)** take any action challenging the validity or enforceability of this Section 4.1 of this Agreement unless the Company is challenging the validity or enforceability of this Agreement.

**4.2 Termination of Standstill Provisions**.

**(a)** Subject to Section 4.2(b), the provisions of Section 4.1 shall terminate and be of no further force and effect in the event the Board shall have endorsed, approved, recommended, or resolved to endorse, approve or recommend a Company Acquisition Transaction.

**(b)** All of the provisions of Section 4.1 shall be reinstated and shall apply in full force according to their terms in the event that: (i) if the provisions of Section 4.1 shall have terminated as the result of a tender offer, and such tender offer (as originally made or as amended or modified) shall have terminated (without closing) prior to the commencement of a tender offer by the Stockholder or any of its Affiliates or Associates that would have been permitted to be made pursuant to Section 4.2(a) as a result of such third-party tender offer, (ii) any tender offer by the Stockholder or any of its Affiliates or Associates (as originally made or as extended or modified) that was permitted to be made pursuant to Section 4.2(a) shall have terminated (without closing); or (iii) if the provisions of Section 4.1 shall have terminated as a result of any action by the Board referred to in Section 4.2(a), and the Board shall have determined not to take any of such actions (and no such transaction considered by the Board shall have closed) prior to the commencement of a tender offer by the Stockholder that would have been permitted to be made pursuant to Section 4.2(a) as a result of the initial determination of the Board referred to in Section 4.2(a).

**(c)** Upon reinstatement of the provisions of Section 4.1, the provisions of this Section 4.2 shall continue to govern for the remainder of the Standstill Period in the event that any of the events described in Section 4.2(a) shall occur. Upon the closing of any tender offer for or acquisition of any securities of the Company or rights or options to acquire any such securities by the Stockholder or any of its Affiliates or Associates that would have been prohibited by the provisions of Section 4.1 but for the provisions of this Section 4.2, all provisions of Section 4.1 and Section 4.2 shall terminate.

**4.3 Sales of Shares of Common Stock**. During the Standstill Period, the Stockholder will only sell shares of Common Stock in open market transactions on The Nasdaq Stock Market, LLC or on such principal stock exchange as the Common Stock is then listed for trading or in private transactions so long as any sale in a private transaction is not to any Person or Group who the Stockholder reasonably believes after due inquiry Beneficially Owns or as a result of such transaction would Beneficially Own more than five percent (5%) of the then outstanding Voting Securities.

**5. VOTING OF STOCKHOLDER SHARES**.

**5.1 Shares Held Subject to Agreement.** Until the Termination Date, for so long as the Stockholder and its Affiliates and Associates collectively Beneficially Own any Common Stock or any other Voting Securities, the Stockholder agrees to hold all such Common Stock or other Voting Securities registered in such Stockholder's name or Beneficially Owned by such Stockholder as of the date hereof and any and all other voting securities of the Company legally or beneficially acquired by them after the date hereof (hereinafter collectively referred to as the "**Stockholder Shares**") subject to, and to vote the Stockholder Shares in accordance with, the provisions of this Agreement.

**5.2 Vote Required.** At all times prior to the Termination Date, the Stockholder shall timely vote in person or by proxy at each annual or special meeting of the Company's stockholders (or shall consent to vote pursuant to an action by written consent of the holders of capital stock of the Company, as and if permitted by the Company's bylaws) all such Stockholder Shares in accordance with the recommendations of the Board on each matter presented to the Company's stockholders at such meeting or consent solicitation as set forth in the applicable definitive proxy statement, including without limitation the election, removal and/or replacement of directors.

**5.3 Irrevocable Proxy.** The Stockholder hereby constitutes and appoints the Company with full power of substitution, as the proxy of such stockholder with respect to all matters in accordance with Section 5, and hereby authorizes the Company to represent and to vote, if and only if such stockholder: (a) fails to vote; or (b) attempts to vote (whether by proxy, in person or by written consent), in a manner which is inconsistent with the terms of this Agreement, all of the Stockholder Shares in accordance with the recommendation of the Board on each matter presented to the Company's stockholders at any annual or special meeting of the Company's stockholders or consent solicitation, in each case, as required pursuant to the terms and provisions of this Agreement. The proxy granted pursuant to the immediately preceding sentence is coupled with an interest and shall be irrevocable unless and until this Agreement terminates pursuant to Section 9 hereof. The Stockholder hereby revokes any and all previous proxies with respect to the Stockholder Shares and shall not hereafter, unless and until this Agreement terminates pursuant to Section 9 hereof, purport to grant any other proxy or power of attorney with respect to any of the Stockholder Shares, deposit any of such Stockholder Shares into a voting trust or enter into any agreement (other than this Agreement), arrangement or understanding with any Person, directly or indirectly, to vote, grant any proxy or give instructions with respect to the voting of any of such Stockholder Shares, in each case, with respect to any matter presented to the Company's stockholders for approval at any annual or special meeting of the Company's stockholders or written consent.

**6. REPRESENTATIONS AND WARRANTIES.**

**6.1** Each party hereto represents and warrants to the other as follows:

**(a)** Authorization. Such party has the requisite power, authority and legal capacity to execute, deliver and perform and to consummate the transactions contemplated by this Agreement. This Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as such enforcement may be limited by any applicable bankruptcy, insolvency, moratorium or similar law affecting creditors' rights generally.

**(b)** No Consents. No consent of any Governmental Authority or other Person is required to be obtained by such party in connection with the execution and delivery by such party of this Agreement.

**6.2** The Stockholder represents and warrants to the Company that as of the date hereof, the Stockholder and its Affiliates and Associates collectively Beneficially Own 1,387,759 shares of Common Stock and have no other interest in the capital stock of the Company.

**6.3** The Stockholder understands and acknowledges that the Company is entering into the Purchase Agreement in reliance upon the Stockholder's execution, delivery and performance of this Agreement.

**7. LEGEND.**

**7.1** Concurrently with the execution of this Agreement, and in addition to any other legends provided for in the Purchase Agreement, there shall be imprinted or otherwise placed on the book-entry statements representing the Stockholder Shares the following restrictive legend (the "**Legend**"):

> "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A LOCK-UP, VOTING AND STANDSTILL AGREEMENT WHICH PLACES CERTAIN RESTRICTIONS ON THE TRANSFER AND VOTING OF THE SHARES REPRESENTED HEREBY. ANY PERSON ACCEPTING ANY INTEREST IN SUCH SHARES SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SUCH AGREEMENT. A COPY OF SUCH LOCK-UP, VOTING AND STANDSTILL AGREEMENT WILL BE FURNISHED TO THE RECORD HOLDER OF THIS CERTIFICATE WITHOUT CHARGE UPON WRITTEN REQUEST TO THE COMPANY AT ITS PRINCIPAL PLACE OF BUSINESS."

**7.2** The Stockholder agrees that, during the term of this Agreement, it will not remove, and will not permit to be removed (upon registration of transfer, reissuance of otherwise), the Legend from any such book-entry statements and will place or cause to be placed the Legend on any new book-entry statements issued to represent Stockholder Shares theretofore represented by a book-entry statements carrying the Legend. The Stockholder will not request that any of the Stockholder Shares be converted from book-entry format to certificated shares.

**8. SUCCESSORS.** The provisions of this Agreement shall be binding upon the successors in interest to any of the Stockholder Shares. The Company shall not permit the transfer of any of the Stockholder Shares on its books or issue a new certificate representing any of the Stockholder Shares unless and until the Person to whom such security is to be transferred shall have executed a written agreement, substantially in the form of this Agreement, pursuant to which such Person becomes a party to this Agreement and agrees to be bound by all the provisions hereof as if such Person were a Stockholder hereunder.

**9. TERMINATION.** This Agreement shall continue in full force and effect from the date hereof through the earliest of the following dates, on which date (the "**Termination Date**") it shall terminate in its entirety on the earlier of: (a) the date that is six (6) months after the date of this Agreement and (b) the date of the closing of a sale, lease, or other disposition of all or substantially all of the Company's assets or the Company's merger into or consolidation with any other corporation or other entity, or any other corporate reorganization, in which the holders of the Company's outstanding voting stock immediately prior to such transaction own, immediately after such transaction, securities representing less than 50% of the voting power of the corporation or other entity surviving such transaction; *provided*, *however*, that this clause "(b)" shall not apply to a merger effected exclusively for the purpose of changing the domicile of the Company; and (c) the date as of which this Agreement is terminated by the written consent of the Company and the holders of at least 75% of the Stockholder Shares.

**10. MISCELLANEOUS.**

**10.1 Specific Performance.** The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the parties hereto shall be entitled to enforce specifically the provisions of this Agreement, including obtaining an injunction or injunctions to prevent breaches or threatened breaches of this Agreement, in any court designated to resolve disputes concerning this Agreement (or, if such court lacks subject matter jurisdiction, in any appropriate state or federal court), this being in addition to any other remedy to which such party is entitled at law or in equity. Each party hereto further agrees not to assert and waives (a) any defense in any action for specific performance that a remedy at Law would be adequate and (b) any requirement under any Law to post security or provide indemnity as a prerequisite to obtaining equitable relief.

**10.2 Expenses**. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party hereto shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

**10.3 Amendment and Waiver.** Any provision of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and the holders of at least 75% of the Stockholder Shares. No failure or delay of any party hereto to exercise any right or remedy given to such party under this Agreement or otherwise available to such party or to insist upon strict compliance by any other party with its obligations hereunder and no single or partial exercise of any such right or power shall constitute a waiver of any party hereto's right to demand exact compliance with the terms hereof. Any written waiver shall be limited to those items specifically waived therein and shall not be deemed to waive any future breaches or violations or other non-specified breaches or violations unless, and to the extent, expressly set forth therein.

**10.4 Notices.** All notices and other communications made pursuant to or under this Agreement shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) as of the date transmitted when transmitted by electronic mail, (c) one Business Day after deposit with a nationally recognized overnight courier service, or (d) three Business Days after the mailing if sent by registered or certified mail, postage prepaid, return receipt requested. All notices and other communications under this Agreement shall be delivered to the addresses set forth on the signature page hereto, or such other address as such party may have given to the other parties by notice pursuant to this Section 10.4.

**10.5 Severability.** If any term or provision of this Agreement is held invalid, illegal or unenforceable in any respect under any applicable Law, the validity, legality and enforceability of all other terms and provisions of this Agreement will not in any way be affected or impaired. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

**10.6 Governing Law**. This Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation, inducement to enter and/or performance of this Agreement (whether related to breach of contract, tortious conduct or otherwise and whether now existing or hereafter arising) shall be governed by, the internal laws of the State of Delaware, without giving effect to any law that would cause the laws of any jurisdiction other than the State of Delaware to be applied.

**10.7 Consent to Jurisdiction; Service of Process; Waiver of Jury Trial.**

**(a)** Each Party agrees that any proceeding arising out of or relating to this Agreement shall be brought exclusively in any state or federal court located in New York County, State of New York and each of the Parties hereby submits to the exclusive jurisdiction of such courts for itself and with respect to its property, generally and unconditionally, for the purpose of any such proceeding. A final judgment in any such proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each Party agrees not to commence any proceeding arising out of or relating to this Agreement, except in the courts described above (other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in New York as described above), irrevocably and unconditionally waives any objection to the laying of venue of any proceeding arising out of or relating to this Agreement in any such court, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such proceeding brought in any such court has been brought in an inconvenient forum or does not have jurisdiction over any Party. Each Party agrees that service of any process, summons, notice or document by U.S. registered mail to such Party's respective address set forth herein shall be effective service of process for any such proceeding.

**(b)** EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, STATUTE OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF. EACH PARTY FURTHER WAIVES ANY RIGHT TO SEEK TO CONSOLIDATE ANY PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER PROCEEDING IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED OR WARRANTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.7.

**10.8 Entire Agreement.** Except for the Purchase Agreement, this Agreement sets forth the entire understanding and agreement between the parties hereto with respect to the subject matter hereof.

**10.9 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Agreement may be executed by facsimile or electronic (.pdf) signature and a facsimile or electronic (.pdf) signature shall constitute an original for all purposes.

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

**IN WITNESS WHEREOF**, the parties hereto have executed this **LOCK-UP, VOTING AND STANDSTILL AGREEMENT** as of the date first written above.

**COMPANY:**

**MOHAWK GROUP HOLDINGS, INC.**

/s/ Fabrice Hamaide

**Fabrice Hamaide**
Chief Financial Office

Address: 37 E 18th St., 7th Floor
New York, NY 10003

**IN WITNESS WHEREOF**, the parties hereto have executed this **LOCK-UP, VOTING AND STANDSTILL AGREEMENT** as of the date first written above.

**STOCKHOLDER:**

**HEALING SOLUTIONS, LLC**

/s/ Jason R. Hope

**Jason R. Hope**
Manager

Address: 4703 W. Brill St
Suite 1001
Phoenix, AZ 85043
Attention Jason Hope

**Exhibit 10.4**

# MANUFACTURING SUPPLY AGREEMENT

This Manufacturing Supply Agreement (as may be amended, restated, supplemented or otherwise modified in accordance with Article XXVI, this "**Agreement**") is made and entered into as of February 2, 2021 (the "**Effective Date**"), by and between Mohawk Group, Inc. ("**Buyer**"), a Delaware corporation, with a place of business at 37 E 18th St., 7th Floor, NY, NY 10003 and Healing Solutions, LLC ("**Supplier**"), a Delaware limited liability company, with offices located at 4703 W. Brill St., Suite 101, Phoenix, AZ, 85043. Supplier and Buyer are sometimes individually referred to herein as a "**Party**" and are collectively referred to as the "**Parties**". Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Purchase Agreement (as defined below).

## RECITALS

**WHEREAS**, on the Effective Date, (i) Mohawk Group Holdings, Inc., a Delaware corporation ("**Parent**") and Truweo, LLC, a Delaware limited liability company and wholly owned subsidiary of Parent (together in their capacity as Purchaser thereunder), (ii) Supplier (in its capacity as Seller thereunder), and (iii) Jason R. Hope and (iv) Super Transcontinental Holdings, LLC, a Delaware limited liability company, as the sole voting member of Seller, entered into that certain Asset Purchase Agreement (the "**Purchase Agreement**"), pursuant to which Purchaser (as defined in the Purchase Agreement) acquired and assumed (either directly or indirectly through one or more Purchaser Designees (as defined in the Purchase Agreement)) from Seller, all of the Acquired Assets and the Assumed Liabilities, respectively;

**WHEREAS**, following the Closing, Supplier will remain engaged in the Retained Business; and

**WHEREAS**, from and after the Closing, Buyer desires that Seller manufacture and supply certain Products (as defined below) to Buyer, and Buyer desires to purchase such Products from Seller, on a temporary basis pursuant to the terms and conditions set forth in this Agreement.

**NOW**, **THEREFORE**, in consideration of the undertakings of the Parties set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

## ARTICLE I.
## MANUFACTURE AND SALES OF PRODUCTS.

**1.1. Products; Forecasts.** Supplier shall manufacture and supply to Buyer the products listed on Exhibit A (the "**Products**"), pursuant to the terms and conditions set forth in this Agreement. On the 15th day of each month during the Term, Buyer shall provide Supplier with a rolling forecast of its anticipated requirements for the Products for the following month, set out by Product and in the case of each Product in an amount not less than the minimum quantity set forth for such Product in Exhibit A (the "**Forecast**"). If timely requested by Buyer, Supplier shall use commercially reasonable efforts to manufacture or supply to Buyer in any particular month more than 100% of Buyer's Forecast for the applicable month, but Supplier shall have no liability for failure to manufacture or supply any amount of Product in excess of the applicable Forecast. Buyer may order less than its Forecast with the written consent of Supplier, which consent shall not be unreasonably withheld, conditioned or delayed.

**1.2. Production, Exclusivity.** Supplier shall produce and supply the Products to Buyer pursuant to the terms and conditions of this Agreement and in accordance with the Quality Standard (defined below) until such time as this Agreement has been terminated in accordance with its terms. Supplier shall conduct in-process and final inspections and testing of the Products in the ordinary course of the Retained Business consistent with Supplier's past practice (prior to the date hereof) relating to the Products to ensure that the Products are manufactured in accordance with the Quality Standard. Supplier shall not change the manufacturing process of any Product in a manner that adversely affects the quality, design, material inputs, appearance or regulatory compliance of such Product without Buyer's written consent, which consent shall be in Buyer's sole discretion, acting reasonably. The Products to be manufactured hereunder are solely for the account of Buyer and Supplier may not sell or offer for sale, distribute, or otherwise dispose of the Products to any other person or entity without the prior written consent of Buyer, which consent shall be at Buyer's sole discretion; *provided*, *however*, that if Buyer fails to take Product in a quantity equal to the applicable Forecast for a month without Supplier's consent, then Supplier shall be permitted to sell such untaken Product to any other person or entity; *provided*, *further*, that any such products sold to any other person or entity shall not be marketed or sold under any of the Acquired Marks (as defined in the Purchase Agreement). For the avoidance of doubt, no such Products sold to any person or entity other than Buyer in accordance with the foregoing sentence shall be included on any invoice and Buyer shall not be obligated to pay for such Product.

**1.3. Status Meetings.** The Parties will meet at least every two weeks, or no later than 10 days following the request of either Party, to review matters related to the production of the Products under this Agreement and to revise and make changes, as may be necessary, to the Products.

