UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934
Date of Report (Date of earliest event reported)**: December 24, 2024**

Velo3D, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**001-39757**	**98-1556965**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

2710 Lakeview Court, Fremont, California	**94538**
(Address of principal executive offices)	(Zip Code)

(408) 610-3915
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(s)	Name of each exchange on which registered
N/A	N/A	N/A

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.

Exchange Agreement

On December 24, 2024, Velo3D, Inc., a Delaware corporation (the "Company"), entered into an Exchange Agreement (the "Exchange Agreement") with Arrayed Notes Acquisition Corp., a Delaware corporation (the "Holder"). Pursuant to the Exchange Agreement, on December 24, 2024, the Company issued to the Holder 185,151,333 shares (the "Shares") of the Company's Common Stock, par value $0.00001 per share (the "Common Stock"), in exchange for the cancellation of $22,382,000.00 in principal amount of the Company's Senior Secured Notes due 2026 plus $369,303.00 of accrued interest on the Notes (the "Exchange"). The closing of the transaction contemplated by the Exchange Agreement occurred on December 24, 2024 (the "Closing"). Immediately following the Closing, the Holder continues to hold $4,999,969.30 in principal amount of the Notes (the "Remaining Notes"). Immediately following the Exchange and the issuance of the Shares, the Holder owned 95% of the Company's issued and outstanding Common Stock.

The Exchange Agreement contains an indemnification provision whereby the Company has agreed to indemnify and hold the Holder and its directors, officers, shareholders and other affiliates (each a "Holder Party" and collectively the "Holder Parties") harmless against actual losses incurred due to (1) any breach of certain representations and warranties of the Company or covenants made by the Company in the Exchange Agreement or (2) any action instituted against the Holder Parties in any capacity by any

stockholder or other equity holder that is not an affiliate or transferee of such Holder Party with respect to any of the transactions contemplated by the Exchange Agreement. The Company's indemnification obligations under the Exchange Agreement are subject to a cap of approximately $4.1 million.

Pursuant to the Exchange Agreement, from and after the Closing, the Holder and the Company have agreed that neither the Holder nor the Company will, directly or indirectly, consummate a Fundamental Transaction (as defined in the Exchange Agreement) unless each holder of Common Stock (other than the Holder, its transferees and their affiliates), has the right to sell its Common Stock on the same terms and conditions (including with respect to form and amount of consideration) on which the Holder is selling, transferring or disposing of its capital stock in the Company in such Fundamental Transaction.

Pursuant to the Exchange Agreement, from and after the Closing, the Holder and the Company have agreed that the Holder, its transferees and their affiliates will not, directly or indirectly, exchange or otherwise convert the Remaining Notes into equity of the Company, in any manner that will result in the reduction of the percentage of the Common Stock of the Company held by the other stockholders of the Company immediately prior to such conversion or exchange, as determined on a fully-diluted basis at the time of such conversion or exchange as compared to such stockholders' ownership of Common Stock as of immediately following the Exchange.

The Exchange Agreement grants customary demand and piggyback registration rights to the Holder whereby the Holder can cause the Company to register with the Securities and Exchange Commission the offer and resale of the Shares acquired by the Holder in the Exchange.

Pursuant to the Exchange Agreement, the Company and its Related Parties (as defined in the Exchange Agreement) have granted a release to the Holder and its Related Parties from claims the Company and its Related Parties may have against the Holder and its Related Parties arising out of acts, facts and circumstances occurring on or before the Closing based on or related to the transactions contemplated by the Exchange Agreement. The Holder and its Related Parties have granted a reciprocal release to the Company and its Related Parties.

Pursuant to the Exchange Agreement, from and after the Closing, the Company and the Holder have agreed that the Company's Board of Directors (the "Board") will be comprised of at least one independent director (as defined in the rules of the OTCQX Best Market) appointed by the Holder (or, if higher, such minimum number of independent directors necessary to comply with applicable listing rules or law) (the "Minimum Independent Director Requirement"), and until the consummation of a Fundamental Transaction, the Holder agrees to take such action as is necessary to cause the Company to be in compliance with the Minimum Independent Director Requirement.

The foregoing description of the Exchange Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Exchange Agreement, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference**.**

Item 3.02 Unregistered Sales of Equity Securities.

To the extent required by this Item 3.02, the information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

The offer and issuance by the Company of the Shares are exempt from registration under Section 4(a)(2) of the Securities Act of 1933, as amended.

Item 5.01 Changes In Control of Registrant.

To the extent required by this Item 5.01, the information set forth under Item 1.01 and 5.02 of this Current Report on Form 8-K is incorporated herein by reference.

On December 24, 2024, as a result of the closing of the transactions contemplated by the Exchange Agreement, a change in control of the Company occurred. Immediately following the Exchange and the issuance of the Shares, the Holder owned 95% of the Company's issued and outstanding Common Stock.

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

Resignation and Appointment of Arun Jeldi to the Company's Board of Directors

In connection with the Closing, Mr. Carl Bass, Ms. Ellen Smith, Ms. Gabrielle Toledano, Mr. Matthew Walters, Mr. Benyamin Buller and Mr. Darryl Porter have resigned from the Board and all committees of the Board on which they serve (if applicable). Such resignations were not the result, in whole or in part, of any disagreement with the Company or the Company's management.

Additionally, effective December 24, 2024, the Board reduced the size of the Board from ten directors to five directors, leaving one vacancy on the Board. Also effective December 24, 2024, the Board formally appointed Arun Jeldi as a director of the Company to fill the newly created vacancy. Mr. Jeldi was designated as a class III director in accordance with the Company's Certificate of Incorporation, as amended, and Amended and Restated Bylaws to serve a term expiring at the Company's 2027 Annual Meeting of Stockholders, and will serve in such capacity until his successor is duly elected and qualified or until his earlier death, resignation, disqualification or removal. Mr. Jeldi has not yet been appointed to any committee of the Board.

Mr. Jeldi was appointed to the Board pursuant to the terms of the Exchange Agreement. Apart from the Exchange Agreement, there is no arrangement or understanding between Mr. Jeldi and any other person pursuant to which Mr. Jeldi was selected as a director. Mr. Jeldi is the Chief Executive Officer and President of Arrayed Additive, Inc., an affiliate of the Holder. Other than the transactions contemplated by the Exchange Agreement, Mr. Jeldi does not have any direct or indirect material interest in any transaction or proposed transaction required to be reported under Item 404(a) of Regulation S-K. To the extent required by this Item 5.02, the information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Resignation of Chief Executive Officer and Appointment of Chief Operating Officer

On December 24, 2024, Mr. Bradley Kreger tendered his resignation from the role of Chief Executive Officer of the Company and the Board accepted Mr. Kreger's resignation, effective December 24, 2024. Concurrently with such resignation, the Board appointed Mr. Kreger to the position of Chief Operating Officer of the Company, effective December 24, 2024.

Mr. Kreger, age 49, has served as the Company's Chief Executive Officer since June 2024 until his resignation on December 24, 2024. He previously served as Interim Chief Executive Officer from December 2023 through June 2024, and has been a class III Director of the Company since January 2024. Prior to serving as the Company's Interim Chief Executive Officer, Mr. Kreger served as the Company's Executive Vice President of Operations from December 2022 to December 2023. Prior to joining the Company, he served as Senior Vice President, Global Operations at Fluidigm Corporation (now known as Standard BioTools Inc.), a manufacturing company for biological research equipment, from April 2018 to October 2022; as Senior Director, Operations, Clinical Sequencing Division at Thermo Fisher Scientific, a supplier of laboratory and scientific products and services, from December 2016 to March 2018; and as Vice President, Reagent Manufacturing at Affymetrix Incorporated, a manufacturing company for biological research equipment, from October 2013 to December 2016. Mr. Kreger holds a B.S. in Biotechnology and Business from Charter Oak State College and an M.S. in Management and Leadership and an M.B.A. from Western Governors University.

There are no arrangements or understandings between Mr. Kreger and any other person pursuant to which Mr. Kreger was selected as the Company's Chief Operating Officer. There are no family relationships between Mr. Kreger and any director or executive officer of the Company, and Mr. Kreger does not have any direct or indirect material interest in any transaction or proposed transaction required to be reported under Item 404(a) of Regulation S-K.

Appointment of Chief Executive Officer

Effective December 24, 2024, the Board appointed Mr. Jeldi to serve as Chief Executive Officer of the Company. Mr. Jeldi will serve as Chief Executive Officer until the earlier of his resignation, death or removal.

Mr. Jeldi, age 44, has served as the Chief Executive Officer and President of several companies over the past five years. Since October 2019, he has served as the Chief Executive Officer and President of Indiana Healthcare Solutions LLC, DBA Ink Staffing, a national healthcare staffing agency. Since December 2020, he has served as Chief Executive Officer and President of Lite Magnesium Products Inc., which designs and manufactures magnesium-based products and components for the aerospace, automotive and other industries. Since June 2023, he has served as Chief Executive Officer and President of Crown Magnesium Inc., which extracts pure magnesium from ore materials. In addition, since June 2023, Mr. Jeldi has served as Chief Executive Officer and President of Arrayed Additive, Inc., which is engaged in magnesium and aluminum lightweight alloy additive manufacturing (3D printing) for the aerospace and defense industries. Arrayed Additive, Inc. owns 100% of the outstanding capital stock of the Holder. The Company believes Mr. Jeldi's significant executive experience in additive manufacturing and in providing design and manufacturing services to the aerospace and defense industries makes him well-qualified to serve as Chief Executive Officer and as a member of the Board.

There are no family relationships between Mr. Jeldi and any director or executive officer of the Company. Apart from the Exchange Agreement, there is no arrangement or understanding between Mr. Jeldi and any other person pursuant to which Mr. Jeldi was selected as the Company's Chief Executive Officer. Other than the transactions contemplated by the Exchange Agreement, Mr. Jeldi does not have any direct or indirect material interest in any transaction or proposed transaction required to be reported under Item 404(a) of Regulation S-K. To the extent required by this Item 5.02, the information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Effective December 24, 2024, the Board approved and adopted the Second Amended and Restated Bylaws of the Company (the "Bylaws"), which amend and restate the Amended and Restated Bylaws of the Company that were previously in effect.

Among other things, the amendments (the "Amendments") that will be effected through the adoption of the Bylaws:

- provide that a "Majority Holder" (as defined below and in the Bylaws) will be exempt from the notice, proposal and other procedures and requirements with respect to the Company's annual or special meeting of stockholders and permitting a "Majority Holder" to call special meetings of the Board, in addition to the Chairperson of the Board, the Chief Executive Officer, the Lead Independent Director or a majority of the members of the Board then in office (a "Majority Holder" is a person or entity that, together with its affiliates, owns a majority of both (1) the voting power and (2) the issued and outstanding shares of capital stock of the Company);
- remove the provision that requires directors to maintain the confidentiality of all non-public information learned in their capacities as directors, including to those third parties who nominated them; and
- add a provision that permits any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, to be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding capital stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, unless the Company's certificate of incorporation provides otherwise.

The foregoing description of the Bylaws and the Amendments does not purport to be complete and is qualified in its entirety by reference to the full text of the Amendment, a copy of which is filed as Exhibit 3.1 to this Current Report on Form 8-K and incorporated herein by reference**.**

Item 7.01. Regulation FD Disclosure.

On December 24, 2024, the Company issued a press release announcing the Exchange Agreement, a copy of which is furnished herewith as Exhibit 99.1.

The information contained in this Item 7.01, including Exhibit 99.1, is being furnished to the Securities and Exchange Commission and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
3.1	Second Amended and Restated Bylaws of Velo3D, Inc.
10.1	Exchange Agreement, dated as of December 24, 2024, by and between Velo3D, Inc. and Arrayed Notes Acquisition Corp.
99.1	Press Release issued December 24, 2024
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

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

Velo3D, Inc.

Date: December 26, 2024

By: */s/ Hull Xu*
Hull Xu
Chief Financial Officer

Exhibit 3.1

VELO3D, INC.

(a Delaware corporation)

SECOND AMENDED AND RESTATED BYLAWS

Effective December 24, 2024

VELO3D, INC.

(a Delaware corporation)

SECOND AMENDED AND RESTATED BYLAWS

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VELO3D, INC.

(a Delaware corporation)

SECOND AMENDED AND RESTATED BYLAWS

Effective December 24, 2024

Article I: STOCKHOLDERS

Section 1.1: Annual Meetings. If required by applicable law, an annual meeting of stockholders shall be held for the election of directors at such date and time as the Board of Directors (the "***Board***") of Velo3D, Inc. (the "***Corporation***") shall each year fix. The meeting may be held either at a place, within or without the State of Delaware as permitted by the Delaware General Corporation Law (the "***DGCL***"), or by means of remote communication as the Board in its sole discretion may determine. Any proper business may be transacted at the annual meeting.

Section 1.2: Special Meetings. Special meetings of stockholders for any purpose or purposes shall be called in the manner set forth in the Restated Certificate of Incorporation of the Corporation (as the same may be amended and/or restated from time to time, the "***Certificate of Incorporation***"). The special meeting may be held either at a place, within or without the State of Delaware, or by means of remote communication as the Board in its sole discretion may determine. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of the meeting.

Section 1.3: Notice of Meetings. Notice of all meetings of stockholders shall be given in accordance with applicable law (including, without limitation, as set forth in Section 7.1.1 of these Bylaws) stating the date, time and place, if any, of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting). In the case of a special meeting, such notice shall also set forth the purpose or purposes for which the meeting is called. Unless otherwise required by applicable law or the Certificate of Incorporation, notice of any meeting of stockholders shall be given not less than ten (10), nor more than sixty (60), days before the date of the meeting to each stockholder of record entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

Section 1.4: Adjournments. Notwithstanding Section 1.5 of these Bylaws, the person presiding over the meeting shall have the power to adjourn the meeting to another time, date and place (if any), regardless of whether quorum is present, at any time and for any reason. Any meeting of stockholders, annual or special, may be adjourned from time to time (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication), and notice need not be given of any such adjourned meeting if the time, date and place (if any) thereof and the means of remote communication (if any) by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are (i) announced at the meeting at which the adjournment is taken, (ii) displayed, during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or (iii) set forth in the notice of meeting given in accordance with Section 222(a) of the DGCL; *provided*, *however*, that if the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If, after the adjournment, a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting. At the adjourned meeting, the Corporation may transact any business that might have been transacted at the original meeting. If a quorum is present at the original meeting, it shall also be deemed present at the adjourned meeting. To the fullest extent permitted by law, the Board may postpone, reschedule or cancel at any time and for any reason any previously scheduled special or annual meeting of stockholders before it is to be held, regardless of whether any notice or public disclosure with respect to any such meeting has been sent or made pursuant to Section 1.3 hereof or otherwise, in which case notice shall be provided to the stockholders of the new date, time and place, if any, of the meeting as provided in Section 1.3 above.

Section 1.5: Quorum. Except as otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, at each meeting of stockholders the holders of a majority of the voting power of the shares of stock issued and outstanding and entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business; *provided*, *however*, that where a separate vote by a class or classes or series of stock is required by applicable law or the Certificate of Incorporation, the holders of a majority of the voting power of the shares of such class or classes or series of the stock issued and outstanding and entitled to vote on such matter, present in person or represented by proxy at the meeting, shall constitute a quorum entitled to take action with respect to the vote on such matter. If a quorum shall fail to attend any meeting, the chairperson of the meeting or, if directed to be voted on by the chairperson of the meeting, the holders of a majority of the voting power of the shares entitled to vote who are present in person or represented by proxy at the meeting, may adjourn the meeting. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

Section 1.6: Organization. Meetings of stockholders shall be presided over by (a) such person as the Board may designate, or (b) in the absence of such a person, the Chairperson of the Board, or (c) in the absence of such person, the Lead Independent Director, or (d) in the absence of such person, the Chief Executive Officer of the Corporation, or (e) in the absence of such person, the President of the Corporation, or (f) in the absence of such person, by a Vice President. The Secretary of the Corporation shall act as secretary of the meeting, but in such person's absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 1.7: Voting; Proxies. Each stockholder of record entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy. Such a proxy may be prepared, transmitted and delivered in any manner permitted by applicable law. Except as may be required in the Certificate of Incorporation, directors shall be elected by a plurality of the votes cast by the holders of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. At all meetings of stockholders at which a quorum is present, unless a different or minimum vote is required by applicable law, rule or regulation applicable to the Corporation or its securities, the rules or regulations of any stock exchange applicable to the Corporation, the Certificate of Incorporation or these Bylaws, in which case such different or minimum vote shall be the applicable vote on the matter, every matter other than the election of directors shall be decided by the affirmative vote of the holders of a majority of the voting power of the shares of stock entitled to vote on such matter that are present in person or represented by proxy at the meeting and are voted for or against the matter (or if there are two or more classes or series of stock entitled to vote as separate classes, then in the case of each class or series, the holders of a majority of the voting power of the shares of stock of that class or series present in person or represented by proxy at the meeting voting for or against such matter).

Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for exclusive use by the Board.

Section 1.8: Fixing Date for Determination of Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at 5:00 p.m. Eastern Time on the day next preceding the day on which notice is given, or, if notice is waived, at 5:00 p.m. Eastern Time on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided*, *however*, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which shall not be more than sixty (60) days prior to such action. If no such record date is fixed by the Board, then the record date for determining stockholders for any such purpose shall be at 5:00 p.m. Eastern Time on the day on which the Board adopts the resolution relating thereto.

Section 1.9: List of Stockholders Entitled to Vote. The Corporation shall prepare, no later than the tenth (10th) day before each meeting of stockholders, a complete list of stockholders entitled to vote at the meeting (*provided*, *however*, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date), arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing in this Section 1.9 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of ten (10) days ending on the day before the meeting date, either (a) on a reasonably accessible electronic network as permitted by applicable law (*provided* that the information required to gain access to the list is provided with the notice of the meeting), or (b) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 1.9 or to vote in person or by proxy at any meeting of stockholders. Notwithstanding the foregoing, the Corporation may maintain and authorize examination of the list of stockholders in any manner expressly permitted by the DGCL at the time.

Section 1.10: Inspectors of Elections.

1.10.1 Applicability. Unless otherwise required by the Certificate of Incorporation or by applicable law, the following provisions of this Section 1.10 shall apply only if and when the Corporation has a class of voting stock that is: (a) listed on a national securities exchange; (b) authorized for quotation on an interdealer quotation system of a registered national securities association; or (c) held of record by more than two thousand (2,000) stockholders. In all other cases, observance of the provisions of this Section 1.10 shall be optional, and at the discretion of the Board.