## ARTICLE II.
## MANUFACTURING AND QUALITY OF PRODUCTS.

**2.1. Quality Standard.** Supplier shall manufacture, store, pack, label and transport the Products in accordance with all applicable Laws (including with respect to regulatory compliance) and in the ordinary course of the Retained Business consistent with Supplier's past practice (prior to the date hereof), relating to the Products and such Products shall: (a) not have a "Use By", "Expiration Date" or similar date reference that is within one year of the date on which such Product is shipped to Buyer pursuant to the terms hereof and (b) be equal in or exceed the quality, design, material, appearance and workmanship of a representative unit of the units of Specified Inventory that were Acquired Assets and acquired by Buyer and its Affiliates pursuant to the Purchase Agreement (collectively, the "**Quality Standards**"); *provided*, *however*, that if any product becomes the subject of a recall or a Proceeding, such Product shall be automatically deemed to not meet the Quality Standards.

**2.2. Samples.** Buyer may request at any time during the term of this Agreement that Supplier provide Buyer production samples of the Products on a monthly basis, or more frequently as Buyer may deem reasonably necessary, in its sole discretion, in the event of material product performance failures or excessive consumer complaints, so that Buyer may evaluate in its sole but reasonable discretion whether such production samples conform to the Quality Standard.

**2.3. Subcontracting.** Supplier may not subcontract any of the services or obligations under this Agreement (except those services or obligations normally outsourced by Supplier in the ordinary course of the Retained Business consistent with Supplier's past practice (prior to the date hereof) relating to the Products) without the express written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

**2.4. Facilities and Audit.**

(a) Buyer shall have the right to inspect Supplier's facilities, or any other location where the Products are manufactured, and to review Supplier's production of the Products; *provided*, that any such inspection will occur during business hours, not interfere with the operation of the Retained Business and only after Buyer has given Supplier at least five days prior written notice of its request for such inspection. Supplier shall fully cooperate with Buyer with respect to any request for inspection of Supplier's facilities. If during any such inspection Buyer determines that Supplier's manufacturing facilities or the production of the Products do not comply with the Quality Standards, Buyer shall have 15 days following the date of such inspection to furnish Supplier with written notice of any such deficiency ("**Deficiency Notice**"). Upon receipt of any Deficiency Notice, Supplier shall promptly, and in any event within 15 days of such receipt, take all commercially reasonable steps necessary to rectify each deficiency set forth therein; *provided* that if Supplier becomes aware that it will be unable to rectify any noncompliance with the Quality Standards it shall promptly provide written notice to Buyer.

(b) In the event Supplier does not agree with the matters set forth in the applicable Deficiency Notice, the matter shall be referred to each Party's executive leadership team for resolution; *provided*, *however*, that pending the resolution of any such dispute the Parties shall abide by and perform in accordance with the Deficiency Notice until it is overturned or modified by the executive leadership team. In the event the respective Parties' executive leadership teams are unable to resolve the matter, the matter shall be resolved pursuant to Article XIV.

## ARTICLE III.
## PURCHASE ORDERS; PRICING.

**3.1. Purchase Orders.** Buyer shall order Products by submitting a purchase order to Supplier via email to [...***...], each consistent with the terms and conditions of this Agreement, including the quantity requirements of Section 1.1 ("**Purchase Orders**"). The Parties may agree in writing to alternative methods and formats of submitting Purchase Orders; *provided* that such changes to Purchase Order submittal methods and formats shall not alter any other term or condition of this Agreement. The initial format of the Purchase Orders shall be Buyer's form. Each Purchase Order shall specify (i) the Products and quantity thereof being ordered, (ii) Product prices, (iii) payment terms, and (iv) the date by which Buyer needs the goods to be delivered to Buyer. Delivery dates must be during the term of the Agreement, except that Buyer may submit a Purchase Order with a requested delivery date after the expiration or termination of this Agreement, in which case the terms and conditions of this Agreement shall apply to such shipment, but under no circumstances shall such shipment be deemed to be or construed as being a renewal or extension of this Agreement. The Parties agree that the terms of this Agreement shall prevail over any conflicting terms and conditions in any Purchase Order or any acknowledgment or other

responsive document provided by Supplier. Any terms that modify or conflict with this Agreement included in a Purchase Order or in any acknowledgment or other responsive document provided by Supplier shall be deemed null and void, and neither Buyer nor Supplier shall be required to comply therewith. Any such modifications or deviations must be in writing and signed by both Parties pursuant to Section 26.1.

**3.2. Acceptance of Purchase Orders.** Supplier shall accept all Purchase Orders promptly upon submission, and in any event no more than two Business Days following receipt of such Purchase Order, that are consistent with the applicable Forecast unless an event of Force Majeure exists.

**3.3. Pricing.**

(a) The initial prices for the Products are set forth on the schedule included as Exhibit A, which prices reflect Supplier's cost of raw materials, transportation and labor related costs in connection with the manufacture and supply of the Products as of the date hereof.

(b) Such initial prices shall be adjusted as necessary during the Term to reflect any actual increases or decreases to the price of raw materials, transportation or labor incurred by Supplier in the manufacturing and supply of the Products. Supplier shall provide Buyer written notice of any increase or decrease in the price of raw materials, transportation or labor by more than a *de minimus* amount (which amount shall be deemed for purposes of this Agreement to mean an amount of not more than one percent (in the aggregate for such costs on a given Purchase Order) from the amount of such costs as set forth on Exhibit A).

(c) Notwithstanding the foregoing, if Supplier's cost of goods increases on or after the Effective Date as a result of it switching to higher cost raw materials than were used by Supplier prior to the Effective Date in order to meet the standard of applicable Law (as in effect on the Effective Date), then such cost increase shall be for Seller's account and shall not be passed on to Buyer through increased prices for the affected Product(s) or otherwise.

(d) Subject to the limitations in this Section 3.3, Supplier shall invoice and Buyer shall pay Supplier for the Products purchased under each Purchase Order at Supplier's cost of raw materials, transportation and labor. Prices do not include, and except as otherwise provided herein, Supplier shall not be responsible for, the cost of any required federal, state or local taxes, duties, export or custom charges, VAT charges, brokerage or other fees. If Buyer provides a resale certificate to Supplier in connection with Buyer's purchase of any Products or any other goods hereunder Supplier shall not charge or remit any sales tax on the sale to Buyer of Products or any other goods hereunder.

## ARTICLE IV.
## INVOICES AND PAYMENT TERMS.

**4.1.** Supplier shall deliver an invoice to Buyer promptly following the last day of each calendar month, and in any event no later than three days following the last day of such month, setting forth the amounts owed for each shipment of Products that occurred during such month.

**4.2.** All invoices submitted by Supplier to Buyer in respect of a given month shall be due and payable by the 15th day of the following month by wire transfer of immediately available funds to the bank account identified by Supplier on the relevant invoice. If Buyer disputes any amount purportedly owed in an invoice, Buyer shall pay the undisputed portion of the invoice as set forth in this ARTICLE IV, and notify Supplier in writing as to the amount in dispute and the basis on which Buyer is disputing the applicable portion of such invoice. Buyer shall be permitted to offset the cost it previously paid for any Products ordered under a prior Purchase Order in respect of which the Products delivered thereunder were returned or recalled against the cost that would be due and payable for Products under a new Purchase Order.

## ARTICLE V.
## SHIPMENTS OF PRODUCTS.

**5.1. Shipment Terms; Title and Risk of Loss.** All Products acquired by Buyer under this Agreement will be suitably packaged for shipment in Supplier's standard containers, marked for shipment to Buyer at the address specified in the Purchase Order, and delivered to Buyer or the forwarding agent selected by Buyer. Shipment of Products under this Agreement shall be F.O.B. destination. Supplier shall use its commercially reasonable efforts to ship Products to Buyer on or before the requested delivery date designated in a Purchase Order. Any expense for any special packaging or any special delivery requested by Buyer shall be borne by Buyer. Supplier shall advise Buyer regarding any such extraordinary packaging or delivery expenses in advance and Buyer shall agree to same before incurring any liability for such expenses. Title and risk of loss will pass F.O.B. destination.

**5.2. Transportation Charges.** Notwithstanding anything herein to the contrary but subject to Supplier passing-through transportation related costs in its pricing to Buyer pursuant to Section 3.3, Supplier shall pay all transportation costs related to Products sold hereunder and further agrees to pay all transportation charges incurred in delivering the Products to Buyer as directed in the relevant Purchase Order.

**5.3. Acceptance of Shipments.** Buyer shall be deemed to have accepted any Product delivered by Supplier pursuant to Purchase Order unless such Product was actually delivered to an Amazon Fulfillment Center but was not accepted by such Amazon Fulfillment Center for any reason or at any time. Any Products that are deemed not to be accepted in accordance with the foregoing sentence shall be replaced by Supplier at no additional cost to Buyer. If Supplier disputes any finding by the applicable Amazon Fulfillment Center that a Product is defective or nonconforming, such dispute shall be solely between Amazon and Supplier and Buyer shall have no obligations or liabilities in respect thereof.

**5.4. Product Recall.** If any Governmental Authority issues a recall or takes similar action in connection with the Products, or if Supplier determines that an event, incident or circumstance has occurred which may reasonably require a recall or market withdrawal, including without limitation any customer or vendor complaints received by Supplier and relating to a Product's or Products' adverse health and safety implications or other similar characteristics, Supplier shall promptly advise Buyer of the circumstances in writing. Buyer shall have the right to control any Product recall process, and Supplier shall cooperate in the event of a Product recall with respect to the reshipment, storage or disposal of recalled Products, the preparation and maintenance of relevant records and reports, and notification to any recipients or end users. Supplier shall pay all reasonable expenses incurred by Buyer in connection with such a recall, including

the costs of shipping, storing and/or destroying Products to the extent that such recall is reasonably determined to have been caused by Supplier's breach of the terms of this Agreement. Buyer shall be responsible for the expenses of effecting any such recall (including any reasonable and documented out-of-pocket expenses incurred by Supplier in connection with such cooperation) in all other instances. Supplier shall promptly refer to Buyer for all responses to all customer complaints involving the health, safety, quality, composition or packaging of the Products, or which could in any way be adverse to Buyer's and/or Products' reputation and brands. For the avoidance of doubt, Supplier shall notify Buyer of any Governmental Authority or material customer inquiries regarding the Products of which Supplier becomes aware.

## ARTICLE VI.
## WARRANTY.

**6.1.** Supplier represents and warrants that the Products will (i) be owned by Supplier free and clear of any liens, claims or encumbrances; (ii) conform to the Quality Standards; (iii) be fit and sufficient for the purposes for which the Products were manufactured and sold to Buyer; (iv) be free from defects in design, material and workmanship; and (v) be new and merchantable. Supplier acknowledges and agrees that these representations and warranties shall survive the acceptance of the Products by an Amazon Fulfillment Center and end users of the Products, are provided for the benefit of Buyer and its successors, assigns and end users of the Products purchased hereunder by Buyer, and are in addition to any warranties and remedies to which the Parties may otherwise agree upon, which are provided by Law, or are contained in any of Supplier's standard product warranties that accompany the Products

## ARTICLE VII.
## CONFIDENTIALITY.

**7.1. Confidential Information.** The Parties acknowledge that for the purpose of the performance of this Agreement and the production and sale of the Products hereunder, one Party may disclose to the other Confidential Information (defined below). The Party disclosing Confidential Information is referred to as the "**Disclosing Party**" and the Party receiving such Confidential Information as the "**Receiving Party**." For the purpose of this Agreement, "**Confidential Information**" shall mean information concerning a Party's products, business and operations including information relating to business plans, analyses, compilations, studies, notes, copies, memoranda, financial records, customers, suppliers, vendors, products, product samples, costs, sources, strategies, inventions, procedures, sales aids or literature, technical advice or knowledge, contractual agreements, pricing, price lists, product white paper, product specifications, trade secrets, procedures, distribution methods, inventories, marketing strategies and interests, algorithms, data, designs, drawings, work sheets, blueprints, concepts, samples, inventions, manufacturing processes, computer programs and systems and know-how or other intellectual property, of a Party and its affiliates that may be at any time furnished, communicated or delivered by the Disclosing Party to the Receiving Party, whether in oral, tangible, electronic or other form; (ii) the terms of any agreement, including this Agreement, and the discussions, negotiations and proposals related to any agreement; (iii) information acquired during any tours of or while present at a Party's facilities; and (iv) all other non-public information provided by the Disclosing Party hereunder including, but not limited, to financial, technical and business information. All Confidential Information shall remain the property of the Disclosing Party.

**7.2. Use of Confidential Information; Standard of Care.** The Receiving Party shall maintain the Confidential Information in strict confidence and disclose the Confidential Information only to its employees and agents who have a need to know such Confidential Information in order to fulfill the business affairs and transactions between the Parties contemplated by this Agreement and who have entered into a written confidentiality agreement whereby such employees and agents are under confidentiality obligations in favor of the Disclosing Party that are no less restrictive than this Agreement. The Receiving Party shall at all times remain responsible for breaches of this Agreement arising from the acts of its employees and agents. The Receiving Party shall protect Confidential Information by using the same degree of care as the Receiving Party uses to protect its own information of a like nature, but no less than a reasonable degree of care, to prevent the unauthorized use, disclosure, dissemination, or publication of the Confidential Information. The Receiving Party agrees not to use the Disclosing Party's Confidential Information for its own purpose or for the benefit of any third party, without the prior written approval of the Disclosing Party. No Confidential Information furnished to the Receiving Party shall be duplicated or copied except as may be strictly necessary to effectuate the purpose of this Agreement.

**7.3. Exceptions; Requested Disclosures.** The Receiving Party shall not have any obligations to preserve the confidential nature of any Confidential Information that (a) the Receiving Party can demonstrate by competent evidence was rightfully in the Receiving Party's possession before receipt from the Disclosing Party (*provided, however*, that this exception shall in no way operate as an exception to Supplier's confidentiality obligations set forth in Section 5.13 of the Purchase Agreement); (b) is or becomes a matter of public knowledge through no fault of the Receiving Party; (c) is rightfully provided to Receiving Party by a third party without, to the best of the Receiving Party's knowledge and reasonable judgment, a duty of confidentiality; (d) is independently developed by the Receiving Party without use of the Confidential Information, as demonstrated by competent evidence; or (e) is disclosed by the Receiving Party with the Disclosing Party's prior written approval. If the Receiving Party is confronted with legal action to disclose Confidential Information received under this Agreement, the Receiving Party shall, unless prohibited by applicable Law, provide prompt written notice to the Disclosing Party to allow the Disclosing Party an opportunity to seek a protective order or other relief it deems appropriate, and the Receiving Party shall reasonably assist the Disclosing Party in such efforts. If disclosure is nonetheless required, the Receiving Party shall limit its disclosure to only that portion of the Confidential Information which it is advised in writing by its legal counsel must be disclosed.

**7.4. Unauthorized Use of Confidential information; Equitable Relief.** If the Receiving Party discovers that any Confidential Information has been used, disseminated or accessed in violation of this Agreement, it will immediately notify the Disclosing Party; take all commercially reasonable actions available to minimize the impact of the use, dissemination or publication; and take any and all necessary steps to prevent any further breach of this Agreement. The Receiving Party hereby agrees and acknowledges that any breach or threatened breach of this Agreement regarding the treatment of the Confidential Information will result in irreparable harm to the Disclosing Party for which there will be no adequate remedy at Law. In addition to other remedies provided by Law or at equity, in such event the Disclosing Party shall be entitled to seek an injunction, without the necessity of posting a bond, to prevent any further breach of this Agreement by the Receiving Party.

**7.5. Return of Confidential Information; Survival.** The Receiving Party shall promptly return or, at Disclosing Party's option, certify destruction of all copies of Confidential Information at any time upon request or within 15 days following the expiration or earlier termination of this Agreement. The foregoing shall not require Receiving Party to return or destroy electronic copies of Confidential Information created pursuant to their respective electronic backup and archival procedures. Notwithstanding any expiration or termination of this Agreement, the Receiving Party's obligations to protect the Confidential Information pursuant to this Section will survive for two years after the expiration or earlier termination of this Agreement.

## ARTICLE VIII.
## INDEMNIFICATION.

**8.1. Supplier's Indemnity Obligations for Intellectual Property Infringement.** Supplier agrees to defend, indemnify and hold harmless Buyer from and against any and all losses, damages, suits, expenses (including reasonable attorneys' fees) and costs arising from a third party claim (collectively "**Infringement Claims**") alleging that the Products sold to Buyer infringe, misappropriate, or otherwise violate any U.S. patent, trademark, copyright, or other U.S. intellectual property rights of any kind or nature excluding to the extent such claim is based upon (i) Supplier's compliance with any information or instructions provided by Buyer, or (ii) modifications to the Product made by Buyer. If the use or sale of any Products furnished under this Agreement is enjoined as a result of an Infringement Claim, Supplier shall, at its own expense and option, either obtain on behalf of Buyer the right to continue to use or sell such Products, substitute an equivalent product reasonably acceptable to Buyer in its place but that still complies with the terms and conditions and obligations of this Agreement, or reimburse Buyer, on a commercially reasonable pro rata basis that reflects the benefits derived by the Buyer from the Products prior to such reimbursement, the purchase price of such Products. The foregoing shall constitute Buyer's sole rights and remedies vis-à-vis Supplier in connection with any such Infringement Claim under this Agreement, but shall have no effect on any rights of Buyer under the Purchase Agreement.