1.10.2 Appointment. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting.

1.10.3 Inspector's Oath. Each inspector of election, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability.

1.10.4 Duties of Inspectors. At a meeting of stockholders, the inspectors of election shall (a) ascertain the number of shares outstanding and the voting power of each share, (b) determine the shares represented at a meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period of time a record of the disposition of any challenges made to any determination by the inspectors, and (e) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

1.10.5 Opening and Closing of Polls. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise.

1.10.6 Determinations. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided pursuant to Section 211(a)(2)b.(i) or (iii) of the DGCL, or in accordance with Sections 211(e) or 212(c)(2) of the DGCL, ballots and the regular books and records of the Corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification of their determinations pursuant to this Section 1.10 shall specify the precise information considered by them, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

Section 1.11: Conduct of Meetings. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting or the Board shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; (v) limitations on the time allotted to questions or comments by participants; (vi) restricting the use of audio/video recording devices and cell phones; (vii) complying with any state and local laws and regulations concerning safety and security; (viii) procedures (if any) requiring attendees to provide the Corporation advance notice of their intent to attend the meeting; and (ix) any additional attendance or other procedures or requirements for proponents submitting a proposal pursuant to Rule 14a-8 promulgated under the Exchange Act (defined below). The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 1.12: Notice of Stockholder Business; Nominations.

1.12.1 Annual Meeting of Stockholders.

(a) Subject to the other provisions of Section 1.12, nominations of persons for election to the Board and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only: (i) pursuant to the Corporation's notice of such meeting (or any supplement thereto), (ii) by or at the direction of the Board or any committee thereof or (iii) by any stockholder of the Corporation who was a stockholder of record at the time of giving of the notice provided for in this Section 1.12 (the "***Record Stockholder***"), who is entitled to vote at such meeting and who complies with the notice and other procedures set forth in this Section 1.12 in all applicable respects. For the avoidance of doubt, the foregoing clause (iii) shall be the exclusive means for a stockholder to make nominations or propose business (other than business included in the Corporation's proxy materials pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (such act, and the rules and regulations promulgated thereunder, the "***Exchange Act***")), at an annual meeting of stockholders, and such stockholder must fully comply with the notice and other procedures set forth in this Section 1.12 to make such nominations or propose business before an annual meeting.

(b) For nominations or other business to be properly brought before an annual meeting by a Record Stockholder pursuant to Section 1.12.1(a) of these Bylaws:

(i) the Record Stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and provide any updates or supplements to such notice at the times and in the forms required by this Section 1.12;

(ii) such other business (other than the nomination of persons for election to the Board) must otherwise be a proper matter for stockholder action;

(iii) (A) if the Proposing Person (as defined below) has provided the Corporation with a Solicitation Notice (as defined below), in the case of a proposal other than the nomination of persons for election to the Board, such Proposing Person must have delivered a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to carry any such proposal and must have included in such materials the Solicitation Notice, or (B) if the Proposing Person has delivered a notice of nomination or nominations, such Proposing Person must certify to the Corporation in writing, that it has complied with and will comply with the requirements of Rule 14a-19 promulgated under the Exchange Act, if applicable, and the Proposing Person shall deliver, no later than five (5) business days prior to the annual meeting or any adjournment, rescheduling, postponement or other delay thereof, reasonable evidence that it has complied with such requirements; and

(iv) in the case of a proposal other than the nomination of persons for election to the Board, if no Solicitation Notice relating thereto has been timely provided pursuant to this Section 1.12, the Proposing Person proposing such business must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 1.12.

To be timely, (i) a Record Stockholder's notice must be delivered to the Secretary at the principal executive offices of the Corporation not later than 5:00 p.m. Eastern Time on the ninetieth (90th) day nor earlier than 5:00 p.m. Eastern Time on the one hundred and twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; *provided*, *however*, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, or if no annual meeting was held in the preceding year, notice by the Record Stockholder to be timely must be so delivered (A) no earlier than 5:00 p.m. Eastern Time on the one hundred and twentieth (120th) day prior to such annual meeting and (B) no later than 5:00 p.m. Eastern Time on the later of the ninetieth (90th) day prior to such annual meeting or 5:00 p.m. Eastern Time on the tenth (10th) day following the day on which Public Announcement (as defined below) of the date of such meeting is first made by the Corporation, (ii) in the case of a proposal for the nomination of persons for election to the Board, the Record Stockholder shall have complied in all respects with the requirements of Section 14 of the Exchange Act, including, without limitation, if applicable, the requirements of Rule 14a-19 (as such rule and regulations may be amended from time to time by the Securities and Exchange Commission, including any Securities and Exchange Commission Staff interpretations relating thereto) and (iii) in the case of a proposal for the nomination of persons for election to the Board, the Board or an executive officer designated thereby shall have determined that the Record Stockholder has satisfied the requirements of this Section 1.12. In no event shall an adjournment, postponement or rescheduling (or the Public Announcement thereof) of an annual meeting for which notice has been given or a Public Announcement of the meeting date has been made commence a new time period (or extend any time period) for providing the Record Stockholder's notice. Notwithstanding anything in this Section 1.12.1 to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased and there is no Public Announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board

made by the Corporation at least ten (10) days prior to the last day a stockholder may deliver a notice in accordance with the first sentence of this paragraph, a stockholder's notice required by this Section 1.12.1 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such Public Announcement is first made by the Corporation.

(c) As to each person whom the Record Stockholder proposes to nominate for election or reelection as a director, in addition to the matters set forth in paragraph (e) below, such Record Stockholder's notice shall set forth:

(i) the name, age, business address and residence address of such person;

(ii) the principal occupation or employment of such nominee;

(iii) the class, series and number of any shares of stock of the Corporation that are beneficially owned or owned of record by such person or any Associated Person (as defined in Section 1.12.4(c));

(iv) the date or dates such shares were acquired and the investment intent of such acquisition;

(v) all other information relating to such person that would be required to be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or would be otherwise required, in each case pursuant to and in accordance with Section 14(a) (or any successor provision) under the Exchange Act and the rules and regulations thereunder;

(vi) such person's written consent to being named as a nominee in any proxy materials relating to the Corporation's next meeting, to the public disclosure of information regarding or related to such person provided to the Corporation by such person or otherwise pursuant to this Section 1.12 and to serving as a director if elected;

(vii) whether such person meets the independence requirements of the stock exchange upon which the Corporation's Common Stock is primarily traded;

(viii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three (3) years, and any other material relationships, between or among such Proposing Person or any of its respective affiliates and associates, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, on the other hand, including all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the Proposing Person or any of its respective affiliates and associates were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant;

(ix) a description of any position of such person as an officer or director of any Competitor (as defined below) within the three years preceding the submission of the notice;

(x) a description of any business or personal interests that could place such person in a potential conflict of interest with the Corporation or any of its subsidiaries; and

(xi) all completed and signed questionnaires, representations and agreements required bySection 1.12.2 of these Bylaws.

The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation and to determine the independence of such director under the Exchange Act and rules and regulations thereunder and applicable stock exchange rules.

(d) As to any business other than the nomination of a director or directors that the Record Stockholder proposes to bring before the meeting, in addition to the matters set forth in paragraph (e) below, such Record Stockholder's notice shall set forth:

(i) a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws, the text of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such Proposing Person, including any anticipated benefit to any Proposing Person therefrom; and

(ii) a description of all agreements, arrangements and understandings between or among any such Proposing Person and any of its respective affiliates or associates, on the one hand, and any other person or persons, on the other hand, (including their names) in connection with the proposal of such business by such Proposing Person;

(e) As to each Proposing Person giving the notice, such Record Stockholder's notice shall set forth:

(i) the current name and address of such Proposing Person, including, if applicable, their name and address as they appear on the Corporation's stock ledger, if different;

(ii) (1) the class or series and number of shares of stock of the Corporation that are directly or indirectly owned of record or beneficially owned by such Proposing Person, including any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future, and (2) a certification regarding whether such Proposing Person, if any, has complied with all applicable federal, state and other legal requirements in connection with such Proposing Person's acquisition of shares of capital stock or other securities of the Corporation and/or such Proposing Person's acts or omissions as a stockholder of the Corporation;

(iii) whether and the extent to which (x) any derivative interest in the Corporation's equity securities (including without limitation any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of shares of the Corporation or otherwise, and any cash-settled equity swap, total return swap, synthetic equity position or similar derivative arrangement (any of the foregoing, a "***Derivative Instrument***"), as well as any rights to dividends on the shares of any class or series of shares of the Corporation that are separated or separable from the underlying shares of the Corporation) or (y) any short interest in any security of the Corporation (for purposes of this Bylaw a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any increase or decrease in the value of the subject security, including through performance-related fees), including without limitation whether and the extent to which any ongoing hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including without limitation any short position or any borrowing or lending of shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such Proposing Person with respect to any share

of stock of the Corporation (any of the foregoing, a "***Short Interest***") is held directly or indirectly by or for the benefit of such Proposing Person;

(iv) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such Proposing Person or any of its respective affiliates or associates is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership;

(v) any direct or indirect material interest in any material contract or agreement with the Corporation, any affiliate of the Corporation or any Competitor (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement);

(vi) any significant equity interests or any Derivative Instruments or Short Interests in any Competitor held by such Proposing Person and/or any of its respective affiliates or associates;

(vii) any other material relationship between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation or any Competitor, on the other hand;

(viii) all information that would be required to be set forth in a Schedule 13D filed pursuant to Rule 13d-1(a) or an amendment pursuant to Rule 13d-2(a) if such a statement were required to be filed under the Exchange Act and the rules and regulations promulgated thereunder by such Proposing Person and/or any of its respective affiliates or associates;