**8.2. Supplier's Additional Indemnity Obligations.** Supplier hereby agrees to defend, indemnify and hold harmless Buyer and its Affiliates, and their respective officers, directors, managers and employees from and against all third party claims, losses, damages, suits, expenses (including reasonable attorneys' fees) and costs (collectively "**Claims**") in connection with or airing out of (i) any failure of Supplier to manufacture, test, assemble, package, store, ship and deliver the Products in accordance with the Quality Standards, (ii) Supplier's breach of any of its representations, warranties or obligations contained in this Agreement; (iii) any gross negligence, willful misconduct or fraud of Supplier or its agents, (iv) Supplier's failure to fully conform to all Laws which affect the Products; or (v) any inaccurate, erroneous or incomplete trade agreement certifications, country of origin information, or export control classification numbers supplied to Buyer for Products furnished by Supplier under this Agreement; *provided, however*, that Supplier shall not be obligated to provide indemnification if any Claim arises out of or results from (A) Buyer's gross negligence or willful misconduct, (B) changes made by Buyer relating to marketing, advertising or promotion of the Products, (C) any modifications or changes made to the Products by any

Person on behalf of Buyer after delivery by Supplier, or (D) use of the Products in combination with any products, materials or equipment supplied to Buyer by a Person other than Supplier, if the Claim could have been avoided by the use of the Products not so combined. This indemnification shall be in addition to any Product warranty obligations of Supplier, in which case all such Product warranty obligations are to be at Supplier's sole expense with payment from the first dollar.

**8.3. Buyer's Indemnification Obligations.** Buyer shall indemnify, defend and hold harmless Supplier and its Affiliates, and their respective officers, directors, managers and employees from and against any Claims (i) asserted by a third party arising out of or resulting from any breach by Buyer of the terms of this Agreement or (ii) that proprietary rights owned by Buyer, including, without limitation, the proprietary rights acquired by an Affiliate of Buyer under the Purchase Agreement, infringe upon or violate any patent, trademark, copyright, trade secret or other proprietary rights of any third party (subject to any right Buyer has to seek recourse or indemnification from Seller under the Purchase Agreement).

**8.4. Procedures for Indemnification.** Promptly after receipt of any written claim or notice of any action giving rise to a claim for indemnification, the indemnitor will provide the indemnitee with written notice of the claim or action. Indemnitor will provide the indemnitee with reasonable cooperation and assistance in the defense or settlement of any Claim, and grant indemnitee control over the defense and settlement of the same; *provided* that indemnitor shall be entitled to participate in the defense of the Claim and to employ counsel at its own expense to assist in the handling of such Claim. Indemnitee shall not agree to any settlement which results in an admission of liability by indemnitor without indemnitor's prior written consent. If indemnitee fails to assume the defense of any Claim, or does not diligently pursue such defense, indemnitor may retain counsel and assume the defense of such Claim at the cost of indemnitee, and in that case, indemnitee shall reimburse indemnitor for all of its reasonable attorneys' fees, costs and damages incurred in settling or defending such claims within 15 days of each of indemnitee's written requests.

## ARTICLE IX.
## INSURANCE.

**9.1.** Supplier shall obtain and keep in force during the term of this Agreement, (i) Worker's Compensation insurance in compliance with the statutory requirements for worker's compensation of the state or states in which it has employees performing any work related to this Agreement; (ii) and employer's liability insurance on a per occurrence basis with a minimum limit of $2,000,000 per occurrence; and (iii) Commercial General Liability ("**CGL**") insurance, including contractual liability and product liability, with a combined single limit for bodily injury and property damage of not less than $5,000,000. Supplier shall provide Buyer with a certificate of insurance evidencing the above coverages on forms furnished by or reasonably acceptable to Buyer or upon Buyer's request provide true copies of the insurance policies. The CGL insurance policy shall name Buyer as an additional insured, but only with respect to liability arising out of this Agreement, and shall cover all claims arising out of incidents or events occurring during the term of the policies. Supplier shall maintain its CGL insurance for a period of two years after the termination or expiration of this Agreement.

## ARTICLE X.
## TERM.

**10.1.** This Agreement shall have a term of fifteen (15) months from the Effective Date (the "**Term**"), unless earlier terminated in accordance with the provisions in Article XI.

## ARTICLE XI.
## TERMINATION.

**11.1. Termination for Breach.**

(a) Buyer may terminate this Agreement at any time in the event of a breach by Supplier of a covenant, commitment or obligation under this Agreement (unless attributable to a Force Majeure Event set forth in Section 11.5) that remains uncured after 30 days following written notice thereof from Buyer to Supplier. Such termination shall be effective immediately and automatically upon the expiration of the applicable notice period, without further notice or action by Buyer. Termination shall be in addition to any other remedies that may be available to Buyer.

(b) Supplier may terminate this Agreement only if Buyer does not pay an amount due hereunder in accordance herewith and such nonpayment remains uncured after 30 days following written notice thereof from Supplier to Buyer. Such termination shall be effective automatically upon the expiration of the applicable notice period, without further notice or action by Supplier.

**11.2. Termination for Bankruptcy, Insolvency or Financial Insecurity.** Either Party may terminate this Agreement immediately at its option upon written notice if the other Party: (i) becomes or is declared insolvent or bankrupt; (ii) is the subject of a voluntary or involuntary bankruptcy or other proceeding related to its liquidation or solvency, which proceeding is not dismissed within 90 days after its filing; (iii) ceases to do business in the normal course; or (iv) makes an assignment for the benefit of creditors. This Agreement shall terminate immediately and automatically upon any determination by a court of competent jurisdiction that either Party is excused or prohibited from performing in full all obligations hereunder, including rejection of this Agreement pursuant to 11 U.S.C. § 365.

**11.3. Termination for Convenience.** Buyer may terminate this Agreement at any time with or without cause by giving sixty (60) days written notice.

**11.4. Obligations upon Termination.** Termination of this Agreement for any reason shall not discharge either Party's liability for obligations incurred hereunder and amounts unpaid at the time of such termination. Buyer shall be responsible for the payment of any delivered Products that were shipped to Buyer prior to termination. Upon termination or expiration of this Agreement for any reason, Supplier shall perform a physical inventory of all finished Products, work in progress, and raw materials and Buyer shall have the right to observe such physical inventory. Buyer shall purchase from Seller all finished Products, work in progress, and raw materials which have been produced or purchased by Supplier on behalf of Buyer in accordance with a Forecast or Purchase Order issued pursuant to this Agreement. Any finished Products, work in progress, and raw materials shall be shipped to Buyer at Buyer's expense.

## ARTICLE XII.
## FORCE MAJEURE.

**12.1.** Neither Party shall be liable hereunder for any failure or delay in the performance of its obligations under this Agreement, if such failure or delay is on account of causes beyond its reasonable control, including civil commotion, war, fires, floods, accident, earthquakes, inclement weather, telecommunications line failures, electrical outages, network failures, governmental regulations or controls, casualty, strikes or labor disputes, terrorism, pandemics (excluding the COVID-19 pandemic in effect as of the date hereof), epidemics, local disease outbreaks, public health emergencies, communicable diseases, quarantines, acts of God, in addition to any and all events, regardless of their dissimilarity to the foregoing, beyond the reasonable control of the Party so defaulting or delaying in the performance of this Agreement (each such event, a "**Force Majeure Event**"), for so long as such Force Majeure Event is in effect. For the avoidance of doubt, the Parties agree that the effects of the COVID-19 pandemic that is ongoing as of the date hereof shall not constitute a Force Majeure Event. Each Party shall use reasonable efforts to notify the other Party of the occurrence of a Force Majeure Event within five (5) Business Days of its occurrence. Should a Party experience a Force Majeure Event, it shall take all reasonable measures to mitigate any impact that such event has on its performance of this Agreement, and shall take all reasonable steps to perform despite such event.

## ARTICLE XIII.
## COMPLIANCE WITH LAWS.

**13.1.** Supplier represents, warrants and covenants that it shall comply in all respects with all applicable Laws with respect to the manufacture, sale, resale, handling, and disposal of any Products subject to this Agreement and its performance of this Agreement. Buyer represents, warrants and covenants that it shall comply in all respects with all applicable Laws with respect to the performance of this Agreement.

## ARTICLE XIV.
## GOVERNING LAW; CONSENT TO JURISDICTION; SERVICE OF PROCESS; WAIVER OF JURY TRIAL.

**14.1. Governing Law.** This Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation, inducement to enter and/or performance of this Agreement (whether related to breach of contract, tortious conduct or otherwise and whether now existing or hereafter arising) shall be governed by, the internal Laws of the State of Delaware, without giving effect to any Law that would cause the Laws of any jurisdiction other than the State of Delaware to be applied.

**14.2. Consent to Jurisdiction.** Each Party agrees that any Proceeding arising out of or relating to this Agreement or any transaction contemplated hereby shall be brought exclusively in any state or federal court located in New York County, State of New York and each of the Parties hereby submits to the exclusive jurisdiction of such courts for itself and with respect to its property, generally and unconditionally, for the purpose of any such Proceeding. A final judgment in any such Proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each Party agrees not to commence any Proceeding arising out of or relating to this Agreement or the transactions contemplated

hereby except in the courts described above (other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in New York as described above), irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in any such court, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Proceeding brought in any such court has been brought in an inconvenient forum or does not have jurisdiction over any Party. Each Party agrees that service of any process, summons, notice or document by U.S. registered mail to such Party's respective address set forth herein shall be effective service of process for any such Proceeding.

**14.3. WAIVER OF JURY TRIAL.** EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, STATUTE OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF. EACH PARTY FURTHER WAIVES ANY RIGHT TO SEEK TO CONSOLIDATE ANY PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER PROCEEDING IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED OR WARRANTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 14.3.

## ARTICLE XV.
## EXPENSES.

**15.1.** Except as otherwise provided herein, all fees and expenses incurred in connection with or related to this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such fees or expenses, whether or not such transactions are consummated.

## ARTICLE XVI.
## REPRESENTATIONS AND WARRANTIES.

**16.1.** Supplier represents and warrants to Buyer that it is a limited liability company duly formed and organized, validly existing, and in good standing under the Laws of the State of Delaware and is authorized to do business in each jurisdiction in which it conducts its business. Buyer represents and warrants to Supplier that it is a corporation duly formed and organized, validly existing, and in good standing under the Laws of the State of Delaware and is authorized to do business in each jurisdiction in which it conducts its business.

**16.2.** Each Party represents and warrants to the other Party that (i) its sale or resale of Products, as applicable, under this Agreement does not violate any existing material obligations or contracts; (ii) it has the full legal right, power, and authority to enter into and perform this Agreement and that all requisite corporate and other approvals have been obtained; (iii) the individual(s) signing this Agreement on its behalf is authorized to execute this Agreement and that no further proof of authorization shall be required; and (iv) there are no pending or threatened actions or proceedings or government investigations against it that may affect its performance of this Agreement.

## ARTICLE XVII.
## FURTHER ACTS; COOPERATION.

**17.1.** Each Party agrees that, upon reasonable request of the other Party from time to time, it shall execute and deliver, or cause to be executed and delivered, such further instruments and take such other actions as may be necessary or desirable to carry out the transactions contemplated by this Agreement or to vest, perfect or confirm of record or otherwise in Buyer any and all right, title and interest in, to and under any of the Products to be acquired as a result of or in connection with this Agreement.

## ARTICLE XVIII.
## ASSIGNMENT.

**18.1.** This Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns, but will not be assignable or delegable by any Party, by operation of Law or otherwise, without the prior written consent of the other Party; *provided*, *however*, that nothing in this Agreement shall or is intended to limit the ability of Buyer to assign its rights or delegate its responsibilities, liabilities and obligations, in whole or in part, without the consent of Supplier, to an Affiliate of Buyer, *provided*, *further,* that no such assignment shall relieve Buyer of any liability or obligations under this Agreement. Any attempted assignment in violation of this ARTICLE XVIII shall be void ab initio.

## ARTICLE XIX.
## INDEPENDENT CONTRACTOR.

**19.1.** The relationship of the Parties hereto is that of vendor and purchaser. Nothing in this Agreement, and no course of dealing between the Parties, shall be construed to create or imply an employment or agency relationship or a partnership or joint venture relationship between the Parties or between one Party and the other Party's employees or agents. Each of the Parties is an independent contractor and neither Supplier nor Buyer has the authority to bind or contract any obligation in the name of or on account of the other Party or to incur any liability or make any statements, representations, warranties or commitments on behalf of the other Party, or otherwise act on behalf of the other. Each Party shall be solely responsible for payment of the salaries of its employees and personnel (including withholding of income taxes and social security), workers compensation, and all other employment benefits.

## ARTICLE XX.
## SEVERABILITY.

**20.1.** If any term or provision of this Agreement is held invalid, illegal or unenforceable in any respect under any applicable Law, the validity, legality and enforceability of all other terms and provisions of this Agreement will not in any way be affected or impaired. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

## ARTICLE XXI.
## HEADINGS; CONSTRUCTION.

**21.1.** The headings/captions appearing in this Agreement have been inserted for the purposes of convenience and ready reference, and do not purport to and shall not be deemed to define, limit or extend the scope or intent of the provisions to which they appertain. Unless the context otherwise requires, words in the singular or plural include the singular and plural, and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter. Whenever the words “include,” “includes” or “including” are used in this Agreement they shall be deemed to be followed by the words “but not limited to.” This Agreement is the result of negotiations between the Parties and their counsel. Accordingly, this Agreement shall not be construed more strongly against either Party regardless of which Party is more responsible for its preparation, and any ambiguity that might exist herein shall not be construed against the drafting Party.

## ARTICLE XXII.
## RIGHTS CUMULATIVE.

**22.1.** The rights and remedies of the Parties herein provided shall be cumulative and not exclusive of any rights or remedies provided by law or equity.

## ARTICLE XXIII.
## COUNTERPARTS.

**23.1.** Except to the extent set forth otherwise in this Agreement, all remedies under this Agreement expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or at Law or in equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy.

## ARTICLE XXIV.
## SURVIVAL.

**24.1.** Section 4.1 (Invoices and Payment Terms), Article VI (Warranty), Article VII (Confidentiality), Article XIV (Governing Law; Consent to Jurisdiction; Service of Process; Waiver of Jury Trial) and Article XV (Expenses) shall survive any termination or expiration of this Agreement regardless of the cause and even if resulting from the material breach of either Party.

**ARTICLE XXV.**
**NOTICE.**

**25.1.** All notices and other communications made pursuant to or under this Agreement shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) as of the date transmitted when transmitted by electronic mail, (c) one Business Day after deposit with a nationally recognized overnight courier service, or (d) three Business Days after the mailing if sent by registered or certified mail, postage prepaid, return receipt requested. All notices and other communications under this Agreement shall be delivered to the addresses set forth below, or such other address as such Party may have given to the other Parties by notice pursuant to this Article XXV (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereinafter maintain):

| | |
|---|---|
| If to Supplier: | Healing Solutions, LLC<br>4703 W. Brill St.<br>Suite 101<br>Phoenix, AZ 85043]<br>E-Mail: [...***...]<br>Attention: Richard Perry |
| with a copy to (which shall not constitute notice): | Squire Patton Boggs<br>1 E. Washington St.<br>Suite 2700<br>Phoenix, AZ 85004<br>E-Mail: [...***...]<br>Attention: Brian A. Cabianca |
| If to Buyer: | Mohawk Group, Inc.<br>c/o Mohawk Group Holdings, Inc.<br>37 E 18th St., 7th Floor<br>NY, NY 10003<br>E-Mail: [...***...]<br>Attention: Christopher J. Porcelli |
| with a copy to (which shall not constitute notice): | Paul Hastings LLP<br>1117 S California Ave,<br>Palo Alto, CA 94304<br>E-Mail: [...***...]<br>Attention: Jeff Hartlin |

**ARTICLE XXVI.**
**AMENDMENT; WAIVER.**

**26.1.** This Agreement may be amended, modified or waived only by the written agreement of the Parties. Unless otherwise specifically provided herein, no failure or delay of any Party to exercise any right or remedy given to such Party under this Agreement or otherwise available to such Party or to insist upon strict compliance by any other Party with its obligations hereunder and no single or partial exercise of any such right or power shall constitute a waiver of any Party's right to demand exact compliance with the terms hereof. Any written waiver shall be limited to those items specifically waived therein and shall not be deemed to waive any future breaches or violations or other non-specified breaches or violations unless, and to the extent, expressly set forth therein.

## ARTICLE XXVII.
## ENTIRE AGREEMENT.

**27.1.** All references in this Agreement shall include all Exhibits and Schedules hereto. This Agreement, the Purchase Agreement, and the Ancillary Agreements constitute the entire agreement of the Parties relating to the subject matter hereof and thereof and supersede all prior agreements or understandings between the Parties with respect to such subject matter. Supplier acknowledges and agrees that neither Buyer nor any of its Affiliates or representatives are making, and neither Supplier nor any of its Affiliates is relying upon, any representations, warranties or other statements by Buyer or any of its Affiliates or representatives except to the extent set forth in this Agreement. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement limits, abridges, cancels, amends, terminates, modifies, or waives in any respect any representations, warranties, covenants, rights, remedies, obligations, or liabilities of any kind or nature of either Party under the Purchase Agreement.

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

In witness whereof, the Parties have executed this Agreement on the date set forth below.

**BUYER:**

**MOHAWK GROUP, INC.**
**A Delaware corporation**

/s/ Fabrice Hamaide

Fabrice:
Hamaide:

(Signature Page to Manufacture Supply Agreement)

In witness whereof, the Parties have executed this Agreement on the date set forth below.

**SUPPLIER:**

**HEALING SOLUTIONS, LLC**
**A Delaware limited liability company**

/s/ Jason R. Hope
Name: Jason R. Hope
Title: Manager

(Signature Page to Manufacture Supply Agreement)

**Exhibit 10.5**

# CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement") is entered into by and between Mohawk Group, Inc. ("Service Recipient"), and Richard A. Perry (referred to herein as "Consultant") dated as of February 2, 2021 (the "Effective Date").

1. **Consulting Relationship**. During the term of this Agreement, Consultant will provide the consulting services (the "Services") to Service Recipient described on Exhibit A to this Agreement, unless Service Recipient chooses to not require any of the Services, until full performance of the Services pursuant to the terms hereof. Consultant shall use Consultant's commercially reasonable efforts to provide the Services in a manner reasonably satisfactory to Service Recipient.

2. **Fees**. As consideration for the Services to be provided by Consultant and subject to the terms and conditions hereof, Service Recipient shall pay to Consultant the amounts specified in Exhibit B attached to this Agreement at the times and in the manner specified therein (the "Fees").

3. **Expenses**. During the term of this Agreement, Service Recipient will reimburse Consultant for reasonable and necessary out-of-pocket expenses actually incurred by Consultant for travel and other reasonable expenditures directly related to the Services in accordance with Service Recipient's expense reimbursement policies for consultants, subject to Consultant's provision of documentation of the expenses reasonably satisfactory to Service Recipient and, in the case of a single expense or a group of related expenses that are individually or in the aggregate in excess of $2,000, advance written notice of a request for reimbursement pre-approved by Service Recipient.

4. **Trade Secrets; Intellectual Property Rights**.

(a) **Proprietary Information**. Consultant agrees during the term of this Agreement and thereafter that it will take all steps reasonably necessary to hold the Service Recipient's and its subsidiaries' (collectively, "Company Group") Proprietary Information (defined below) in trust and confidence, will not use Proprietary Information in any manner or for any purpose not expressly set forth in this Agreement, and will not disclose any such Proprietary Information to any third party without first obtaining Service Recipient's express written consent on a case-by-case basis. "Proprietary Information" means all Work Product as defined in Section 4(c) below and all information disclosed by Company Group to Consultant not generally known in the industry and includes, without limitation, (i) trademarks, trade secrets, inventions, mask works, ideas, processes, formulas, source and object codes, data, software, artwork other works of authorship, know-how, improvements, discoveries, developments, designs, processes and manufacturing techniques (hereinafter collectively referred to as "Inventions"); and (ii) information regarding plans for investment, acquisitions, research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers; and (iii) information regarding the skills and compensation of employees of the Company Group. Notwithstanding the other provisions of this Agreement, nothing received by Consultant will be considered to be Proprietary Information if (A) it has been published or is otherwise readily available to the public other than by a breach of this Agreement; (B) it has been rightfully received by Consultant from a third party without confidential limitations; (C) it has been independently developed for Consultant by personnel or agents without use of the Proprietary Information; or (D) it was known to Consultant prior to its first receipt from the Company Group (as defined in Section 7 below). For the avoidance of doubt, the duties under this Section 4(a) shall continue indefinitely unless such duties are expressly terminated by the Company Group.

(b) **Third Party Information**. Consultant understands that the Company Group has received and will in the future receive from third parties confidential or proprietary information ("Third Party Information") subject to a duty on the Company Group's part to maintain the confidentiality of such

information and use it only for certain limited purposes. Consultant agrees to hold Third Party Information in confidence and not to disclose to anyone (other than Company Group personnel who need to know such information in connection with their work for the Company Group) or to use, except in connection with Consultant's work for Service Recipient, Third Party Information unless expressly authorized in writing by an officer of Service Recipient. Furthermore, Consultant represents and warrants that this consulting engagement for Service Recipient does not and would not breach any agreements or duties to any other third party. In Consultant's work for Service Recipient, Consultant will be expected not to violate any lawful restrictive covenants or make any unauthorized use or disclosure to Service Recipient or any other entity of any confidential information, including trade secrets, of any other party to whom Consultant may have an obligation of confidentiality.

(c) **Ownership of Work Product**. As used in this Agreement, the term "Work Product" means any deliverables of Consultant made to Service Recipient, and any Invention, whether or not patentable, which is solely or jointly conceived, made, or reduced to practice, by Consultant in the course of any work performed for Service Recipient. Consultant agrees that any and all Inventions conceived, made, or first reduced to practice in the performance of work under this Agreement shall be the sole and exclusive property of Service Recipient.

(d) **Assignment of the Work Product**. Consultant irrevocably assigns to Service Recipient all right, title and interest worldwide in and to Work Product and all applicable intellectual property rights related to the Work Product, including without limitation, copyrights, trademarks, trade secrets, patents, moral rights, contract and licensing rights. Consultant agrees not to challenge the validity of Service Recipient's ownership in the Work Product, and Consultant agrees to take all reasonable steps requested by Service Recipient at Service Recipient's expense to perfect its ownership rights in the Work Product. If Consultant has any rights to the Work Product that cannot be assigned to Service Recipient, Consultant unconditionally and irrevocably waives the enforcement of such rights.

(f) **Defend Trade Secrets Act Limitations**. Notwithstanding Consultant's confidentiality obligations set forth above, Consultant understands that, pursuant to the Defend Trade Secrets Act of 2016, Consultant will not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that: (i) is made (A) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Consultant understands that in the event it is determined that disclosure of trade secrets was not done in good faith pursuant to the preceding sentence, Consultant will be subject to substantial damages, including punitive damages and attorneys' fees.

5. **Term and Termination.** Performance of the Services shall commence on the Closing Date (as defined in that certain Asset Purchase Agreement by and between Mohawk Group Holdings, Inc., Truweo, LLC, Healing Solutions, LLC, Jason R. Hope, and Super Transcontinental Holdings, LLC, dated as of February 2, 2021 (the "Purchase Agreement") and continue through the first to occur of: (a) the occurrence of the Earn-Out Consideration Event (as defined in the Purchase Agreement), (b) the Earn-Out Termination Date (as defined in the Purchase Agreement), (c) Consultant's failure (other than a good faith attempt to provide the Services) or refusal to provide Services as identified in Exhibit A, only after written notice from Service Recipient to Consultant of the Services that are not being performed and only if Consultant fails to cure or provide a good faith reason as to why the Services are unable to be performed within 10 days of receipt of such written notice (in either case the term shall not end), or (d) upon 30 days' written notice from Consultant (provided, however, that upon receipt of such notice from Consultant, Service Recipient may accelerate the termination date). Service Recipient or Consultant may also terminate this Agreement in the event of a material breach of this Agreement subject to written notice and an opportunity to cure if curable within 10 days by the other party; provided that if Consultant terminates this Agreement due to Service Recipient's material breach, nothing herein shall preclude Consultant's right to payment of any Fees owed upon the occurrence of the applicable Earn-Out Consideration Event (as defined and described on Exhibit B).

6. **Independent Contractor**. Consultant's relationship with Service Recipient will be that of an independent contractor and not that of an employee. Consultant shall be solely responsible for determining the method, details and means of performing the Services; provided, however, that Consultant shall not subcontract any work in a manner inconsistent with the Transition Services Agreement (as defined in the Purchase Agreement) or without the written consent of the Service Recipient. Consultant has no authority to enter into contracts that bind Service Recipient or create obligations on the part of Service Recipient without the prior written authorization of Service Recipient. Consultant acknowledges and agrees that Consultant will not be eligible for any Service Recipient employee benefits. Consultant shall have full responsibility for applicable taxes for all compensation paid to Consultant under this Agreement, and for compliance with all applicable labor and employment requirements with respect to Consultant's form of business organization.

7. **Services for Competitors**. Consultant represents and warrants that during the term of the Agreement, with the exception of: (a) being employed by or providing any services to the Retained Business or Seller (each term as defined in the Purchase Agreement); or (b) as mutually agreed upon by Consultant and Service Recipient. Notwithstanding the foregoing clause (a), and during the term of this Agreement, Consultant will not provide consulting or other services for any business, including worldwide retail and online sale, that would reasonably be deemed to compete with (i) the products sold as part of the Acquired Assets or (ii) any existing product sold by Purchaser as of the Closing Date, anywhere in world. Notwithstanding the foregoing, nothing contained in this Section 7 shall prohibit Consultant from the passive ownership of less than 2% of any class of stock listed on a national securities exchange or traded in the over-the-counter market.

8. **Non-Solicitation**. Consultant represents and warrants that during the term of the Agreement and for a period of 12 months thereafter, Consultant will not, without Service Recipient's express written consent, either directly or indirectly, solicit any employee, contractor, or consultant of the Company Group to terminate his, her, or its relationship with the Company Group.

9. **Non-Interference**. Service Recipient agrees that it shall not unreasonably interfere with Consultant's efforts and ability to provide the Services. Unreasonable interference shall include, but is not limited to, causing delays which compel Consultant's non-performance of the Services or impedes Consultant's ability to deliver the Services, requiring unlawful conduct to deliver the Services, Company Group's failure to perform under (as applicable) the Purchase Agreement or the Transition Services Agreement, and rejecting the reasonable recommendations or decisions that allow for the performance of the Services.

10. **Miscellaneous**. Any term of this Agreement may be amended or waived only with the written consent of the parties. This Agreement, including the Exhibits hereto, constitutes the sole agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, email, overnight delivery service or confirmed facsimile, and 48 hours after being deposited in the regular mail as certified or registered mail. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of New York, without giving effect to the principles of conflict of laws. In the event of any dispute or action arising out of this Agreement, such action shall be brought and maintained exclusively in New York, New York. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

11. **Survival**. Sections 4, 6, 8, 10, and 11 shall survive the termination of this Agreement.

12. **Corporate Power**. Consultant and Service Recipient represent and warrant that each party has all necessary power to enter into this Agreement, and that, in connection with the provision of Services, Consultant shall comply with all applicable laws.

13. **Sole Agreement**. This Agreement is the sole agreement between the parties with respect to the subject matter hereof and may be amended only by an instrument in writing executed by the parties hereof.

14. **Questionnaires; Investor Status; Registration; Trading Restrictions**.

(a) *Questionnaires.* As a pre-requisite to receive payment of the Fees, Consultant shall complete an Investor Questionnaire, in substantially the form attached hereto as Exhibit C, on the date on which this Agreement is executed and, upon Service Recipient's request, prior to the date on which the shares to be issued as set forth on Exhibit B are issued to Consultant. In addition, to the extent that such shares are registered by Mohawk Group Holdings, Inc. ("Parent"), Consultant shall also complete a Selling Stockholder Questionnaire, in substantially the form of such questionnaire as is attached as an exhibit to the Purchase Agreement within five business days of the issuance of such shares.

(b) *Accredited Investor Status.* Notwithstanding any provisions of this Agreement (including Exhibit B) to the contrary, in the event Parent believes in its reasonable discretion that Consultant is not an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended (the "Securities Act"), Parent may determine in its discretion, to be exercised in good faith, to pay the Fees that would otherwise be due under this Agreement to Consultant in the form of cash only, and not in the form of Parent Common Stock (as defined in the Purchase Agreement), with the amount of cash to be paid in lieu of any such Parent Common Stock with respect thereto to be calculated based on the Parent Stock Price (as defined in the Purchase Agreement).

(c) *Piggy-Back Registration*. If, following the issuance of any shares of Parent Common Stock pursuant to this Agreement, Parent shall determine to prepare and file with the Securities and Exchange Commission a Registration Statement (as defined in the Purchase Agreement) relating to an offering for the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with Parent's stock option or other employee benefit plans, then Service Recipient or Parent shall deliver to Consultant a written notice of such determination and, if within 15 days after the date of the delivery of such notice, Consultant shall so request in writing, Service Recipient will cause Parent to include in such registration statement all or any part of the shares of Parent Common Stock issued hereunder that Consultant requests to be registered.

(d) *Trading Restrictions*. Consultant agrees that, following the issuance of any shares of Parent Common Stock pursuant to this Agreement, for so long as it holds any of the outstanding shares of Parent Common Stock it shall not, directly or indirectly, sell, transfer or otherwise dispose of any such shares if such sale, transfer or other disposition would exceed 10% of the average daily trading volume of Parent Common Stock, as reported on Nasdaq (as defined in the Purchase Agreement), for the 10 consecutive Trading Days (as defined in the Purchase Agreement) ending on the Trading Day immediately preceding such sale, transfer or other disposition. From and after the date on which any shares of Parent Common

Stock are issued to Consultant pursuant to this Agreement, upon written notice from Service Recipient or Parent (each such notice, a "Trading Report Request"), Consultant shall be required to promptly, and in any event not later than two Business Days (as defined in the Purchase Agreement) from delivery of a Trading Report Request, provide to Service Recipient or Parent copies of trading statements for such periods specified in the applicable Trading Report Request, from Consultant's broker, stock representative, registered representative, or other similar representative, as applicable, evidencing compliance with this Section 14(d).

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The parties have executed this Agreement on the respective dates set forth below.

**MOHAWK GROUP, INC.**

By: /s/ Fabrice Hamaide
Name: Fabrice Hamaide
Title: Chief Financial Officer

Date: February 2, 2021

(Signature Page to Consulting Agreement)

The parties have executed this Agreement on the respective dates set forth below.

**RICHARD A. PERRY**

/s/ Richard A. Perry

Date: February 1, 2021

Address: [ ...***... ]

[ ...***... ]

(Signature Page to Consulting Agreement)

**EXHIBIT A**

**DESCRIPTION OF CONSULTING SERVICES**

***Description of Services***

Consultant to provide assistance with sourcing, evaluating and entering into supplier agreements with New Suppliers in respect of each SKU of Specified Inventory (as each capitalized term is defined in the Purchase Agreement).

Consultant to provide transition services, including but not limited to advising Service Recipient on knowledge, and sale of each SKU of Specified Inventory consistent with and as described in the Transition Services Agreement (as each capitalized term is defined in the Purchase Agreement) until such time that no Services are being provided thereunder.

***Consultants Point of Contact:*** Christopher Porcelli

**EXHIBIT B**

**CONSULTING FEES**

Consultant shall receive the following, upon the occurrence of an Earn-Out Consideration Event (as defined in the Purchase Agreement) that occurs:

(i) prior to the date that is nine months following the Closing Date, Service Recipient shall cause Parent to issue to Consultant 166,595 shares of Parent Common Stock (in book-entry format);

(ii) on or after the date that is nine months following the Closing Date but before the date that is 12 months following the Closing Date, Service Recipient shall cause Parent to issue to Consultant 124,946 shares of Parent Common Stock (in book-entry format); or

(iii) on or after the date that is 12 months following the Closing Date but before the Earn-Out Termination Date (as defined in the Purchase Agreement), Service Recipient shall cause Parent to issue to Consultant 83,297 shares of Parent Common Stock (in book-entry format);

In no event shall Consultant be issued shares of Parent Common Stock pursuant to more than one of the above clauses (i) – (iii) of this Exhibit B.

In addition to the shares of Parent Common Stock issued to Consultant pursuant to (i), (ii) or (iii) above, Consultant will also receive an additional cash payment equal to the aggregate par value of any such shares of Parent Common Stock issued to Consultant, with such cash payment then immediately remitted back to the Company Group for Consultant to purchase such shares of Parent Common Stock issued at a per share par value purchase price (meaning Consultant's applicable IRS Form 1099 issued and filed by Service Recipient will report such additional cash amount as compensation for Consultant's services).

**Exhibit 10.6**

# CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement") is entered into by and between Mohawk Group, Inc. ("Service Recipient"), and Christopher J. Marshall (referred to herein as "Consultant") dated as of February 2, 2021 (the "Effective Date").

1. **Consulting Relationship**. During the term of this Agreement, Consultant will provide the consulting services (the "Services") to Service Recipient described on Exhibit A to this Agreement, unless Service Recipient chooses to not require any of the Services, until full performance of the Services pursuant to the terms hereof. Consultant shall use Consultant's commercially reasonable efforts to provide the Services in a manner reasonably satisfactory to Service Recipient.

2. **Fees**. As consideration for the Services to be provided by Consultant and subject to the terms and conditions hereof, Service Recipient shall pay to Consultant the amounts specified in Exhibit B attached to this Agreement at the times and in the manner specified therein (the "Fees").

3. **Expenses**. During the term of this Agreement, Service Recipient will reimburse Consultant for reasonable and necessary out-of-pocket expenses actually incurred by Consultant for travel and other reasonable expenditures directly related to the Services in accordance with Service Recipient's expense reimbursement policies for consultants, subject to Consultant's provision of documentation of the expenses reasonably satisfactory to Service Recipient and, in the case of a single expense or a group of related expenses that are individually or in the aggregate in excess of $2,000, advance written notice of a request for reimbursement pre-approved by Service Recipient.

4. **Trade Secrets; Intellectual Property Rights**.