(ix) any other information relating to such Proposing Person that would be required to be disclosed in proxy materials or other filings required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business or nomination proposed to be brought before the meeting pursuant to Section 14(a) (or any successor provision) under the Exchange Act and the rules and regulations thereunder;

(x) such Proposing Person's written consent to the public disclosure of information provided to the Corporation pursuant to this Section 1.12;

(xi) a complete written description of any agreement, arrangement or understanding (whether oral or in writing) (including any knowledge that another person or entity is Acting in Concert (as defined in Section 1.12.4(c)) with such Proposing Person) between or among such Proposing Person, any of its respective affiliates or associates and any other person Acting in Concert with any of the foregoing persons;

(xii) a representation that the Record Stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person (including virtually in the case of a meeting conducted solely by means of remote communication) or by proxy at the meeting to propose such business or nomination;

(xiii) in the case of a proposal other than the nomination of persons for election to the Board, a representation whether such Proposing Person intends (or is part of a group that intends) to deliver a proxy statement or form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to carry the proposal (an affirmative statement of such intent being a "***Solicitation Notice***"); and

(xiv) in the case of a nomination or nominations, a representation that such Proposing Person intends to solicit the holders of shares representing at least 67% of the voting power of the shares entitled to vote on the election of directors in support of director nominees other than the Corporation's nominees in accordance with Rule 14a-19, and the name of each participant (as defined in Item 4 of Exchange Act Schedule 14A) in such solicitation;

(xv) a complete and accurate description of any pending or, to such Proposing Person's knowledge, threatened legal proceeding in which such Proposing Person is a party or participant involving the Corporation or, to such Proposing Person's knowledge, any current or former officer, director, affiliate or associate of the Corporation; and

(xvi) any proxy, contract, arrangement, or relationship pursuant to which the Proposing Person has a right to vote, directly or indirectly, any shares of any security of the Corporation.

The disclosures to be made pursuant to the foregoing clauses (ii), (iii), (iv) and (vi) shall not include any information with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner.

(f) A Record Stockholder providing written notice required by this Section 1.12 shall update such notice, and any other information provided to the Corporation, in writing, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for determining the stockholders entitled to notice of the meeting and (ii) 5:00 p.m. Eastern Time on the tenth (10th) business day prior to the meeting or any adjournment, postponement or rescheduling thereof. In the case of an update pursuant to clause (i) of the foregoing sentence, such update shall be received by the Secretary of the Corporation at the principal executive office of the Corporation not later than five (5) business days after the record date for determining the stockholders entitled to notice of the meeting, and in the case of an update and supplement pursuant to clause (ii) of the foregoing sentence, such update and supplement shall be received by the Secretary of the Corporation at the principal executive office of the Corporation not later than eight (8) business days prior to the date for the meeting and, if practicable, any adjournment, postponement or rescheduling thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed). Notwithstanding the foregoing, if a Proposing Person no longer plans to solicit proxies in accordance with its representation pursuant to Section 1.12.1(e)(xiv), the Record Stockholder shall inform the Corporation of this change by delivering a writing to the Secretary at the principal executive offices of the Corporation no later than two (2) business days after the occurrence of such change. A Record Stockholder shall also update its notice so that the information required by Section 1.12.1(e)(viii) is current through the date of the meeting or any adjournment, postponement, or rescheduling thereof, and such update shall be delivered in writing to the Secretary at the principal executive offices of the Corporation no later than two (2) business days after the occurrence of any material change to the information previously disclosed pursuant to Section 1.12.1(e)(viii). For the avoidance of doubt, the obligation to update as set forth in this paragraph shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a Record Stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or nomination or to submit any new proposal, including by changing or adding nominees, matters, business and/or resolutions proposed to be brought before a meeting of the stockholders. If a Record Stockholder providing written notice required by this Section 1.12 fails to provide any written update in accordance with this Section 1.12, the information as to which such written update relates may be deemed not to have been provided in accordance with these Bylaws.

(g) If any information submitted pursuant to this Section 1.12 is inaccurate or incomplete in any material respect (as determined by the Board or a committee thereof), such information shall be deemed not to have been provided in accordance with these Bylaws. A Record Stockholder shall notify the Secretary in writing at the principal executive offices of the Corporation of any inaccuracy or change in any information submitted within two (2) business days after becoming aware of such inaccuracy or change, and any such notification shall clearly identify the inaccuracy or change, it being understood that no such notification will cure any deficiencies or inaccuracies with respect to

any prior submission by such Record Stockholder. Upon written request of the Secretary on behalf of the Board (or a duly authorized committee thereof), the Record Stockholder shall provide, within seven (7) business days after delivery of such request (or such longer period as may be specified in such request), (1) written verification, reasonably satisfactory to the Board, any committee thereof, or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted and (2) a written affirmation of any information submitted as of an earlier date. If the Record Stockholder fails to provide such written verification or affirmation within such period, the information as to which written verification or affirmation was requested may be deemed not to have been provided in accordance with these Bylaws.

(h) Notwithstanding anything in Section 1.12 or any other provision of the Bylaws to the contrary, any person who has been determined by a majority of the Whole Board to have violated a Board confidentiality policy while serving as a director of the Corporation in the preceding five (5) years shall be ineligible to be nominated or be qualified to serve as a member of the Board, absent a prior waiver for such nomination or qualification approved by two-thirds of the Whole Board.

1.12.2 Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee of any stockholder for election or reelection as a director of the Corporation, the person proposed to be nominated must deliver (in accordance with the time periods prescribed for delivery of notice under Section 1.12 of these Bylaws) to the Secretary at the principal executive offices of the Corporation all completed and signed questionnaires in the forms required by the Corporation (which form the stockholder shall request in writing from the Secretary of the Corporation and which the Secretary shall provide to such stockholder within ten (10) days of receiving such request) with respect to the background and qualification of such person to serve as a director of the Corporation and the background of any other person or entity on whose behalf, directly or indirectly, the nomination is being made and a signed representation and agreement (in the form available from the Secretary upon written request) that such person: (a) is not and will not become a party to (i) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "***Voting Commitment***") that has not been disclosed to the Corporation or (ii) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (b) is not and will not become a party to any Compensation Arrangement (as defined below) that has not been disclosed therein, (c) if elected as a director of the Corporation, will comply with all informational and similar requirements of applicable insurance policies and laws and regulations in connection with service or action as a director of the Corporation, (d) if elected as a director of the Corporation, will comply with all corporate governance, conflict of interest, stock ownership requirements, confidentiality and trading policies and guidelines of the Corporation publicly disclosed from time to time, (e) if elected as a director of the Corporation, will act in the best interests of the Corporation and its stockholders and not in the interests of individual constituencies, (f) consents to being named as a nominee in any proxy materials relating to the Corporation's next meeting and agrees to serve if elected as a director, (g) intends to serve as a director for the full term for which such individual is to stand for election, (h) represents and warrants that his or her candidacy or, if elected, Board membership, would not violate applicable state or federal law, the Certificate of Incorporation, these Bylaws, or the rules of any stock exchange on which shares of the Corporation's Common Stock are traded, and (i) will provide facts, statements, and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects, and that do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

1.12.3 Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of such meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of such meeting (a) by or at the direction of the Board or any committee thereof or (b) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice of the special meeting, who shall be entitled to vote at the meeting and who complies with the notice and other procedures set forth in this Section 1.12 in all applicable respects. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if (A) the stockholder's notice required by Section 1.12.1(b) of these Bylaws shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation (i) no earlier than the one hundred and twentieth (120th) day prior to such special meeting and (ii) no later than 5:00 p.m. Eastern Time on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which Public Announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting, (B) the stockholder has complied in all respects with the requirements of Section 14 of the Exchange Act, including, without limitation, if applicable, the requirements of Rule 14a-19 (as such rule and regulations may be amended from time to time by the Securities and Exchange Commission, including any Securities and Exchange Staff interpretations relating thereto) and (C) the Board or an executive officer designated thereby has determined that the stockholder has satisfied the requirements of Section 1.12. In no event shall an adjournment, postponement or rescheduling (or the Public Announcement thereof) of a special meeting commence a new time period (or extend any time period) for providing such notice.

1.12.4 General.

(a) (i) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, only such persons who are nominated in accordance with the procedures set forth in this Section 1.12 shall be eligible to be elected at a meeting of stockholders and serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.12. The number of nominees a stockholder may nominate for election at a meeting of stockholders (or in the case of a Record Stockholder giving the notice on behalf of another Proposing Person, the number of nominees a stockholder may nominate for election at the meeting on behalf of such Proposing Person) shall not exceed the number of directors to be elected at such meeting. Except as otherwise provided by law or these Bylaws, the chairperson of the meeting shall have the power and duty to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 1.12 (including satisfying the information requirements set forth herein with accurate and complete information) and, if any proposed nomination or business is not in compliance herewith, to declare that such defective proposal or nomination shall be disregarded (and any such nominee shall be disqualified), including that if a stockholder provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act and subsequently fails to comply with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3) promulgated under the Exchange Act, including the provision to the Corporation of notices required thereunder in a timely manner, then the Corporation shall disregard any proxies or votes solicited for such stockholder's director nominees (and any such nominee shall be disqualified). Notwithstanding the foregoing provisions of this Section 1.12, unless otherwise required by law, if the stockholder (or a Qualified Representative of the stockholder (as defined below)) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. If a stockholder has given timely notice as required herein to make a nomination or bring a proposal of other business before any annual or special meeting of stockholders of the Corporation and intends to authorize a Qualified Representative to act for such stockholder as a proxy to present the nomination or proposal at such meeting, the stockholder shall give notice of such authorization in writing to the Secretary not less than three (3) business days before the date of such meeting, including the name and contact information for such person. Notwithstanding the foregoing provisions of Section 1.12, unless otherwise required by law, no stockholder shall solicit proxies in support of director nominees other than the Corporation's nominees unless such stockholder has complied with Rule 14a-19 promulgated under the Exchange Act in connection with the solicitation of such proxies, including the provision to the Corporation of notices required thereunder in a timely manner.

(ii) The Board may request that any Proposing Person, and any proposed nominee of such Proposing Person, furnish such additional information as may be reasonably required by the Board. Such Proposing Person and/or proposed nominee thereof shall provide such additional information within ten (10) days after it has been requested by the Board. The Board may require any such proposed nominee to submit to interviews with the Board or any committee thereof, and such proposed nominee shall make themself available for any such interviews within no less than ten (10) business days following the date of such request.

(b) Notwithstanding the foregoing provisions of this Section 1.12, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein, for the avoidance of doubt including, but not limited to, Rule 14a-19 of the Exchange Act. Nothing in this

Section 1.12 shall be deemed to affect any rights of (a) stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (b) the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

(c) Notwithstanding anything to the contrary contained in this Section 1.12, no Majority Holder shall be subject to the notice, proposal and other procedures and requirements set forth in Section 1.12 with respect to any annual or special meeting of stockholders.

(d) For purposes of these Bylaws the following definitions shall apply:

(i) a person shall be deemed to be "***Acting in Concert***" with another person if such person knowingly acts (whether or not pursuant to an express agreement, arrangement or understanding) in concert with, or toward a common goal relating to the management, governance or control of the Corporation in substantial parallel with, such other person where (A) each person is conscious of the other person's conduct or intent and this awareness is an element in their decision-making processes and (B) at least one additional factor suggests that such persons intend to act in concert or in substantial parallel, which such additional factors may include, without limitation, exchanging information (whether publicly or privately), attending meetings, conducting discussions or making or soliciting invitations to act in concert or in substantial parallel; *provided* that a person shall not be deemed to be Acting in Concert with any other person solely as a result of the solicitation or receipt of revocable proxies or consents from such other person in response to a solicitation made pursuant to, and in accordance with, Section 14(a) (or any successor provision) of the Exchange Act by way of a proxy or consent solicitation statement filed on Schedule 14A. A person Acting in Concert with another person shall be deemed to be Acting in Concert with any third party who is also Acting in Concert with such other person;

(ii) "***affiliate***" and "***associate***" shall have the meanings ascribed thereto in Rule 405 under the Securities Act of 1933, as amended (the "***Securities Act***"); *provided*, *however*, that the term "partner" as used in the definition of "associate" shall not include any limited partner that is not involved in the management of the relevant partnership;

(iii) "***Associated Person***" shall mean with respect to any subject stockholder or other person (including any proposed nominee) (A) any person directly or indirectly controlling, controlled by or under common control with such stockholder or other person, (B) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder or other person, (C) any associate of such stockholder or other person, and (D) any person directly or indirectly controlling, controlled by or under common control or Acting in Concert with any such Associated Person;

(iv) "***Compensation Arrangement***" shall mean any direct or indirect compensatory payment or other financial agreement, arrangement or understanding with any person or entity other than the Corporation, including any agreement, arrangement or understanding with respect to any direct or indirect compensation, reimbursement or indemnification in connection with candidacy, nomination, service or action as a nominee or as a director of the Corporation;

(v) "***Competitor***" shall mean any entity that provides products or services that compete with or are alternatives to the principal products produced or services provided by the Corporation or its affiliates;

(vi) A "***Majority Holder***" means a person or entity that, together with its affiliates, owns a majority of both (A) the voting power and (B) the issued and outstanding shares of capital stock the Corporation. For purposes of the forgoing, neither the Corporation nor any of its subsidiaries shall be deemed to be an affiliate of any stockholder.

(vii) "***Proposing Person***" shall mean (A) the Record Stockholder providing the notice of business proposed to be brought before an annual meeting or nomination of persons for election to the Board at a stockholder meeting, (B) the beneficial owner or beneficial owners, if different, on whose behalf the notice of business proposed to be brought before the annual meeting or nomination of persons for election to the Board at a stockholder meeting is made, and (C) any Associated Person on whose behalf the notice of business proposed to be brought before the annual meeting or nomination of persons for election to the Board at a stockholder meeting is made;

(viii) "***Public Announcement***" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act; and

(ix) to be considered a "***Qualified Representative***" of a stockholder, a person must be a duly authorized officer, manager, trustee or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as a proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction thereof, at the meeting. The Secretary of the Corporation, or any other person who shall be appointed to serve as secretary of the meeting, may require, on behalf of the Corporation, reasonable and appropriate documentation to verify the status of a person purporting to be a "Qualified Representative" for purposes hereof.

Section 1.13: Action by Written Consent.

(a) Except as may be otherwise provided in the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding capital stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were delivered to the Corporation as provided in Section 1.14.(b).

(b) Every written consent shall bear the date of signature of each stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this section and Delaware Law to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

Article II: BOARD OF DIRECTORS

Section 2.1: Number; Qualifications. The total number of directors constituting the Whole Board shall be fixed from time to time in the manner set forth in the Certificate of Incorporation and the term "***Whole Board***" shall have the meaning specified in the Certificate of Incorporation. No decrease in the authorized number of directors constituting the Whole Board shall shorten the term of any incumbent director. Directors need not be stockholders of the Corporation.

Section 2.2: Election; Resignation; Removal; Vacancies. Election of directors need not be by written ballot. Each director shall hold office until the annual meeting

at which such director's term expires and until such director's successor is elected and qualified or until such director's earlier death, resignation, disqualification or removal. Any director may resign by delivering a resignation in writing or by electronic transmission to the Corporation at its principal office or to the Chairperson of the Board, the Chief Executive Officer, or the Secretary. Such resignation shall be effective upon delivery unless it is specified to be effective at a later time or upon the happening of an event. Subject to the special rights of holders of any series of Preferred Stock to elect directors, directors may be removed only as provided by the Certificate of Incorporation and applicable law. All vacancies occurring in the Board and any newly created directorships resulting from any increase in the authorized number of directors shall be filled in the manner set forth in the Certificate of Incorporation.

Section 2.3: **Regular Meetings**. Regular meetings of the Board may be held at such places, within or without the State of Delaware, and at such times as the Board may from time to time determine. Notice of regular meetings need not be given if the date, times and places thereof are fixed by resolution of the Board.

Section 2.4: **Special Meetings**. Special meetings of the Board may be called by the Chairperson of the Board, the Chief Executive Officer, the Lead Independent Director, a majority of the members of the Board then in office, or a Majority Holder, and may be held at any time, date or place, within or without the State of Delaware, as the person or persons calling the meeting shall fix. Notice of the time, date and place of such meeting shall be given, orally, in writing or by electronic transmission (including electronic mail), by the person or persons calling the meeting to all directors at least four (4) days before the meeting if the notice is mailed, or at least twenty-four (24) hours before the meeting if such notice is given by telephone, hand delivery or electronic transmission; *provided*, *however*, that if, under the circumstances, the Chairperson of the Board, the Lead Independent Director or the Chief Executive Officer calling a special meeting deems that more immediate action is necessary or appropriate, notice may be delivered on the day of such special meeting. Unless otherwise indicated in the notice, any and all business may be transacted at a special meeting.

Section 2.5: **Remote Meetings Permitted**. Members of the Board, or any committee of the Board, may participate in a meeting of the Board or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to conference telephone or other communications equipment shall constitute presence in person at such meeting.

Section 2.6: **Quorum; Vote Required for Action**. At all meetings of the Board, a majority of the Whole Board shall constitute a quorum for the transaction of business. If a quorum shall fail to attend any meeting, a majority of those present may adjourn the meeting to another place, date or time. Except as otherwise provided herein or in the Certificate of Incorporation, or required by law, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board.

Section 2.7: **Organization**. Meetings of the Board shall be presided over by (a) the Chairperson of the Board, or (b) in the absence of such person, the Lead Independent Director, or (c) in such person's absence, by the Chief Executive Officer, or (d) in such person's absence, by a chairperson chosen by the Board at the meeting. The Secretary shall act as secretary of the meeting, but in such person's absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8: **Unanimous Action by Directors in Lieu of a Meeting**. Any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or such committee, as the case may be, consent thereto in writing or by electronic transmission. After an action is taken, the writing or writings or electronic transmission or transmissions shall be filed with the minutes of proceedings of the Board or committee, as applicable. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.9: **Powers**. Except as otherwise provided by the Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board.

Section 2.10: **Compensation of Directors**. Members of the Board, as such, may receive, pursuant to a resolution of the Board, fees and other compensation for their services as directors, including without limitation their services as members of committees of the Board.

Article III: COMMITTEES

Section 3.1: **Committees**. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting of such committee who are not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in a resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving, adopting, or recommending to the stockholders any action or matter (other than the election or removal of members of the Board) expressly required by the DGCL to be submitted to stockholders for approval or (b) adopting, amending or repealing any bylaw of the Corporation.

Section 3.2: **Committee Rules**. Each committee shall keep records of its proceedings and make such reports as the Board may from time to time request. Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for the conduct of its business. In the absence of such rules, each committee shall conduct its business in the same manner as the Board conducts its business pursuant to Article II of these Bylaws. Except as otherwise provided in the Certificate of Incorporation, these Bylaws or the resolution of the Board designating the committee, any committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and may delegate to any such subcommittee any or all of the powers and authority of the committee.