(a) **Proprietary Information**. Consultant agrees during the term of this Agreement and thereafter that it will take all steps reasonably necessary to hold the Service Recipient's and its subsidiaries' (collectively, "Company Group") Proprietary Information (defined below) in trust and confidence, will not use Proprietary Information in any manner or for any purpose not expressly set forth in this Agreement, and will not disclose any such Proprietary Information to any third party without first obtaining Service Recipient's express written consent on a case-by-case basis. "Proprietary Information" means all Work Product as defined in Section 4(c) below and all information disclosed by Company Group to Consultant not generally known in the industry and includes, without limitation, (i) trademarks, trade secrets, inventions, mask works, ideas, processes, formulas, source and object codes, data, software, artwork other works of authorship, know-how, improvements, discoveries, developments, designs, processes and manufacturing techniques (hereinafter collectively referred to as "Inventions"); and (ii) information regarding plans for investment, acquisitions, research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers; and (iii) information regarding the skills and compensation of employees of the Company Group. Notwithstanding the other provisions of this Agreement, nothing received by Consultant will be considered to be Proprietary Information if (A) it has been published or is otherwise readily available to the public other than by a breach of this Agreement; (B) it has been rightfully received by Consultant from a third party without confidential limitations; (C) it has been independently developed for Consultant by personnel or agents without use of the Proprietary Information; or (D) it was known to Consultant prior to its first receipt from the Company Group (as defined in Section 7 below). For the avoidance of doubt, the duties under this Section 4(a) shall continue indefinitely unless such duties are expressly terminated by the Company Group.

(b) **Third Party Information**. Consultant understands that the Company Group has received and will in the future receive from third parties confidential or proprietary information ("Third Party Information") subject to a duty on the Company Group's part to maintain the confidentiality of such

information and use it only for certain limited purposes. Consultant agrees to hold Third Party Information in confidence and not to disclose to anyone (other than Company Group personnel who need to know such information in connection with their work for the Company Group) or to use, except in connection with Consultant's work for Service Recipient, Third Party Information unless expressly authorized in writing by an officer of Service Recipient. Furthermore, Consultant represents and warrants that this consulting engagement for Service Recipient does not and would not breach any agreements or duties to any other third party. In Consultant's work for Service Recipient, Consultant will be expected not to violate any lawful restrictive covenants or make any unauthorized use or disclosure to Service Recipient or any other entity of any confidential information, including trade secrets, of any other party to whom Consultant may have an obligation of confidentiality.

(c) **Ownership of Work Product**. As used in this Agreement, the term "Work Product" means any deliverables of Consultant made to Service Recipient, and any Invention, whether or not patentable, which is solely or jointly conceived, made, or reduced to practice, by Consultant in the course of any work performed for Service Recipient. Consultant agrees that any and all Inventions conceived, made, or first reduced to practice in the performance of work under this Agreement shall be the sole and exclusive property of Service Recipient.

(d) **Assignment of the Work Product**. Consultant irrevocably assigns to Service Recipient all right, title and interest worldwide in and to Work Product and all applicable intellectual property rights related to the Work Product, including without limitation, copyrights, trademarks, trade secrets, patents, moral rights, contract and licensing rights. Consultant agrees not to challenge the validity of Service Recipient's ownership in the Work Product, and Consultant agrees to take all reasonable steps requested by Service Recipient at Service Recipient's expense to perfect its ownership rights in the Work Product. If Consultant has any rights to the Work Product that cannot be assigned to Service Recipient, Consultant unconditionally and irrevocably waives the enforcement of such rights.

(f) **Defend Trade Secrets Act Limitations**. Notwithstanding Consultant's confidentiality obligations set forth above, Consultant understands that, pursuant to the Defend Trade Secrets Act of 2016, Consultant will not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that: (i) is made (A) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Consultant understands that in the event it is determined that disclosure of trade secrets was not done in good faith pursuant to the preceding sentence, Consultant will be subject to substantial damages, including punitive damages and attorneys' fees.

5. **Term and Termination.** Performance of the Services shall commence on the Closing Date (as defined in that certain Asset Purchase Agreement by and between Mohawk Group Holdings, Inc., Truweo, LLC, Healing Solutions, LLC, Jason R. Hope, and Super Transcontinental Holdings, LLC, dated as of February 2, 2021 (the "Purchase Agreement") and continue through the first to occur of: (a) the occurrence of the Earn-Out Consideration Event (as defined in the Purchase Agreement), (b) the Earn-Out Termination Date (as defined in the Purchase Agreement), (c) Consultant's failure (other than a good faith attempt to provide the Services) or refusal to provide Services as identified in Exhibit A, only after written notice from Service Recipient to Consultant of the Services that are not being performed and only if Consultant fails to cure or provide a good faith reason as to why the Services are unable to be performed within 10 days of receipt of such written notice (in either case the term shall not end), or (d) upon 30 days' written notice from Consultant (provided, however, that upon receipt of such notice from Consultant, Service Recipient may accelerate the termination date). Service Recipient or Consultant may also terminate this Agreement in the event of a material breach of this Agreement subject to written notice and an opportunity to cure if curable within 10 days by the other party; provided that if Consultant terminates this Agreement due to Service Recipient's material breach, nothing herein shall preclude Consultant's right to payment of any Fees owed upon the occurrence of the applicable Earn-Out Consideration Event (as defined and described on Exhibit B).

6. **Independent Contractor**. Consultant's relationship with Service Recipient will be that of an independent contractor and not that of an employee. Consultant shall be solely responsible for determining the method, details and means of performing the Services; provided, however, that Consultant shall not subcontract any work in a manner inconsistent with the Transition Services Agreement (as defined in the Purchase Agreement) or without the written consent of the Service Recipient. Consultant has no authority to enter into contracts that bind Service Recipient or create obligations on the part of Service Recipient without the prior written authorization of Service Recipient. Consultant acknowledges and agrees that Consultant will not be eligible for any Service Recipient employee benefits. Consultant shall have full responsibility for applicable taxes for all compensation paid to Consultant under this Agreement, and for compliance with all applicable labor and employment requirements with respect to Consultant's form of business organization.

7. **Services for Competitors**. Consultant represents and warrants that during the term of the Agreement, with the exception of: (a) being employed by or providing any services to the Retained Business or Seller (each term as defined in the Purchase Agreement); or (b) as mutually agreed upon by Consultant and Service Recipient. Notwithstanding the foregoing clause (a), and during the term of this Agreement, Consultant will not provide consulting or other services for any business, including worldwide retail and online sale, that would reasonably be deemed to compete with (i) the products sold as part of the Acquired Assets or (ii) any existing product sold by Purchaser as of the Closing Date, anywhere in world. Notwithstanding the foregoing, nothing contained in this Section 7 shall prohibit Consultant from the passive ownership of less than 2% of any class of stock listed on a national securities exchange or traded in the over-the-counter market.

8. **Non-Solicitation**. Consultant represents and warrants that during the term of the Agreement and for a period of 12 months thereafter, Consultant will not, without Service Recipient's express written consent, either directly or indirectly, solicit any employee, contractor, or consultant of the Company Group to terminate his, her, or its relationship with the Company Group.

9. **Non-Interference**. Service Recipient agrees that it shall not unreasonably interfere with Consultant's efforts and ability to provide the Services. Unreasonable interference shall include, but is not limited to, causing delays which compel Consultant's non-performance of the Services or impedes Consultant's ability to deliver the Services, requiring unlawful conduct to deliver the Services, Company Group's failure to perform under (as applicable) the Purchase Agreement or the Transition Services Agreement, and rejecting the reasonable recommendations or decisions that allow for the performance of the Services.

10. **Miscellaneous**. Any term of this Agreement may be amended or waived only with the written consent of the parties. This Agreement, including the Exhibits hereto, constitutes the sole agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, email, overnight delivery service or confirmed facsimile, and 48 hours after being deposited in the regular mail as certified or registered mail. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of New York, without giving effect to the principles of conflict of laws. In the event of any dispute or action arising out of this Agreement, such action shall be brought and maintained exclusively in New York, New York. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

11. **Survival**. Sections 4, 6, 8, 10, and 11 shall survive the termination of this Agreement.

12. **Corporate Power**. Consultant and Service Recipient represent and warrant that each party has all necessary power to enter into this Agreement, and that, in connection with the provision of Services, Consultant shall comply with all applicable laws.

13. **Sole Agreement**. This Agreement is the sole agreement between the parties with respect to the subject matter hereof and may be amended only by an instrument in writing executed by the parties hereof.

14. **Questionnaires; Investor Status; Registration; Trading Restrictions**.

(a) *Questionnaires.* As a pre-requisite to receive payment of the Fees, Consultant shall complete an Investor Questionnaire, in substantially the form attached hereto as Exhibit C, on the date on which this Agreement is executed and, upon Service Recipient's request, prior to the date on which the shares to be issued as set forth on Exhibit B are issued to Consultant. In addition, to the extent that such shares are registered by Mohawk Group Holdings, Inc. ("Parent"), Consultant shall also complete a Selling Stockholder Questionnaire, in substantially the form of such questionnaire as is attached as an exhibit to the Purchase Agreement within five business days of the issuance of such shares.

(b) *Accredited Investor Status.* Notwithstanding any provisions of this Agreement (including Exhibit B) to the contrary, in the event Parent believes in its reasonable discretion that Consultant is not an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended (the "Securities Act"), Parent may determine in its discretion, to be exercised in good faith, to pay the Fees that would otherwise be due under this Agreement to Consultant in the form of cash only, and not in the form of Parent Common Stock (as defined in the Purchase Agreement), with the amount of cash to be paid in lieu of any such Parent Common Stock with respect thereto to be calculated based on the Parent Stock Price (as defined in the Purchase Agreement).

(c) *Piggy-Back Registration*. If, following the issuance of any shares of Parent Common Stock pursuant to this Agreement, Parent shall determine to prepare and file with the Securities and Exchange Commission a Registration Statement (as defined in the Purchase Agreement) relating to an offering for the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with Parent's stock option or other employee benefit plans, then Service Recipient or Parent shall deliver to Consultant a written notice of such determination and, if within 15 days after the date of the delivery of such notice, Consultant shall so request in writing, Service Recipient will cause Parent to include in such registration statement all or any part of the shares of Parent Common Stock issued hereunder that Consultant requests to be registered.

(d) *Trading Restrictions*. Consultant agrees that, following the issuance of any shares of Parent Common Stock pursuant to this Agreement, for so long as it holds any of the outstanding shares of Parent Common Stock it shall not, directly or indirectly, sell, transfer or otherwise dispose of any such shares if such sale, transfer or other disposition would exceed 10% of the average daily trading volume of Parent Common Stock, as reported on Nasdaq (as defined in the Purchase Agreement), for the 10 consecutive Trading Days (as defined in the Purchase Agreement) ending on the Trading Day immediately preceding such sale, transfer or other disposition. From and after the date on which any shares of Parent Common

Stock are issued to Consultant pursuant to this Agreement, upon written notice from Service Recipient or Parent (each such notice, a "Trading Report Request"), Consultant shall be required to promptly, and in any event not later than two Business Days (as defined in the Purchase Agreement) from delivery of a Trading Report Request, provide to Service Recipient or Parent copies of trading statements for such periods specified in the applicable Trading Report Request, from Consultant's broker, stock representative, registered representative, or other similar representative, as applicable, evidencing compliance with this Section 14(d).

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The parties have executed this Agreement on the respective dates set forth below.

**MOHAWK GROUP, INC.**

By: /s/ Fabrice Hamaide
Name: Fabrice Hamaide
Title: Chief Financial Officer

Date: February 2, 2021

(Signature Page to Consulting Agreement)

The parties have executed this Agreement on the respective dates set forth below.

**CHRISTOPHER J. MARSHALL**

/s/ Christopher J. Marshall

Date: February 1, 2021

Address: […***…]

[…***…]

(Signature Page to Consulting Agreement)

**EXHIBIT A**

**DESCRIPTION OF CONSULTING SERVICES**

***Description of Services***

Consultant to provide assistance with sourcing, evaluating and entering into supplier agreements with New Suppliers in respect of each SKU of Specified Inventory (as each capitalized term is defined in the Purchase Agreement).

Consultant to provide transition services, including but not limited to advising Service Recipient on knowledge, and sale of each SKU of Specified Inventory consistent with and as described in the Transition Services Agreement (as each capitalized term is defined in the Purchase Agreement) until such time that no Services are being provided thereunder.

***Consultants Point of Contact:*** Christopher Porcelli

**EXHIBIT B**

**CONSULTING FEES**

Consultant shall receive the following, upon the occurrence of an Earn-Out Consideration Event (as defined in the Purchase Agreement) that occurs:

(i) prior to the date that is nine months following the Closing Date, Service Recipient shall cause Parent to issue to Consultant 13,882 shares of Parent Common Stock (in book-entry format);

(ii) on or after the date that is nine months following the Closing Date but before the date that is 12 months following the Closing Date, Service Recipient shall cause Parent to issue to Consultant 10,412 shares of Parent Common Stock (in book-entry format); or

(iii) on or after the date that is 12 months following the Closing Date but before the Earn-Out Termination Date (as defined in the Purchase Agreement), Service Recipient shall cause Parent to issue to Consultant 6,941 shares of Parent Common Stock (in book-entry format);

In no event shall Consultant be issued shares of Parent Common Stock pursuant to more than one of the above clauses (i) – (iii) of this Exhibit B.

In addition to the shares of Parent Common Stock issued to Consultant pursuant to (i), (ii) or (iii) above, Consultant will also receive an additional cash payment equal to the aggregate par value of any such shares of Parent Common Stock issued to Consultant, with such cash payment then immediately remitted back to the Company Group for Consultant to purchase such shares of Parent Common Stock issued at a per share par value purchase price (meaning Consultant's applicable IRS Form 1099 issued and filed by Service Recipient will report such additional cash amount as compensation for Consultant's services).

**Exhibit 10.7**

# CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement") is entered into by and between Mohawk Group, Inc. ("Service Recipient"), and Quinn P. McCullough (referred to herein as "Consultant") dated as of February 2, 2021 (the "Effective Date").

1. **Consulting Relationship**. During the term of this Agreement, Consultant will provide the consulting services (the "Services") to Service Recipient described on Exhibit A to this Agreement, unless Service Recipient chooses to not require any of the Services, until full performance of the Services pursuant to the terms hereof. Consultant shall use Consultant's commercially reasonable efforts to provide the Services in a manner reasonably satisfactory to Service Recipient.

2. **Fees**. As consideration for the Services to be provided by Consultant and subject to the terms and conditions hereof, Service Recipient shall pay to Consultant the amounts specified in Exhibit B attached to this Agreement at the times and in the manner specified therein (the "Fees").

3. **Expenses**. During the term of this Agreement, Service Recipient will reimburse Consultant for reasonable and necessary out-of-pocket expenses actually incurred by Consultant for travel and other reasonable expenditures directly related to the Services in accordance with Service Recipient's expense reimbursement policies for consultants, subject to Consultant's provision of documentation of the expenses reasonably satisfactory to Service Recipient and, in the case of a single expense or a group of related expenses that are individually or in the aggregate in excess of $2,000, advance written notice of a request for reimbursement pre-approved by Service Recipient.

4. **Trade Secrets; Intellectual Property Rights**.

(a) **Proprietary Information**. Consultant agrees during the term of this Agreement and thereafter that it will take all steps reasonably necessary to hold the Service Recipient's and its subsidiaries' (collectively, "Company Group") Proprietary Information (defined below) in trust and confidence, will not use Proprietary Information in any manner or for any purpose not expressly set forth in this Agreement, and will not disclose any such Proprietary Information to any third party without first obtaining Service Recipient's express written consent on a case-by-case basis. "Proprietary Information" means all Work Product as defined in Section 4(c) below and all information disclosed by Company Group to Consultant not generally known in the industry and includes, without limitation, (i) trademarks, trade secrets, inventions, mask works, ideas, processes, formulas, source and object codes, data, software, artwork other works of authorship, know-how, improvements, discoveries, developments, designs, processes and manufacturing techniques (hereinafter collectively referred to as "Inventions"); and (ii) information regarding plans for investment, acquisitions, research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers; and (iii) information regarding the skills and compensation of employees of the Company Group. Notwithstanding the other provisions of this Agreement, nothing received by Consultant will be considered to be Proprietary Information if (A) it has been published or is otherwise readily available to the public other than by a breach of this Agreement; (B) it has been rightfully received by Consultant from a third party without confidential limitations; (C) it has been independently developed for Consultant by personnel or agents without use of the Proprietary Information; or (D) it was known to Consultant prior to its first receipt from the Company Group (as defined in Section 7 below). For the avoidance of doubt, the duties under this Section 4(a) shall continue indefinitely unless such duties are expressly terminated by the Company Group.

(b) **Third Party Information**. Consultant understands that the Company Group has received and will in the future receive from third parties confidential or proprietary information ("Third Party Information") subject to a duty on the Company Group's part to maintain the confidentiality of such

information and use it only for certain limited purposes. Consultant agrees to hold Third Party Information in confidence and not to disclose to anyone (other than Company Group personnel who need to know such information in connection with their work for the Company Group) or to use, except in connection with Consultant's work for Service Recipient, Third Party Information unless expressly authorized in writing by an officer of Service Recipient. Furthermore, Consultant represents and warrants that this consulting engagement for Service Recipient does not and would not breach any agreements or duties to any other third party. In Consultant's work for Service Recipient, Consultant will be expected not to violate any lawful restrictive covenants or make any unauthorized use or disclosure to Service Recipient or any other entity of any confidential information, including trade secrets, of any other party to whom Consultant may have an obligation of confidentiality.

(c) **Ownership of Work Product**. As used in this Agreement, the term "Work Product" means any deliverables of Consultant made to Service Recipient, and any Invention, whether or not patentable, which is solely or jointly conceived, made, or reduced to practice, by Consultant in the course of any work performed for Service Recipient. Consultant agrees that any and all Inventions conceived, made, or first reduced to practice in the performance of work under this Agreement shall be the sole and exclusive property of Service Recipient.