Article IV: OFFICERS; CHAIRPERSON; LEAD INDEPENDENT DIRECTOR

Section 4.1: **Generally**. The officers of the Corporation shall consist of a Chief Executive Officer (who may be the Chairperson of the Board or the President), a President, a Secretary and a Treasurer and may consist of such other officers, including, without limitation, a Chief Financial Officer, and one or more Vice Presidents, as may from time to time be appointed by the Board. All officers shall be elected by the Board; *provided*, *however*, that the Board may empower the Chief Executive Officer of the Corporation to appoint any officer other than the Chief Executive Officer, the President, the Chief Financial Officer or the Treasurer. Except as otherwise provided by law, by the Certificate of Incorporation or these Bylaws, each officer shall hold office until such officer's successor is duly elected and qualified or until such officer's earlier resignation, death, disqualification or removal. Any number of offices may be held by the same person. Any officer may resign by delivering a resignation in writing or by electronic transmission to the Corporation at its principal office or to the Chairperson of the Board, the Chief Executive Officer, or the Secretary. Such resignation shall be effective upon delivery unless it is specified to be effective at some later time or upon the happening of some later event. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board and the Board may, in its discretion, leave unfilled, for such period as it may determine, any offices. Each such successor shall hold office for the unexpired term of such officer's predecessor and until a successor is duly elected and qualified or until such officer's earlier resignation, death, disqualification or removal.

Section 4.2: **Chief Executive Officer**. Subject to the control of the Board and such supervisory powers, if any, as may be given by the Board, the powers and duties of

the Chief Executive Officer of the Corporation are:

4.2.1 to act as the general manager and, subject to the control of the Board, to have general supervision, direction and control of the business and affairs of the Corporation;

4.2.2 subject to Section 1.6 of these Bylaws, to preside at all meetings of the stockholders;

4.2.3 subject to Section 1.2 of these Bylaws, to call special meetings of the stockholders to be held at such times and, subject to the limitations prescribed by law or by these Bylaws, at such places as he or she shall deem proper; and

4.2.4 to affix the signature of the Corporation to all deeds, conveyances, mortgages, guarantees, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board or which, in the judgment of the Chief Executive Officer, should be executed on behalf of the Corporation; to sign certificates for shares of stock of the Corporation (if any); and, subject to the direction of the Board, to have general charge of the property of the Corporation and to supervise and control all officers, agents and employees of the Corporation.

The person holding the office of President shall be the Chief Executive Officer of the Corporation unless the Board shall designate another officer to be the Chief Executive Officer.

Section 4.3: Chairperson of the Board. Subject to the provisions of Section 2.7 of these Bylaws, the Chairperson of the Board shall have the power to preside at all meetings of the Board and shall have such other powers and duties as provided in these Bylaws and as the Board may from time to time prescribe. The Chairperson of the Board may or may not be an officer of the Corporation.

Section 4.4: Lead Independent Director. The Board may, in its discretion, elect a lead independent director from among its members that are Independent Directors (as defined below) (such director, the "***Lead Independent Director***"). The Lead Independent Director shall preside at all meetings at which the Chairperson of the Board is not present and shall exercise such other powers and duties as may from time to time be assigned to him or her by the Board or as prescribed by these Bylaws. For purposes of these Bylaws, "***Independent Director***" has the meaning ascribed to such term under the rules of the exchange upon which the Corporation's Common Stock is primarily traded, or if not then traded on an exchange, the rules of the OTCQB Venture Market.

Section 4.5: President. The person holding the office of Chief Executive Officer shall be the President of the Corporation unless the Board shall have designated one individual as the President and a different individual as the Chief Executive Officer of the Corporation. Subject to the provisions of these Bylaws and to the direction of the Board, and subject to the supervisory powers of the Chief Executive Officer (if the Chief Executive Officer is an officer other than the President), and subject to such supervisory powers and authority as may be given by the Board to the Chairperson of the Board, and/or to any other officer, the President shall have the responsibility for the general management and control of the business and affairs of the Corporation and the general supervision and direction of all of the officers, employees and agents of the Corporation (other than the Chief Executive Officer, if the Chief Executive Officer is an officer other than the President) and shall perform all duties and have all powers that are commonly incident to the office of President or that are delegated to the President by the Board.

Section 4.6: Chief Financial Officer. The person holding the office of Chief Financial Officer shall be the Treasurer of the Corporation unless the Board shall have designated another officer as the Treasurer of the Corporation. Subject to the direction of the Board and the Chief Executive Officer, the Chief Financial Officer shall perform all duties and have all powers that are commonly incident to the office of Chief Financial Officer, or as the Board or the Chief Executive Officer may from time to time prescribe.

Section 4.7: Treasurer. The person holding the office of Treasurer shall have custody of all monies and securities of the Corporation. The Treasurer shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions. The Treasurer shall also perform such other duties and have such other powers as are commonly incident to the office of Treasurer, or as the Board or the Chief Executive Officer may from time to time prescribe.

Section 4.8: Vice President. Each Vice President shall have all such powers and duties as are commonly incident to the office of Vice President or that are delegated to him or her by the Board or the Chief Executive Officer. A Vice President may be designated by the Board to perform the duties and exercise the powers of the Chief Executive Officer or President in the event of the Chief Executive Officer's or President's absence or disability.

Section 4.9: Secretary. The Secretary shall issue or cause to be issued all authorized notices for, and shall keep, or cause to be kept, minutes of all meetings of the stockholders and the Board. The Secretary shall have charge of the corporate minute books and similar records and shall perform such other duties and have such other powers as are commonly incident to the office of Secretary, or as the Board or the Chief Executive Officer may from time to time prescribe.

Section 4.10: Delegation of Authority. The Board may from time to time delegate the powers or duties of any officer of the Corporation to any other officers or agents of the Corporation, notwithstanding any provision hereof.

Section 4.11: Removal. Any officer of the Corporation shall serve at the pleasure of the Board and may be removed at any time, with or without cause, by the Board; *provided* that if the Board has empowered the Chief Executive Officer to appoint any officer of the Corporation, then such officer may also be removed by the Chief Executive Officer. Such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation.

Article V: STOCK

Section 5.1: Certificates; Uncertificated Shares. The shares of capital stock of the Corporation shall be uncertificated shares; *provided*, *however*, that the resolution of the Board that the shares of capital stock of the Corporation shall be uncertificated shares shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation (or the transfer agent or registrar, as the case may be). Notwithstanding the foregoing, the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be certificated shares. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the Corporation, by any two authorized officers of the Corporation (it being understood that each of the Chairperson of the Board, the Vice-Chairperson of the Board, the Chief Executive Officer, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary and any Assistant Secretary shall be an authorized officer for such purpose), representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were an officer, transfer agent or registrar at the date of issue.

Section 5.2: Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates or Uncertificated Shares. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate previously issued by it, alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to agree to indemnify the Corporation and/or to give the Corporation a bond sufficient to indemnify it, against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Section 5.3: Other Regulations. Subject to applicable law, the Certificate of Incorporation and these Bylaws, the issue, transfer, conversion and registration of shares represented by certificates and of uncertificated shares shall be governed by such other regulations as the Board may establish.

Article VI: INDEMNIFICATION

Section 6.1: Indemnification of Officers and Directors. Each person who was or is made a party to, or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, legislative or any other type whatsoever (a "***Proceeding***"), by reason of the fact that such person (or a person of whom such person is the legal representative), is or was a director or officer of the Corporation or, while serving as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (for purposes of this Article VI, an "***Indemnitee***"), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the DGCL as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expenses, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith, provided such Indemnitee acted in good faith and in a manner that the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal Proceeding, had no reasonable cause to believe the Indemnitee's conduct was unlawful. Such indemnification shall continue as to an Indemnitee who has ceased to be a director or officer of the Corporation and shall inure to the benefit of such Indemnitees' heirs, executors and administrators. Notwithstanding the foregoing, subject to Section 6.5 of these Bylaws, the Corporation shall indemnify any such Indemnitee seeking indemnity in connection with a Proceeding (or part thereof) initiated by such Indemnitee only if such Proceeding (or part thereof) was authorized by the Board or such indemnification is authorized by an agreement approved by the Board.

Section 6.2: Advance of Expenses. The Corporation shall pay all expenses (including attorneys' fees) incurred by an Indemnitee in defending any Proceeding in advance of its final disposition; *provided*, *however*, that if the DGCL then so requires, the advancement of such expenses shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such Indemnitee, to repay such amounts if it shall ultimately be determined that such Indemnitee is not entitled to be indemnified under this Article VI or otherwise.

Section 6.3: Non-Exclusivity of Rights. The rights conferred on any person in this Article VI shall not be exclusive of any other right that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote or consent of stockholders or disinterested directors, or otherwise. Additionally, nothing in this Article VI shall limit the ability of the Corporation, in its discretion, to indemnify or advance expenses to persons whom the Corporation is not obligated to indemnify or advance expenses pursuant to this Article VI.

Section 6.4: Indemnification Contracts. The Board is authorized to cause the Corporation to enter into indemnification contracts with any director, officer, employee or agent of the Corporation, or any person serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation, partnership, joint venture, trust or other enterprise, including employee benefit plans, providing indemnification or advancement rights to such person. Such rights may be greater than those provided in this Article VI.

Section 6.5: Right of Indemnitee to Bring Suit. The following shall apply to the extent not in conflict with any indemnification contract provided for inSection 6.4 of these Bylaws.

6.5.1 Right to Bring Suit. If a claim under Section 6.1 or 6.2 of these Bylaws is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Indemnitee shall be entitled to be paid, to the fullest extent permitted by law, the expense of prosecuting or defending such suit. In any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the Indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the Indemnitee has not met any applicable standard of conduct which makes it permissible under the DGCL (or other applicable law) for the Corporation to indemnify the Indemnitee for the amount claimed.

6.5.2 Effect of Determination. The absence of a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in applicable law shall not create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit.

6.5.3 Burden of Proof. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VI, or otherwise, shall be on the Corporation.

Section 6.6: Nature of Rights. The rights conferred upon Indemnitees in this Article VI shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer or trustee and shall inure to the benefit of the Indemnitee's heirs, executors and administrators. Any amendment, repeal or modification of any provision of this Article VI that adversely affects any right of an Indemnitee or an Indemnitee's successors shall be prospective only, and shall not adversely affect any right or protection conferred on a person pursuant to this Article VI with respect to any Proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, repeal or modification.

Section 6.7: Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 6.8: Indemnification for Successful Defense. To the extent that an Indemnitee has been successful on the merits or otherwise in defense of any Proceeding (or in defense of any claim, issue or matter therein), such Indemnitee shall be indemnified under this Section 6.8 against expenses (including attorneys' fees) actually and reasonably incurred in connection with such defense. Indemnification under this Section 6.8 shall not be subject to satisfaction of a standard of conduct, and the Corporation may not assert the failure to satisfy a standard of conduct as a basis to deny indemnification or recover amounts advanced, including in a suit brought pursuant to Section 6.5 (notwithstanding anything to the contrary therein); provided, however, that, any Indemnitee who is not a current or former director or officer (as such term is defined in the final sentence of Section 145(c)(1) of the DGCL) shall be entitled to indemnification under Section 6.1 and this Section 6.8 only if such Indemnitee has satisfied the standard of conduct required for indemnification under Section 145(a) or Section 145(b) of the DGCL.

Article VII: NOTICES

Section 7.1: Notice.

7.1.1 Form and Delivery. Except as otherwise required by law, notice may be given in writing directed to a stockholder's mailing address as it appears on the records of the Corporation and shall be given: (a) if mailed, when notice is deposited in the U.S. mail, postage prepaid; and (b) if delivered by courier service, the earlier of when the notice is received or left at such stockholder's address. So long as the Corporation is subject to the Securities and Exchange Commission's proxy rules set forth in Regulation 14A under the Exchange Act, notice shall be given in the manner required by such rules. To the extent permitted by such rules, or if the Corporation is not subject to Regulation 14A, notice may be given by electronic transmission directed to the stockholder's electronic mail address, and if so given, shall be given when directed to such stockholder's electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by Section 232(e) of the DGCL. If notice is given by electronic mail, such notice shall comply with the applicable provisions of Sections 232(a) and 232(d) of the DGCL. Notice may be given by other forms of electronic transmission with the consent of a stockholder in the manner permitted by Section 232(b) of the DGCL and shall be deemed given as provided therein.

7.1.2 Affidavit of Giving Notice. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Section 7.2: Waiver of Notice. Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or these Bylaws, a written waiver of notice, signed by the person entitled to notice, or waiver by electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any waiver of notice.

Article VIII: INTERESTED DIRECTORS

Section 8.1: Interested Directors. No contract or transaction between the Corporation and one or more of its members of the Board or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are members of the board of directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof that authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if: (a) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (b) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a committee thereof, or the stockholders.

Section 8.2: Quorum. Interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction.

Article IX: MISCELLANEOUS

Section 9.1: Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board.

Section 9.2: Seal. The Board may provide for a corporate seal, which may have the name of the Corporation inscribed thereon and shall otherwise be in such form as may be approved from time to time by the Board.

Section 9.3: Form of Records. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on or by means of, or be in the form of, any other information storage device, method or one or more electronic networks or databases (including one or more distributed electronic networks or databases), electronic or otherwise, *provided* that the records so kept can be converted into clearly legible paper form within a reasonable time and otherwise comply with the DGCL. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of the DGCL.

Section 9.4: Reliance Upon Books and Records. A member of the Board, or a member of any committee designated by the Board shall, in the performance of such person's duties, be fully protected in relying in good faith upon the books and records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 9.5: Certificate of Incorporation Governs. In the event of any conflict between the provisions of the Certificate of Incorporation and Bylaws, the provisions of the Certificate of Incorporation shall govern.

Section 9.6: Severability. If any provision of these Bylaws shall be held to be invalid, illegal, unenforceable or in conflict with the provisions of the Certificate of Incorporation, then such provision shall nonetheless be enforced to the maximum extent possible consistent with such holding and the remaining provisions of these Bylaws (including without limitation, all portions of any section of these Bylaws containing any such provision held to be invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation, that are not themselves invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation) shall remain in full force and effect.

Section 9.7: Time Periods. In applying any provision of these Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

Article X: AMENDMENT

Notwithstanding any other provision of these Bylaws, any alteration, amendment or repeal of these Bylaws, and any adoption of new Bylaws, shall require the approval of the Board or the stockholders of the Corporation as expressly provided in the Certificate of Incorporation.

Article XI: EXCLUSIVE FORUM

Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, (i) the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act, including all causes of action asserted against any defendant named in such complaint, and (ii) the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the United States

District Court for the District of Delaware), shall be the sole and exclusive forum for (a) any derivative action or proceeding brought in the name or right of the Corporation or on behalf of the Corporation, (b) any action or proceeding asserting a claim that is based upon a breach of a duty owed by a current or former director, officer, employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (c) any action or proceeding arising or asserting a claim arising pursuant to any provision of the DGCL (or as to which the DGCL confers jurisdiction upon the Court of Chancery) or any provision of the Certificate of Incorporation, any designation relating to any outstanding to any series of preferred stock, or these Bylaws, (d) any action to interpret, apply, enforce, or determine the validity of the Certificate of Incorporation or these Bylaws, or (e) any action or proceeding asserting a claim governed by the internal affairs doctrine. For the avoidance of doubt, this Article XI is intended to benefit and may be enforced by the Corporation, the Corporation's officers and directors, the underwriters to any offering giving rise to such complaint, and any other professional entity whose profession gives authority to a statement made by that person or entity and who has prepared or certified any part of the documents underlying the offering.

Any person or entity purchasing or otherwise acquiring or holding any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XI.

Exhibit 10.1

Execution Version

EXCHANGE AGREEMENT

This Exchange Agreement (this "Agreement") is dated as of December 24, 2024, between Velo3D, Inc., a Delaware corporation (the "Company"), and Arrayed Notes Acquisition Corp., a Delaware corporation (the "Holder"). Any reference herein to "party" or "parties" shall mean the parties hereto.

WHEREAS, the Holder is a holder of the following debt instruments of the Company: (a) Senior Secured Note due 2026, Certificate No. A-1, in the principal amount of $10,952,787.32, and (b) Senior Secured Note due 2026, Certificate No. A-2, in the principal amount of $16,429,180.98 (the "Notes"); and

WHEREAS, subject to the terms and conditions set forth in this Agreement, as of the closing of the Exchange (the "Closing"), the Company will issue shares of the Company's Common Stock, par value $0.00001 per share (the "Common Stock"), as set forth herein, in exchange for the cancellation of $22,382,000 in principal amount of Notes plus $369,303.00 of interest on the Notes, (collectively, the "Exchanged Notes"), which shall be deemed satisfaction in full of the Company's obligations relating to the Exchanged Notes, leaving $4,999,969.30 in principal amount of Notes outstanding, in full force and effect in accordance with their terms (the "Remaining Notes").

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and the Holder agree as follows:

ARTICLE I.
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings set forth in this Section 1.1:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person as such terms are used in and construed under Rule 405 under the Securities Act.

"Agreement" shall have the meaning ascribed to such term in the recitals.

"Board of Directors" means the board of directors of the Company.

"Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in the City of New York or in the State of California are authorized or required by Law to remain closed.

"Bylaws" shall have the meaning ascribed to such term in Section 2.3(a)(v).

"Cap" means $4,086,996.19.

"Claims" shall mean any and all claims, cross-claims, counterclaims, commitments, proceedings, demands, obligations, debts, damages, losses, judgments, orders, costs, expenses, actions, causes of action (whether class, derivative or individual in nature), controversies, defenses, offsets, liens, indemnities, guaranties, remedies, liabilities, suits, demands, or judgments against a Released Party, including, without limitation, any debt arising in any way in connection with any acts of a Released Party, of any kind and nature, whether imposed by agreement, understanding, Law, equity or otherwise, which arose or have arisen prior to the Closing Date of whatever kind, type, nature or description, whether known or unknown, suspected or unexpected, foreseen or unforeseen, asserted or unasserted, direct or indirect, contingent or fixed, matured or unmatured, secured or unsecured, disputed or undisputed.

"Company" shall have the meaning ascribed to such term in the recitals.

"Closing" shall have the meaning ascribed to such term in the recitals.

"Closing Date" shall have the meaning ascribed to such term in Section 2.2.

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

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" shall have the meaning ascribed to that term in the recitals.

"Common Stock Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, shares of Common Stock.

"Company Counsel" shall have the meaning ascribed to such term in Section 6.19(a).

"Company Released Claims" shall have the meaning ascribed to such term in Section 6.1(b).

"Company Releasing Parties" shall have the meaning ascribed to such term in Section 6.1(a).