(d) **Assignment of the Work Product**. Consultant irrevocably assigns to Service Recipient all right, title and interest worldwide in and to Work Product and all applicable intellectual property rights related to the Work Product, including without limitation, copyrights, trademarks, trade secrets, patents, moral rights, contract and licensing rights. Consultant agrees not to challenge the validity of Service Recipient's ownership in the Work Product, and Consultant agrees to take all reasonable steps requested by Service Recipient at Service Recipient's expense to perfect its ownership rights in the Work Product. If Consultant has any rights to the Work Product that cannot be assigned to Service Recipient, Consultant unconditionally and irrevocably waives the enforcement of such rights.

(f) **Defend Trade Secrets Act Limitations**. Notwithstanding Consultant's confidentiality obligations set forth above, Consultant understands that, pursuant to the Defend Trade Secrets Act of 2016, Consultant will not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that: (i) is made (A) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Consultant understands that in the event it is determined that disclosure of trade secrets was not done in good faith pursuant to the preceding sentence, Consultant will be subject to substantial damages, including punitive damages and attorneys' fees.

5. **Term and Termination.** Performance of the Services shall commence on the Closing Date (as defined in that certain Asset Purchase Agreement by and between Mohawk Group Holdings, Inc., Truweo, LLC, Healing Solutions, LLC, Jason R. Hope, and Super Transcontinental Holdings, LLC, dated as of February 2, 2021 (the "Purchase Agreement") and continue through the first to occur of: (a) the occurrence of the Earn-Out Consideration Event (as defined in the Purchase Agreement), (b) the Earn-Out Termination Date (as defined in the Purchase Agreement), (c) Consultant's failure (other than a good faith attempt to provide the Services) or refusal to provide Services as identified in Exhibit A, only after written notice from Service Recipient to Consultant of the Services that are not being performed and only if Consultant fails to cure or provide a good faith reason as to why the Services are unable to be performed within 10 days of receipt of such written notice (in either case the term shall not end), or (d) upon 30 days' written notice from Consultant (provided, however, that upon receipt of such notice from Consultant, Service Recipient may accelerate the termination date). Service Recipient or Consultant may also terminate this Agreement in the event of a material breach of this Agreement subject to written notice and an opportunity to cure if curable within 10 days by the other party; provided that if Consultant terminates this Agreement due to Service Recipient's material breach, nothing herein shall preclude Consultant's right to payment of any Fees owed upon the occurrence of the applicable Earn-Out Consideration Event (as defined and described on Exhibit B).

6. **Independent Contractor**. Consultant's relationship with Service Recipient will be that of an independent contractor and not that of an employee. Consultant shall be solely responsible for determining the method, details and means of performing the Services; provided, however, that Consultant shall not subcontract any work in a manner inconsistent with the Transition Services Agreement (as defined in the Purchase Agreement) or without the written consent of the Service Recipient. Consultant has no authority to enter into contracts that bind Service Recipient or create obligations on the part of Service Recipient without the prior written authorization of Service Recipient. Consultant acknowledges and agrees that Consultant will not be eligible for any Service Recipient employee benefits. Consultant shall have full responsibility for applicable taxes for all compensation paid to Consultant under this Agreement, and for compliance with all applicable labor and employment requirements with respect to Consultant's form of business organization.

7. **Services for Competitors**. Consultant represents and warrants that during the term of the Agreement, with the exception of: (a) being employed by or providing any services to the Retained Business or Seller (each term as defined in the Purchase Agreement); or (b) as mutually agreed upon by Consultant and Service Recipient. Notwithstanding the foregoing clause (a), and during the term of this Agreement, Consultant will not provide consulting or other services for any business, including worldwide retail and online sale, that would reasonably be deemed to compete with (i) the products sold as part of the Acquired Assets or (ii) any existing product sold by Purchaser as of the Closing Date, anywhere in world. Notwithstanding the foregoing, nothing contained in this Section 7 shall prohibit Consultant from the passive ownership of less than 2% of any class of stock listed on a national securities exchange or traded in the over-the-counter market.

8. **Non-Solicitation**. Consultant represents and warrants that during the term of the Agreement and for a period of 12 months thereafter, Consultant will not, without Service Recipient's express written consent, either directly or indirectly, solicit any employee, contractor, or consultant of the Company Group to terminate his, her, or its relationship with the Company Group.

9. **Non-Interference**. Service Recipient agrees that it shall not unreasonably interfere with Consultant's efforts and ability to provide the Services. Unreasonable interference shall include, but is not limited to, causing delays which compel Consultant's non-performance of the Services or impedes Consultant's ability to deliver the Services, requiring unlawful conduct to deliver the Services, Company Group's failure to perform under (as applicable) the Purchase Agreement or the Transition Services Agreement, and rejecting the reasonable recommendations or decisions that allow for the performance of the Services.

10. **Miscellaneous**. Any term of this Agreement may be amended or waived only with the written consent of the parties. This Agreement, including the Exhibits hereto, constitutes the sole agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, email, overnight delivery service or confirmed facsimile, and 48 hours after being deposited in the regular mail as certified or registered mail. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of New York, without giving effect to the principles of conflict of laws. In the event of any dispute or action arising out of this Agreement, such action shall be brought and maintained exclusively in New York, New York. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

11. **Survival**. Sections 4, 6, 8, 10, and 11 shall survive the termination of this Agreement.

12. **Corporate Power**. Consultant and Service Recipient represent and warrant that each party has all necessary power to enter into this Agreement, and that, in connection with the provision of Services, Consultant shall comply with all applicable laws.

13. **Sole Agreement**. This Agreement is the sole agreement between the parties with respect to the subject matter hereof and may be amended only by an instrument in writing executed by the parties hereof.

14. **Questionnaires; Investor Status; Registration; Trading Restrictions**.

(a) *Questionnaires.* As a pre-requisite to receive payment of the Fees, Consultant shall complete an Investor Questionnaire, in substantially the form attached hereto as Exhibit C, on the date on which this Agreement is executed and, upon Service Recipient's request, prior to the date on which the shares to be issued as set forth on Exhibit B are issued to Consultant. In addition, to the extent that such shares are registered by Mohawk Group Holdings, Inc. ("Parent"), Consultant shall also complete a Selling Stockholder Questionnaire, in substantially the form of such questionnaire as is attached as an exhibit to the Purchase Agreement within five business days of the issuance of such shares.

(b) *Accredited Investor Status.* Notwithstanding any provisions of this Agreement (including Exhibit B) to the contrary, in the event Parent believes in its reasonable discretion that Consultant is not an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended (the "Securities Act"), Parent may determine in its discretion, to be exercised in good faith, to pay the Fees that would otherwise be due under this Agreement to Consultant in the form of cash only, and not in the form of Parent Common Stock (as defined in the Purchase Agreement), with the amount of cash to be paid in lieu of any such Parent Common Stock with respect thereto to be calculated based on the Parent Stock Price (as defined in the Purchase Agreement).

(c) *Piggy-Back Registration*. If, following the issuance of any shares of Parent Common Stock pursuant to this Agreement, Parent shall determine to prepare and file with the Securities and Exchange Commission a Registration Statement (as defined in the Purchase Agreement) relating to an offering for the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with Parent's stock option or other employee benefit plans, then Service Recipient or Parent shall deliver to Consultant a written notice of such determination and, if within 15 days after the date of the delivery of such notice, Consultant shall so request in writing, Service Recipient will cause Parent to include in such registration statement all or any part of the shares of Parent Common Stock issued hereunder that Consultant requests to be registered.

(d) *Trading Restrictions*. Consultant agrees that, following the issuance of any shares of Parent Common Stock pursuant to this Agreement, for so long as it holds any of the outstanding shares of Parent Common Stock it shall not, directly or indirectly, sell, transfer or otherwise dispose of any such shares if such sale, transfer or other disposition would exceed 10% of the average daily trading volume of Parent Common Stock, as reported on Nasdaq (as defined in the Purchase Agreement), for the 10 consecutive Trading Days (as defined in the Purchase Agreement) ending on the Trading Day immediately preceding such sale, transfer or other disposition. From and after the date on which any shares of Parent Common

Stock are issued to Consultant pursuant to this Agreement, upon written notice from Service Recipient or Parent (each such notice, a "Trading Report Request"), Consultant shall be required to promptly, and in any event not later than two Business Days (as defined in the Purchase Agreement) from delivery of a Trading Report Request, provide to Service Recipient or Parent copies of trading statements for such periods specified in the applicable Trading Report Request, from Consultant's broker, stock representative, registered representative, or other similar representative, as applicable, evidencing compliance with this Section 14(d).

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The parties have executed this Agreement on the respective dates set forth below.

**MOHAWK GROUP, INC.**

By: /s/ Fabrice Hamaide
Name: Fabrice Hamaide
Title: Chief Financial Officer

Date: February 2, 2021

(Signature Page to Consulting Agreement)

The parties have executed this Agreement on the respective dates set forth below.

**QUINN P. MCCULLOUGH**

/s/ Quinn P. McCullough

Date: February 1, 2021

Address: [...***... ]

[...***... ]

(Signature Page to Consulting Agreement)

**EXHIBIT A**

**DESCRIPTION OF CONSULTING SERVICES**

***Description of Services***

Consultant to provide assistance with sourcing, evaluating and entering into supplier agreements with New Suppliers in respect of each SKU of Specified Inventory (as each capitalized term is defined in the Purchase Agreement).

Consultant to provide transition services, including but not limited to advising Service Recipient on knowledge, and sale of each SKU of Specified Inventory consistent with and as described in the Transition Services Agreement (as each capitalized term is defined in the Purchase Agreement) until such time that no Services are being provided thereunder.

***Consultants Point of Contact:*** Christopher Porcelli

**EXHIBIT B**

**CONSULTING FEES**

Consultant shall receive the following, upon the occurrence of an Earn-Out Consideration Event (as defined in the Purchase Agreement) that occurs:

(i) prior to the date that is nine months following the Closing Date, Service Recipient shall cause Parent to issue to Consultant 27,765 shares of Parent Common Stock (in book-entry format);

(ii) on or after the date that is nine months following the Closing Date but before the date that is 12 months following the Closing Date, Service Recipient shall cause Parent to issue to Consultant 20,824 shares of Parent Common Stock (in book-entry format); or

(iii) on or after the date that is 12 months following the Closing Date but before the Earn-Out Termination Date (as defined in the Purchase Agreement), Service Recipient shall cause Parent to issue to Consultant 13,882 shares of Parent Common Stock (in book-entry format);

In no event shall Consultant be issued shares of Parent Common Stock pursuant to more than one of the above clauses (i) – (iii) of this Exhibit B.

In addition to the shares of Parent Common Stock issued to Consultant pursuant to (i), (ii) or (iii) above, Consultant will also receive an additional cash payment equal to the aggregate par value of any such shares of Parent Common Stock issued to Consultant, with such cash payment then immediately remitted back to the Company Group for Consultant to purchase such shares of Parent Common Stock issued at a per share par value purchase price (meaning Consultant's applicable IRS Form 1099 issued and filed by Service Recipient will report such additional cash amount as compensation for Consultant's services).

**Exhibit 10.8**

# TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (as amended, restated, supplemented or otherwise modified in accordance with Section 13.05, this "Agreement"), dated as of February 2, 2021 (the "Effective Date"), is made and entered into between Healing Solutions, LLC, a Delaware limited liability company ("Service Provider" or "Seller"), and Truweo, LLC, a Delaware limited liability company (and each of its subsidiaries, "Recipient") (each of Service Provider and Recipient, a "Party" and, together, the "Parties"). All capitalized terms used herein but not defined in Article I hereof shall have the meaning assigned to them in the Asset Purchase Agreement (as defined below).

## RECITALS

**WHEREAS**, (i) Mohawk Group Holdings, Inc., a Delaware corporation ("Parent"), and Truweo, LLC, a Delaware limited liability company ("Acquisition Sub" and together with Parent, "Purchaser"), (ii) Service Provider, (iii) Jason R. Hope, as Founder, and (iv) only for the purposes of certain stated sections, Super Transcontinental Holdings LLC, entered into that certain Asset Purchase Agreement, dated as of the Effective Date (as amended, restated, supplemented or otherwise modified in accordance with its terms, the "Asset Purchase Agreement"), pursuant to which Recipient purchased the Acquired Assets and assumed the Assumed Liabilities;

**WHEREAS**, in an effort to ensure an orderly transition of the Acquired Assets to Purchaser, in connection with, and as a condition to, the consummation of the Transactions, Service Provider has agreed to provide the Services to the Recipient from and after the Effective Date, pursuant to the terms and conditions set forth in this Agreement;

**WHEREAS**, Mohawk Group, Inc. and Service Provider have also concurrently entered into a Manufacturing and Supply Agreement, dated as of the Effective Date whereby Service Provider will manufacture and supply certain products described therein to an Affiliate of Recipient; and

**WHEREAS**, the execution, delivery and performance of this Agreement by the Parties is a condition to the consummation of the Transactions contemplated by the Asset Purchase Agreement.

## AGREEMENT

**NOW**, **THEREFORE**, in consideration of the foregoing and of the mutual agreements contained herein, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

## ARTICLE I

## DEFINITIONS; RULES OF CONSTRUCTION

Section 1.01 Definitions. All For purposes of this Agreement, the following terms have the meanings set forth below:

(a) "Acquisition Sub" has the meaning set forth in the Preamble.

(b) "Agreement" has the meaning set forth in the Preamble.

(c) "Audit Rights" has the meaning set forth in Section 4.06.

(d) "Asset Purchase Agreement" has the meaning set forth in the Recitals.

(e) "Claim" means any claim (including any cross-claim or counterclaim), cause of action, allegation, charge, complaint, demand, dispute and other assertion of Liability, whenever or however arising, including by Law, Contract, tort, equity or otherwise.

(f) "Early Termination Consequence" has the meaning set forth in Section 3.02(a).

(g) "Effective Date" has the meaning set forth in the Preamble.

(h) "Expiration Date" has the meaning set forth in Section 3.01.

(i) "Impracticable" and "Impracticability" have the meanings set forth in Section 2.02.

(j) "Intellectual Property" means all intellectual property and industrial property rights arising under the Laws of any jurisdiction, including: (i) patents, patent applications and statutory invention registrations, (ii) copyrights and all rights in any original works of authorship that are within the scope of any applicable copyright Law, together with all registrations and applications associated with any of the foregoing, (iii) trade secrets and all other intellectual property rights in confidential or proprietary information, processes, technology, designs, formulae, algorithms, procedures, methods, discoveries, specifications, inventions, compositions, and know-how, and (iv) any trademarks, service marks, trade names, service names, trade dress, logos, domain names, and other identifiers of source or origin, together with all registrations, applications and goodwill associated with any of the foregoing.

(k) "Invoice" has the meaning set forth in Section 4.03.

(l) "Liquidation Event" means the occurrence of (i) the resolution of the board of directors and stockholders of Recipient to dissolve Recipient; (ii) Recipient making a general assignment of its assets for the benefit of any creditors, including attachment of, execution on, or the appointment of a custodian or receiver with respect to a substantial part of Recipient's property or any property essential to the conduct of its business; (iii) Recipient being declared insolvent or bankrupt or undertaking or preparing to undertake any composition or arrangement with creditors generally, winding-up, dissolution, liquidation, administration, receivership (administrative or otherwise) or bankruptcy, or if any event analogous to any of the foregoing in any jurisdiction in which Recipient is formed, resident or carries on business; or (iv) if a petition is filed by or against Recipient under the bankruptcy or insolvency laws of any jurisdiction or any other debtors' relief Law, unless such petition is dismissed within 30 days after filing.

(m) "Parent" has the meaning set forth in the Preamble.

(n) "Party" and "Parties" have the meanings set forth in the Preamble

(o) "Payment Due Date" has the meaning set forth in Section 4.04.

(p) "Point of Contact" has the meaning set forth in ARTICLE X.

(q) "Recipient" has the meaning set forth in the Preamble.

(r) "Service" and "Services" have the meanings set forth in Section 2.01.

(s) "Service Fee" has the meaning set forth in Section 4.01.

(t) "Service Period" has the meaning set forth in Section 3.01.

(u) "Service Provider" has the meaning set forth in the Preamble.

(v) "Service Provider Sales Tax" has the meaning set forth in Section 4.01.

(w) "Tax Amount" has the meaning set forth in Section 4.01.

(x) "Tax Authority" means any Governmental Authority having the power to impose, regulate, collect or administer the imposition of Taxes, including the Internal Revenue Service and any state or local department of revenue.

(y) "Termination Notice" has the meaning set forth in Section 3.02(a).

(z) "Transition Services Schedule" has the meaning set forth in Section 2.01.

Section 1.02 Rules of Construction. The following rules of construction shall govern the interpretation of this Agreement: (a) all references to Articles, Sections, Exhibits or Schedules are to Articles, Sections, Exhibits or Schedules in this Agreement; (b) each accounting term not otherwise defined in this Agreement has the meaning assigned to it in accordance with GAAP; (c) unless the context otherwise requires, words in the singular or plural include the singular and plural, and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter; (d) whenever the words "include," "includes" or "including" are used in this Agreement they shall be deemed to be followed by the words "but not limited to;" (e) the word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not simply mean "if;" (f) references to any statute, rule, regulation or form (including in the definition thereof) shall be deemed to include references to such statute, rule, regulation or form as amended, modified, supplemented or replaced from time to time (and, in the case of any statute, include any rules and regulations promulgated under such statute), and all references to any section of any statute, rule, regulation or form include any successor to such section; (g) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is referenced in beginning the calculation of such period will be excluded (for example, if an action is to be taken within two days after a triggering event and such event occurs on a Tuesday, then the action must be taken on or prior to Thursday); if the last day of such period is a non-Business Day, the period in question will end on the next succeeding Business Day; (h) time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement; (i) the subject headings of Articles and Sections of this Agreement are included for purposes of convenience of reference only and shall not affect the construction or interpretation of any of its provisions; (j) (i) the terms "hereof," "herein," "hereby," "hereto," and derivative or similar words refer to this entire Agreement, including the Schedules and Exhibits hereto; and (ii) the term "any" means "any and all"; (k) (i) references to "days" means calendar days unless Business Days are expressly specified and (ii) references to "$" mean U.S. dollars; (l) the Parties intend that each representation, warranty, covenant and agreement contained herein shall have independent significance, and if any Party has breached any representation, warranty, covenant or agreement contained herein in any respect, the fact that there exists another representation, warranty, covenant or agreement relating to the same or similar subject matter that the Party has not breached shall not detract from or mitigate the fact that the Party is in

breach of the first representation, warranty, covenant or agreement; (m) all uses of "written" contained in this Agreement shall be deemed to include information transmitted via e-mail, facsimile or other electronic transmission; (n) any drafts of this Agreement circulated by or among the Parties prior to the final fully executed drafts shall not be used for purposes of interpreting any provision of this Agreement, and each of the Parties agrees that no Party shall make any claim, assert any defense or otherwise take any position inconsistent with the foregoing in connection with any dispute or Proceeding among any of the foregoing or for any other purpose; and (o) the Parties have participated jointly in the negotiation and drafting of this Agreement; in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement and the language used in it will be deemed to be the language chosen by the Parties to express their mutual intent.

## ARTICLE II

## SERVICES PROVIDED

Section 2.01 Transition Services. Subject to the terms and conditions provided herein, Service Provider shall provide, or cause to be provided, to Recipient the service(s) set forth in the Transition Service Schedule attached hereto as Schedule I (the "Transition Service Schedule"), which Transition Service Schedule constitutes part of this Agreement. Each discrete service set forth in the Transition Service Schedule shall be referred to herein as a "Service" and collectively, all the services set forth on the Transition Service Schedule shall be referred to herein as "Services."

Section 2.02 Impracticability. Service Provider shall not be required to provide, or cause to be provided, any Service to the extent the performance of such Service becomes impracticable notwithstanding Service Provider's commercially reasonable efforts to provide such Service to Recipient ("Impracticable" or "Impracticability"), including to the extent the performance of such Services becomes impracticable because it could reasonably be expected to require Service Provider or any of its Affiliates to violate any Laws. Service Provider shall provide Recipient with reasonable notice of the occurrence of any event that Service Provider becomes aware of which would cause Service Provider to curtail or cease providing, or causing to provide, any Service pursuant to this Section 2.02.

Section 2.03 Additional Resources. In providing the Services, Service Provider shall act in the ordinary course of business, but shall not otherwise be obligated to: (a) hire or train any additional employees (other than replacement of any employees who would have otherwise provided any of the Services); (b) maintain the employment of any specific employee; (c) purchase, lease or license any additional equipment, hardware, software, data, or other tangible or intangible personal property; (d) upgrade or modify any existing equipment, hardware, software, data, or other tangible or intangible personal property; or (e) pay any costs or expenses related to the conversion or transfer of data or other information of Recipient or its Affiliates to any alternate supplier of the Services or pay any other costs or expenses relating to the performance of the Services.

Section 2.04 Separation of Assets. Service Provider shall label all Specified Inventory and any Excluded SKU Inventory acquired under the Asset Purchase Agreement and held in Service Provider's facilities and premises as having been acquired pursuant to the Asset Purchase Agreement and shall keep such Specified Inventory and any Excluded SKU Inventory physically separate from all inventory acquired pursuant to the Supplier Agreement and held in Service Provider's facilities and premises. Upon the expiration or earlier termination of this Agreement, Service Provider shall reasonably cooperate with Recipient to facilitate the transfer of any remaining inventory, whether Specified Inventory or any Excluded SKU Inventory acquired pursuant to the Asset Purchase Agreement or other inventory acquired pursuant to the Supplier Agreement, to a location determined by Purchaser.

Section 2.05 No Warranty. RECIPIENT ACKNOWLEDGES THAT SERVICE PROVIDER IS NOT IN THE BUSINESS OF PROVIDING THE SERVICES TO THIRD PARTIES AND THAT SERVICE PROVIDER IS PROVIDING THE SERVICES AS AN ACCOMMODATION TO PURCHASER FOLLOWING THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED IN THE ASSET PURCHASE AGREEMENT. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THE SERVICES TO BE PROVIDED UNDER THIS AGREEMENT ARE FURNISHED AS IS, WHERE IS, AND WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ADEQUACY, OR COMPLIANCE WITH ANY LAW, DOMESTIC OR FOREIGN.

## ARTICLE III

## TERM AND TERMINATION

Section 3.01 Term. The term of this Agreement shall commence on the Effective Date and shall remain in effect until the 15 month anniversary of the Effective Date(the "Expiration Date"), unless earlier terminated pursuant to Section 3.02. With respect to each Service, the term of this Agreement shall commence on the Effective Date and shall remain in effect until the earlier of the Expiration Date or the date Recipient terminates such Service under Section 3.02 (each, a "Service Period").

Section 3.02 Termination.

(a) Recipient may terminate this Agreement with respect to all or any one or more of the Services and release Service Provider from performance of the same upon 30 days prior written notice to Service Provider (a "Termination Notice"). If Recipient provides a Termination Notice with respect to one or more (but not all) of the Services, as soon as reasonably practicable following receipt of a Termination Notice, Service Provider shall notify Recipient as to whether the termination of any Service or Services that are the subject of the Termination Notice will require termination or partial termination of any other Service or Services (an "Early Termination Consequence"). If Service Provider notifies Recipient of an Early Termination Consequence, Recipient may withdraw its Termination Notice within 10 days of such notification. If Recipient does not withdraw such Termination Notice within such time period, termination of such Services will be final, including with respect to the termination of any other Service or Services identified by Service Provider as an Early Termination Consequence. Recipient shall not have the right to reinstitute any Service once such Service has been terminated for any reason.

(b) Service Provider may terminate this Agreement (with respect to all or with respect to any one or more of the Services) immediately upon written notice of termination to Recipient if any of the following events occur: Recipient breaches any payment obligation hereunder and fails to pay such amount to Service Provider in full within 10 Business Days after written notice is delivered by Service Provider to Recipient, or otherwise breaches this Agreement and fails to cure such breach within 30 days after a written notice is delivered by Service Provider to Recipient; or (ii) a Liquidation Event occurs. Such termination shall be effective automatically upon the expiration of the applicable notice period, without further notice or action by Service Provider.

(c) This Agreement will automatically terminate without any further action by either Party on the earlier of: (i) the Expiration Date or (ii) the date of termination or expiration of all Service Periods.

Section 3.03 Effect of Termination. Upon any termination or expiration of this Agreement, all rights, obligations and liabilities of the Parties under this Agreement shall terminate and become void, except that the following provisions shall survive such termination or expiration: this Section 3.03, ARTICLE I, ARTICLE IV, ARTICLE VI, ARTICLE VIII, ARTICLE IX, ARTICLE XII, and ARTICLE XIII and any other definitions set forth in this Agreement necessary to interpret any of the foregoing provisions referenced in this Section 3.03. Notwithstanding the foregoing, in the event of any termination of this Agreement with respect to one or more, but less than all, of the Services, this Agreement shall continue in full force and effect with respect to any Services not terminated under Section 3.02 hereof.

## ARTICLE IV

## COMPENSATION

Section 4.01 Fees. In connection with the provision of a Service by Service Provider, subject to the terms and conditions set forth herein, Recipient agrees to pay to Service Provider the amount set forth on the Transition Service Schedule for such Service that is performed by Service Provider (each, a "Service Fee", and collectively, the "Service Fees").

Section 4.02 Taxes. To the extent that any sales Taxes or other similar Taxes are applicable to any of the Service Fees (the "Service Provider Sales Taxes"), Service Provider is liable to account for and remit such Service Provider Sales Taxes to the relevant Tax Authorities according to applicable Law. Service Provider can charge such Service Provider Sales Taxes (the "Tax Amount") to Recipient and Recipient will pay Service Provider such amount in addition to the Service Fees paid pursuant to Section 4.01 upon receipt of any documentation as may be requested by Recipient to assist it in substantiating or recovering such Service Provider Sales Taxes. In the event that applicable Laws require that any portion of a Tax Amount be withheld from any payment by Recipient under this Agreement, then the sum payable by the Recipient shall be increased to the extent necessary to ensure that after the making of that deduction or withholding of the Service Provider Sales Tax, the Service Provider receives a net amount equal to the amount that the Service Provider would have received had no such deduction or withholding been made. For the avoidance of doubt, the Recipient has no obligation to reimburse the Service Provider for, or increase the sum payable to the Service Provider in respect of, any Taxes imposed on or measured by income or similar Taxes.

Section 4.03 Invoices. In each month during the Term, Service Provider shall deliver to Recipient an invoice on the first (1st) day of such month and the fifteenth (15th) day of such month (or if not on a Business Day, then the first Business Day immediately preceding such day) (each invoice for the period of time commencing on the day of such invoice and continuing until the day of the next invoice, a "Billing Period") for the Services to be performed by Service Provider in such Billing Period (each, an "Invoice"); provided that no invoice shall be for an amount in excess of one half (1/2) of the maximum monthly amount of the Service Fee set forth on the Transition Services Schedule. Such Invoice shall set forth (a) a description of the Services to be performed by Service Provider during such Billing Period, (b) an itemized calculation of the Service Fees for each of the Services to be performed by Service Provider during such Billing Period, (c) an itemized calculation of the Tax Amounts in respect of such Services, and (d) payment instructions, including all wire transfer information, for the payment of such Service Fees and Tax Amounts.

Section 4.04 Payment. All amounts required to be paid by Recipient under this Agreement shall be due in cash within 15 days of Recipient's receipt of the applicable Invoice (the "Payment Due Date"). Payment shall be deemed made on the date Recipient's wire transfer is received by Service Provider.

Section 4.05 Right to Suspend Services. If payment in full of any Invoice is not received by Service Provider from Recipient on or prior to the applicable Payment Due Date, in addition to all other rights of Service Provider hereunder, Service Provider shall have the right, after giving 15 days' prior written notice thereof to Recipient, to suspend all or any portion of the Services until such time as Recipient has paid in full all amounts then due, including any accrued interest. After such payment in full is received and as long as Recipient continues to perform hereunder, Service Provider shall promptly resume providing, or causing to be provided, the Services to Recipient until the Expiration Date, subject to earlier termination thereof in accordance with ARTICLE III.

Section 4.06 Audit Rights. Service Provider shall keep and maintain all books and records relating to the Services. At any time during the term of this Agreement and for one year thereafter, Recipient shall have the right, at Recipient's expense, to audit, examine and make copies of or extracts from the books and records of Service Provider (the "Audit Right"), to the extent necessary to verify the performance by Service Provider of the Services and its obligations under this Agreement. Recipient may exercise the Audit Right through such auditors (or other Representatives) as it may determine in its sole discretion. Recipient shall (a) exercise the Audit Right only upon reasonable written notice to Service Provider and during normal business hours and (ii) use its reasonable efforts to conduct the Audit Right in such a manner as to minimize the inconvenience and disruption to Service Provider. All documentation and information provided under this Section 4.06 in connection with any such review or audit shall be subject to Section 8.01.

## ARTICLE V

## STANDARD OF CARE; GENERAL OBLIGATIONS

Section 5.01 Service Provider Standard of Care. Service Provider hereby agrees to use commercially reasonable efforts to provide, or cause to be provided, Services in compliance with applicable Laws and in a timely, efficient and workmanlike manner, with the degree of skill and level of care no less in quality than that with which such Services were performed in the ordinary course of business by Service Provider prior to the date hereof. Subject to Section 2.03, Service Provider agrees to assign sufficient resources and qualified personnel as are reasonably required to perform the Services in accordance with the standards set forth in the preceding sentence.

Section 5.02 Recipient Standard of Care. Recipient shall (a) promptly provide Service Provider and its subcontractors with resources and materials and complete and accurate information and documentation, in each case, reasonably sufficient for Service Provider to perform, or cause to be performed, its obligations hereunder in a timely manner, and (b) provide Service Provider and its subcontractors with timely decisions, approvals and acceptances so that Service Provider may accomplish its obligations hereunder in a timely manner.

Section 5.03 Title; License. Unless transferred to Purchaser as an Acquired Asset under the Asset Purchase Agreement, Service Provider represents that, to its knowledge, (a) it has, directly or indirectly, good and valid title to, or a valid leasehold or license interest in (including the right to give Recipient any access specified in this Agreement), all of the equipment, hardware, intellectual property, IT systems, software and other assets necessary for the provision of the Services by Service Provider or its Affiliates, and (b) each of the foregoing are fit for the purpose of providing the Services. Service Provider further

represents that the assets licensed or leased from a third party and used in connection with providing the Services are, to Service Provider's knowledge, subject to a valid and existing license or lease agreement, and, to Service Provider's knowledge, neither Service Provider nor the licensor or lessor, as applicable, is, or would be as a result of providing the Services, in breach or default of any such agreement.

Section 5.04 Cooperation; Consents. Service Provider shall use commercially reasonable efforts to obtain any consents, permits, approvals or licenses, implement any systems and to take, or cause to be taken, any and all other actions necessary or advisable for Service Provider to provide the Services. In the event that Service Provider is unable to obtain any consent, permit, approval or license, the Parties will work together to agree upon a commercially reasonable alternative arrangement.

Section 5.05 Alternatives. If Service Provider reasonably believes it is unable to provide any Service because of Impracticability, the Parties shall discuss in good faith a reasonable alternative approach for providing the Services to Recipient. Until such alternative approach is agreed upon, including any additional costs or expenses to be incurred by Service Provider and paid by Recipient, or the Impracticability is otherwise resolved to the satisfaction of the Parties, Service Provider shall have no obligation to perform the Services affected by the Impracticability. To the extent an agreed upon alternative approach includes Service Provider's incurrence of additional costs or expenses beyond those incurred in connection with the underlying Service, Recipient shall make prompt payment to Service Provider in the amount of such mutually agreed additional costs and expenses (in addition to any other payments under this Agreement) when invoiced in accordance with Section 4.03.

## ARTICLE VI

## RELATIONSHIP BETWEEN THE PARTIES

Section 6.01 Relationship. This Agreement does not constitute a partnership, joint venture or formal business organization of any kind. The Service Provider is an independent contractor for all purposes hereunder. The Service Provider shall have complete control over the performance of, and the details for accomplishing, the Services. In no event shall the Service Provider or any of its Affiliates or any of their respective agents, representatives or employees be deemed to be agents, representatives or employees of the Recipient. The Service Provider's employees shall be paid exclusively by the Service Provider for all Services performed hereunder.

## ARTICLE VII

## SUBCONTRACTORS

Section 7.01 Subcontractors. Service Provider shall have the right to subcontract to any Person all or part of its obligations under this Agreement; provided that in no event shall the Service Fee charged to Recipient by Service Provider in respect of any Service(s) increase as a result of any such subcontracting by Service Provider of such Service(s). Subject to the terms and conditions of this Agreement, Service Provider shall remain responsible for the performance of subcontracted Services by such subcontractor under this Agreement. Service Provider shall have the right to designate which of its employees or subcontractors will furnish Services to Recipient, and may remove and/or replace any such employees or subcontractors in its sole discretion.

## ARTICLE VIII

## CONFIDENTIALITY

Section 8.01 Confidentiality. Service Provider acknowledges and agrees that this Agreement and the transactions contemplated hereby are deemed to be "Purchaser Confidential Information" and shall be subject to the confidentiality provisions set forth in Section 5.13 of the Asset Purchase Agreement. Recipient acknowledges and agrees that the Services provided hereunder, to the extent they constitute "Seller Confidential Information," shall be subject to the confidentiality provisions set forth in Section 5.13 of the Asset Purchase Agreement; *provided*, *however,* that if Parent exercises its Purchase Option under the Asset Purchase Agreement the Services shall no longer constitute Seller Confidential Information. Notwithstanding the foregoing, Seller acknowledges and agrees that Parent shall be permitted to disclose this Agreement if required by Law, including pursuant to the applicable requirements of the Securities Act and the Exchange Act.

## ARTICLE IX

## LIMITATION OF LIABILITY AND DISCLAIMER

Section 9.01 LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY ARISING OUT OF A BREACH OF THIS AGREEMENT. EACH PARTY'S MAXIMUM LIABILITY TO, AND THE SOLE REMEDY OF, SUCH PARTY FOR ANY BREACH OF THIS AGREEMENT OR OTHERWISE WITH RESPECT TO SERVICES SHALL NOT EXCEED THE AMOUNTS PAID FOR SERVICES UNDER THIS AGREEMENT.

Section 9.02 DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, INCLUDING ALL SCHEDULES, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER REGARDING ITS PERFORMANCE OF ANY SERVICES PROVIDED HEREUNDER, WHETHER EXPRESS, IMPLIED OR OTHERWISE, AND BOTH PARTIES EXPRESSLY DISCLAIM ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND MERCHANTABILITY.

## ARTICLE X

## POINTS OF CONTACT

Section 10.01 Relationship. Service Provider and Recipient shall each appoint an individual to act as its point of contact (each, a "Point of Contact") to deal with issues arising out of the performance of this Agreement, and to facilitate orderly provision and receipt of the Services. Initially the Point of Contact for Service Provider shall be Richard A. Perry (Telephone: [...***...]; Email Address: [...***...]) and for Recipient shall be Christopher J. Porcelli (Telephone: [...***...]; Email Address: [...***...]). Each Party agrees to provide reasonable access (in person, by telephone or electronically via e-mail) during normal business hours to its Point of Contact for problem resolution. Either Party may replace its Point of Contact at any time with another individual of similar seniority by providing notice in accordance with Section 13.02.

## ARTICLE XI

## ACCESS

Section 11.01 Recipient Access. Service Provider shall provide, and cause its Affiliates and other agents to provide, to Parent and its accounting, legal and other representatives, as well as their respective officers, employees, Affiliates and other agents, access at all reasonable times and during normal business hours, upon reasonable advanced notice, to the Service Provider's facilities and personnel as Recipient deems reasonably necessary or advisable, including in connection with the receipt of the Services and for the purpose of conducting inventory counts or inspections of any Acquired Assets stored at such facilities or any products purchased under the Supply Agreement or in connection with the exercise of Recipient's Audit Rights. Recipient agrees that it and any of its accounting, legal and other representatives, as well as their respective officers, employees, Affiliates and other agents that access Service Provider's facilities shall use commercially reasonable efforts to conform to those policies, rules and procedures applicable to working onsite at Service Provider's facilities, provided that Service Provider has provided a copy of such policies to the Recipient in advance of such access and shall not unreasonably interfere with Service Provider's activities.

## ARTICLE XII

## INTELLECTUAL PROPERTY

Section 12.01 Intellectual Property Ownership. Except as expressly set forth in this Agreement, no license, title, ownership or other Intellectual Property rights are transferred from either Party to the other Party or its Affiliates, and each Party retains all such rights, title, ownership and other interest in its Intellectual Property, as well as in its information technology systems, platforms, applications and all other software, hardware, systems and resources it uses to provide or receive the Services, as applicable.

Section 12.02 Limited Licenses to Use Intellectual Property. Subject to the terms and conditions of this Agreement, (a) Service Provider hereby grants to Recipient a non-exclusive, royalty-free right and license to use, solely during the term of this Agreement, any and all relevant and applicable Intellectual Property owned or licensable by Service Provider, but solely to the extent necessary for Recipient to receive and use the Services under this Agreement, and (b) Recipient hereby grants to Service Provider a non-exclusive, royalty-free right and license to use, solely during the term of this Agreement, any and all relevant and applicable Intellectual Property owned or licensable by Recipient, but solely to the extent necessary to enable Service Provider to provide the Services.

## ARTICLE XIII

## MISCELLANEOUS

Section 13.01 Expenses. Except as otherwise provided herein, all fees and expenses incurred in connection with or related to this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such fees or expenses, whether or not such transactions are consummated.

Section 13.02 Notices. All notices and other communications made pursuant to or under this Agreement shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) as of the date transmitted when transmitted by electronic mail, (c) one Business Day after deposit with a nationally recognized overnight courier service, or (d) three Business Days after the mailing if sent by registered or certified mail, postage prepaid, return receipt requested. All notices and other communications under this Agreement shall be delivered to the addresses set forth below, or such other address as such Party may have given to the other Parties by notice pursuant to this Section 13.02 (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereinafter maintain):

If to Service Provider:

Healing Solutions, LLC
4703 W. Brill St.
Suite 101
Phoenix, AZ 85043
E-Mail: [...***...]
Attention: Richard A. Perry

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

Squire Patton Boggs
1 E. Washington St.
Suite 2700
Phoenix, AZ 85004
E-Mail: [...***...]
Attention: Brian A. Cabianca

If to Recipient:

Mohawk Group Holdings, Inc.
37 E 18th St., 7th Floor
NY, NY 10003
E-Mail: [...***...]
Attention: Christopher J. Porcelli

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

Paul Hastings LLP
1117 S California Ave,
Palo Alto, CA 94304
E-Mail: [...***...]
Attention: Jeff Hartlin

Section 13.03 Severability. If any term or provision of this Agreement is held invalid, illegal or unenforceable in any respect under any applicable Law, the validity, legality and enforceability of all other terms and provisions of this Agreement will not in any way be affected or impaired. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

Section 13.04 Entire Agreement. All references in this Agreement shall include all Exhibits and Schedules hereto. This Agreement the Purchase Agreement, and the Ancillary Agreements constitute the entire agreement of the Parties relating to the subject matter hereof and thereof and supersede all prior agreements or understandings between the Parties with respect to such subject matter. The Parties acknowledge and agree that neither it nor any of its Affiliates or representatives are making, and neither Party nor any of its Affiliates is relying upon, any representations, warranties or other statements by the other Party or any of its Affiliates or representatives except to the extent set forth in this Agreement.

Section 13.05 Amendments; Waiver. This Agreement may be amended, modified or waived only by the written agreement of the Parties. Unless otherwise specifically provided herein, no failure or delay of any Party to exercise any right or remedy given to such Party under this Agreement or otherwise available to such Party or to insist upon strict compliance by any other Party with its obligations hereunder and no single or partial exercise of any such right or power shall constitute a waiver of any Party's right to demand exact compliance with the terms hereof. Any written waiver shall be limited to those items specifically waived therein and shall not be deemed to waive any future breaches or violations or other non-specified breaches or violations unless, and to the extent, expressly set forth therein.

Section 13.06 Assignment; Successors and Assigns. This Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns, and, except as set forth in ARTICLE VII, will not be assignable or delegable by either Service Provider or Recipient, by operation of Law or otherwise, without the prior written consent of the other Party; provided, that nothing in this Agreement shall or is intended to limit the ability of Recipient to assign its rights or delegate its responsibilities, liabilities and obligations under this Agreement, in whole or in part, without the consent of Service Provider (a) to any Affiliate of Recipient, (b) in connection with a change of control of Recipient or (c) in the event of a sale of all or substantially all of the assets of Recipient. Any attempted assignment in violation of this Section 13.06 shall be void ab initio.

Section 13.07 Third Party Beneficiaries. This Agreement shall inure exclusively to the benefit of and be binding upon the Parties and their respective successors, permitted assigns, executors and legal representatives. Nothing in this Agreement, express or implied, is intended to confer on any Person (other than the Parties or their respective successors and permitted assigns) any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 13.08 Remedies; Specific Performance.

(a) Except to the extent set forth otherwise in this Agreement, all remedies under this Agreement expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or at Law or in equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy.

(b) The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the Parties shall be entitled to enforce specifically the provisions of this Agreement, including obtaining an injunction or injunctions to prevent breaches or threatened breaches of this Agreement, in any court designated to resolve disputes concerning this Agreement (or, if such court lacks subject matter jurisdiction, in any appropriate state or federal court), this being in addition to any other remedy to which such Party is entitled at Law or in equity. Each Party further agrees not to assert and waives (a) any defense in any action for specific performance that a remedy at Law would be adequate and (b) any requirement under any Law to post security or provide indemnity as a prerequisite to obtaining equitable relief.

Section 13.09 Governing Law; Consent to Jurisdiction; Service of Process; Waiver of Jury Trial.

(a) This Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation, inducement to enter and/or performance of this Agreement (whether related to breach of contract, tortious conduct or otherwise and whether now existing or hereafter arising) shall be governed by, the internal Laws of the State of Delaware, without giving effect to any Law that would cause the Laws of any jurisdiction other than the State of Delaware to be applied.

(b) Each Party agrees that any Proceeding arising out of or relating to this Agreement or any transaction contemplated hereby shall be brought exclusively in any state or federal court located in New York County, State of New York and each of the Parties hereby submits to the exclusive jurisdiction of such courts for itself and with respect to its property, generally and unconditionally, for the purpose of any such Proceeding. A final judgment in any such Proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each Party agrees not to commence any Proceeding arising out of or relating to this Agreement or the transactions contemplated hereby except in the courts described above (other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in New York as described above), irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in any such court, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Proceeding brought in any such court has been brought in an inconvenient forum or does not have jurisdiction over any Party. Each Party agrees that service of any process, summons, notice or document by U.S. registered mail to such Party's respective address set forth herein shall be effective service of process for any such Proceeding.

(c) EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, STATUTE OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF. EACH PARTY FURTHER WAIVES ANY RIGHT TO SEEK TO CONSOLIDATE ANY PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER PROCEEDING IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED OR WARRANTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13.09.

Section 13.10 Force Majeure. Any failure by Service Provider to perform any obligations under this Agreement, if caused by or resulting from, in whole or in part, fire, flood, embargo, government regulation or administrative action, war, acts of war (whether war be declared or not), insurrection, riot, civil unrest, strike, lockout, terrorist act, act of God, or any other cause beyond Service Provider's reasonable control, shall not constitute a breach of any provision of this Agreement.

Section 13.11 Counterparts; Deliveries. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Agreement may be executed by facsimile or electronic (.pdf) signature and a facsimile or electronic (.pdf) signature shall constitute an original for all purposes.

Section 13.12 Further Acts; Cooperation. Each Party agrees that, upon reasonable request of the other Party from time to time, it shall execute and deliver, or cause to be executed and delivered, such further instruments and take such other actions as may be necessary or desirable to carry out the transactions contemplated by this Agreement.

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

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

**SERVICE PROVIDER:**

**HEALING SOLUTIONS, LLC**

By: /s/ Jason R. Hope
Name: Jason R. Hope
Title: Manager

**RECIPIENT:**

**MOHAWK GROUP INC.**

By: /s/ Fabrice Hamaide
Name: Fabrice Hamaide
Title: Chief Financial Officer

**Exhibit 99.1**

**Mohawk Group Accelerates Accretive M&A Strategy Announcing Acquisition of Leading E-Commerce Essential Oils and Wellness Brands Portfolio**

February 2, 2021

Company Raises 2021 Net Revenue Outlook Range to $340 million - $370 million

Provides 2021 Net Income Outlook Range of $1 million - $5 million &
2021 Adjusted EBITDA Outlook Range of $28 million - $32 million

Announces New $16.5 Million Term Loan

Conference Call to be Held On Tuesday, February 2, 2021 at 8:30 am ET

NEW YORK, Feb. 02, 2021 (GLOBE NEWSWIRE) – Mohawk Group Holdings, Inc. (Nasdaq: MWK) ("Mohawk" or the "Company") today announced it acquired the assets of e-commerce company Healing Solutions, LLC ("Healing Solutions"), a leading online seller of essential oils. Healing Solutions' unaudited trailing twelve month revenue and operating income excluding inventory liquidations, as of October 31, 2020, were approximately $65.2 million and $12.7 million, respectively.

Yaniv Sarig, Co-Founder and Chief Executive Officer of the Company, commented, "Our mission to build the leading e-commerce consumer brands platform has taken another meaningful step forward today. We are thrilled to enter the essential oils category which further diversifies our e-commerce portfolio of brands. Consumable products with recurring purchases and subscription revenue opportunities that complement our hard goods brands have been on our radar. Our strategy to create a supply chain and technology platform designed to operate e-commerce brands across a wide spectrum of categories at scale continues to bear fruit. We are still at the early stages of executing on our ambitious goals and are looking forward to developing new products for the brands we are acquiring as well as extending their reach internationally."

As consideration for Healing Solutions' assets, Mohawk paid approximately $15.3 million in cash and issued approximately 1.4 million shares of Mohawk's common stock. The cash and common stock payments reflect an approximate 3.8x multiple on the trailing twelve month operating income of Healing Solutions, excluding liquidations, as of October 31, 2020. Mohawk will also issue approximately 170,000 shares of Mohawk's common stock as consideration related to inventory being acquired from Healing Solutions, which number of shares shall be subject to adjustment (up to a maximum of 280,000 shares) based on actual inventory delivered as determined following the closing. In addition, and subject to the achievement of certain cost reduction metrics within the next 15 months, Mohawk agreed to issue to Healing Solutions and certain consultants up to a maximum of approximately 736,912 shares (in the aggregate) of Mohawk's common stock. In connection with the transaction, Healing Solutions is subject to certain trading restrictions on all shares to be issued in connection with the transaction and signed a six month lockup, voting, and standstill agreement.

**Increased 2021 Revenue Outlook & Establishing 2021 Net Income and Adjusted EBITDA Outlook**

For full year 2021, the Company expects net revenue to be in the range of $340 million to $370 million, up from $290 million to $320 million, reflecting the addition of the Healing Solutions business. The Company is establishing a net income estimate for the year ended December 31, 2021, which it expects to be in a range of $1 million to $5 million due primarily to quarterly interest expense, net and stock-based compensation expense.

The Company is also establishing an Adjusted EBITDA estimate for the year ended December 31, 2021, which it expects to be in the range of $28 million to $32 million.

The most directly comparable GAAP financial measure for Adjusted EBITDA is net income. The Company has not reconciled its expectations as to forward-looking Adjusted EBITDA to net income, the most directly comparable GAAP measure, because certain items are out of the Company's control or cannot be reasonably predicted, including that the historical revenue and operating income of the Healing Solutions business are subject to the completion of the Company's standard procedures for the preparation and completion of its financial statements and completion of an audit by the Company's independent registered public accounting firm. Accordingly, a reconciliation of forward-looking Adjusted EBITDA to net income is not available without unreasonable effort.

**New $16.5 Million Term Loan**

Mohawk today also announced the issuance of a Senior Secured Note to an institutional lender. The Company received gross proceeds of $14.0 million in exchange for the Senior Secured Note with an aggregate principal amount of $16.5 million with a bullet maturity in 24 months. The new Senior Secured Note has a zero percent interest rate. In connection with the Senior Secured Note, the Company issued to the institutional lender warrants to purchase an aggregate of 469,931 shares of the Company's common stock at a strike price of $25.10.

A.G.P. / Alliance Global Partners acted as sole placement agent on the debt transaction.

**Conference Call Details**

Management will host a conference call on Tuesday February 2, 2021 at 8:30 am ET to discuss the acquisition. Investors and analysts interested in participating in the call are invited to dial (877) 295-1077 (domestic) or (470) 495-9485 (international) and provide the conference ID: 1076569. The conference call will also be available to interested parties through a live webcast at https://ir.mohawkgp.com.

**About Mohawk Group Holdings, Inc.**

Mohawk Group Holdings, Inc., together with its subsidiaries ("Mohawk"), is a rapidly growing technology-enabled consumer products company that uses machine learning, natural language processing, and data analytics to design, develop, market and sell products. Mohawk predominantly operates through online retail channels such as Amazon and Walmart. In addition to Healing Solutions, Mohawk has eleven owned and operated brands and sells products in multiple categories, including home and kitchen appliances, kitchenware, environmental appliances (i.e., dehumidifiers and air conditioners), beauty-related products and, to a lesser extent, consumer electronics. Mohawk was founded on the premise that if a company selling consumer packaged goods was founded today, it would apply artificial intelligence and machine learning, the synthesis of massive quantities of data and the use of social proof to validate high caliber product offerings as opposed to over-reliance on brand value and other traditional marketing tactics.

**Forward Looking Statements**

All statements other than statements of historical facts included in this press release that address activities, events or developments that we expect, believe or anticipate will or may occur in the future are forward-looking statements including, in particular, the statements regarding this acquisition, our M&A strategy, the potential for recurring purchase or subscription revenue related to the Healing Solutions business, our goal of creating a supply chain and technology platform designed to operate e-commerce brands across a wide spectrum of categories, any potential acquisition of additional businesses in the future, our ability to create significant operating leverage and efficiency when integrating companies that we acquire, including through the use of our team's expertise, the economies of scale of our supply chain and automation driven by our

platform, our expectations regarding future growth internationally and through the development and launch of products under our brands and the acquisition of additional brands, our 2021 net revenue outlook, including any expected impact that this acquisition may have thereon, and the statements about our expected net income and Adjusted EBITDA for the full year 2021. These forward-looking statements are based on management's current expectations and beliefs and are subject to uncertainties and factors, all of which are difficult to predict and many of which are beyond our control and could cause actual results to differ materially and adversely from those described in the forward-looking statements. These risks include, but are not limited to, those related to this acquisition; those related to our ability to create operating leverage and efficiency when integrating companies that we acquire, including through the use of our team's expertise, the economies of scale of our supply chain and automation driven by our platform; those related to our ability to grow internationally and through the launch of products under our brands and the acquisition of additional brands; those related to the impact of COVID-19, including its impact on consumer demand, our cash flows, financial condition and revenue growth rate; the completion of our customary audit procedures and the audit of the Healing Solutions business or any other acquired business; our supply chain including sourcing, manufacturing, warehousing and fulfillment; our ability to manage expenses, working capital and capital expenditures efficiently; our business model and our technology platform; our ability to disrupt the consumer products industry; our ability to grow market share in existing and new product categories, including PPE; our ability to generate profitability and stockholder value; international tariffs and trade measures; inventory management, product liability claims, recalls or other safety and regulatory concerns; reliance on third party online marketplaces; seasonal and quarterly variations in our revenue; acquisitions of other companies and technologies, our ability to continue to access debt and equity capital and the extent of our leverage and other factors discussed in the "Risk Factors" section of our most recent periodic reports filed with the Securities and Exchange Commission ("SEC"), all of which you may obtain for free on the SEC's website at www.sec.gov.

Although we believe that the expectations reflected in our forward-looking statements are reasonable, we do not know whether our expectations will prove correct. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof, even if subsequently made available by us on our website or otherwise. We do not undertake any obligation to update, amend or clarify these forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

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