"Company Released Parties" shall have the meaning ascribed to such term in Section 6.1(b).

"Covered Parties" shall have the meaning ascribed to such term in Section 4.7(c).

"Debt" means the principal outstanding amount under the Exchanged Notes plus any accrued interest thereon as of the date hereof.

"Designated Person" shall have the meaning ascribed to such term in Section 6.19(a).

"Disclosure Schedules" means the Disclosure Schedules of the Company delivered concurrently with this Agreement.

"Enforceability Exceptions" shall have the meaning ascribed to such term in Section 3.1(c).

"Exchange" shall have the meaning ascribed to such term in Section 2.1.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Exchanged Notes" shall have the meaning ascribed to such term in the recitals.

"Existing Policies" means the Company's and the Subsidiaries' officers' and directors' corporate and management liability insurance existing as of the date hereof.

"Existing Representation" shall have the meaning ascribed to such term in Section 6.19(a).

"Fraud" means, with respect to a party, an actual and intentional fraud with respect to the making of a representation and warranty pursuant to Section 3.1 or Section 3.2 (as applicable); provided, however, that such actual and intentional fraud of such party shall only be deemed to exist if the Holder or the Company (as applicable) had actual knowledge (as opposed to imputed or constructive knowledge) that the applicable representation or warranty made by such party pursuant to, in the case of the Company, Section 3.1 as qualified by the Disclosure Schedules (subject to Section 6.16), or, in the case of the Holder, Section 3.2, was actually false when made, with the intention that the other party rely thereon to its detriment. For the avoidance of doubt, "Fraud" does not include any claim for fraud based on negligence, recklessness, equitable fraud, promissory fraud, constructive fraud, or similar theory.

"Fundamental Representations" means those representations and warranties of the Company set forth in the first sentence of Section 3.1(b), solely with respect to the Company (Organization and Qualification); Section 3.1(c) (Authorization; Enforcement); Section 3.1(d)(i) (No Conflicts); the first sentence of Section 3.1(f) (Issuance of Shares; Registration); the first sentence of Section 3.1(g) (Capitalization) and Section 3.1(l) (Brokers).

"Fundamental Transaction" means any sale, transfer, disposition, merger, exchange, combination or other transaction or series of transactions whether or not for value and whether voluntarily, by operation of Law or otherwise, the effect of which is that the Holder is no longer the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of (i) 50% or more of the Company's then issued and outstanding voting Common Stock or (ii) 50% or more of the Company's then issued and outstanding voting securities having the right to elect a majority of the board of directors of the Company.

"GAAP" means United States generally accepted accounting principles applied on a consistent basis.

"Go-Forward D&O Policy" shall have the meaning ascribed to such term in Section 4.7(b).

"Holder" shall have the meaning ascribed to such term in the recitals.

"Holder Party" shall have the meaning ascribed to such term in Section 4.4.

"Holder Released Claims" shall have the meaning ascribed to such term in Section 6.1(a).

"Holder Released Party" shall have the meaning ascribed to such term in Section 6.1(a).

"Holder Releasing Party" shall have the meaning ascribed to such term in Section 6.1(b).

"Indemnified Person" shall have the meaning ascribed to such term in Section 4.7(a).

"Knowledge" or words of similar import when used with respect to the Company, means the actual knowledge as of the date hereof of any fact, circumstance or condition of those officers of the Company set forth on Schedule 1.1(b).

"Law" means any statute, federal, state, local or non-U.S. law (including common law), ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment or decree of any governmental authority.

"Liens" means a lien, hypothecation, charge, license, pledge, mortgage, security interest, encumbrance, right of first refusal, preemptive right, claim, easement, servitude, transfer restriction, voting trust or agreement, defect or irregularity in title, encroachment or other restriction or limitation whatsoever.

"Losses" means any losses, liabilities, obligations, claims, contingencies, damages, costs, and expenses, including all judgments, amounts paid in settlements, court costs and reasonable, documented, out of pocket external attorneys' fees and costs of investigation.

"Material Adverse Effect" means (i) a material adverse effect on the results of operations, assets, business or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, or (ii) a material adverse effect on the Company's ability to perform in any material respect its obligations under this Agreement taken as a whole; provided, that any change, effect, event, occurrence, state of facts or development (each, a "Change") attributable to any of the following (either alone or in combination) shall not constitute, and shall not be taken into account in determining whether there has been or will be, a Material Adverse Effect: (a) the negotiation, execution and delivery of any Transaction Document and the consummation, announcement or pendency of the transactions contemplated by any Transaction Document (including any effect on the relationships of the Company and any of the Subsidiaries with their customers, suppliers, employees or competitors); (b) the identity of, or the effects of any facts or circumstances relating to, the Holder or its Affiliates; (c) economic, business, regulatory or political conditions or conditions generally affecting the industry or segments therein in which the Company and any of the Subsidiaries participate; (d) the U.S. economy as a whole or the capital, securities, currency, credit or financial markets in general or the markets in which the Company and any of the Subsidiaries operate including changes in prevailing interest rates or exchange rates or changes in commodity prices; (e) any action taken or not taken or statements made by Holder or its Affiliates or their respective representatives; (f) compliance with the terms of, or the taking or not taking of any action required by, any Transaction Document or any action or omission requested or approved by the Holder; (g) any breach, violation or non-performance of any provision of any Transaction Document by the Holder or its Affiliates; (h) any change in GAAP or any accounting requirements, policies or principles or any interpretation or enforcement thereof, or any change in applicable Laws or the interpretation or enforcement thereof or changes in regulatory conditions in the jurisdictions in which the Company or any of the Subsidiaries operate; (i) any act of public enemies or other calamity, crisis or geopolitical event or any acts of war (whether or not declared), attack, hostility, sabotage or terrorism occurring after the date of this Agreement or the continuation, escalation or worsening of any such acts of war, attack, hostilities, sabotage or terrorism threatened or underway as of the date of this Agreement; (j) any earthquakes, hurricanes, wildfires, floods, pandemics, epidemics, outbreaks, public health emergencies, or other natural disasters, diseases, acts

of God or force majeure events, including the continuation, escalation or worsening thereof; (k) any failure by the Company or any of the Subsidiaries to meet any projections, forecasts, estimates or budgets for any period prior to, on or after the date of this Agreement; (l) any litigation, arbitration, or regulatory action or proceeding relating to this Agreement or the transactions contemplated hereby; (m) any fluctuations in the market price or trading volume of the Company's securities, in and of itself; or (n) any seasonal changes in the business of the Company or any of its Subsidiaries; provided, however, that (A) with respect to clauses (k) and (m) of this definition, the underlying cause of such Change may be taken into account in determining whether a Material Adverse Effect has occurred if not otherwise excluded in the foregoing clauses (a) through (n), and (B) in the case of clauses (c), (d), (h), (i), and (j) of this definition, if any such Change has had or would reasonably be expected to have a disproportionate adverse impact on the business of the Company and its Subsidiaries, taken as a whole, compared to other companies which conduct business in the same industry and geography in which the Company and its Subsidiaries operate, then the impact of such Change on the Company and its Subsidiaries to the extent of such disproportionate impact may be taken into account for purposes of determining the occurrence of a Material Adverse Effect.

"Maximum Number of Securities" shall have the meaning ascribed to such term in Section 5.1(c).

"Minimum Independent Director Requirement" shall have the meaning ascribed to such term in Section 4.10.

"Most Recent SEC Reports" means the Company's most recent annual report on Form 10-K filed with the Commission on April 3, 2024 and all subsequent SEC Reports.

"Non-Recourse Party" shall have the meaning ascribed to such term in Section 6.2.

"Notes" shall have the meaning ascribed to such term in the recitals.

"Permitted Liens" means (i) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties, (ii) Liens granted in connection with the Exchanged Notes or Retained Notes, (iii) Liens disclosed in the SEC Reports, (iv) bankers' liens, rights of setoff and similar Liens incurred on deposits or securities accounts made in the ordinary course of business, (v) restrictions on transfer or other Liens contained in the Charter or other organizational documents of the Company or the Subsidiaries, (vi) restrictions on transfer under applicable federal and state securities laws, (vii) Liens arising in the ordinary course of business on cash or securities in connection with worker's compensation, unemployment compensation and other types of social security and (viii) any other Lien not material to the business of the Company and the Subsidiaries taken as a whole.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Post-Closing Covenants" shall have the meaning ascribed to such term in Section 6.11.

"Post-Closing Representation" shall have the meaning ascribed to such term in Section 6.19(a).

"Privileged Information" shall have the meaning ascribed to such term in Section 6.19(b).

"Proceeding" means an action, claim, suit, notice of violation, investigation or proceeding, before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign).

"Related Parties" with regards to any party hereto means, collectively, current, future, and former officers, directors, managers, members, equity holders (regardless of whether such equity interests are held directly or indirectly), affiliated investment funds or investment vehicles, predecessors, successors, assigns, subsidiaries, affiliates, managed accounts or funds, partners, limited partners, general partners, principals, management companies, fund advisors, employees, agents, trustees, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each acting in such capacity.

"Released Claims" means, together, the Holder Released Claims and Company Released Claims.

"Released Party" means, together, the Holder Released Parties and the Company Released Parties.

"Releasing Party" means, together, the Holder Releasing Parties and the Company Releasing Parties.

"Remaining Notes" has the meaning ascribed to such term in the recitals.

"Required Approvals" shall have the meaning ascribed to such term in Section 3.1(e).

"Rule 144" means Rule 144 promulgated by the Commission 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 Commission having substantially the same purpose and effect as such Rule.

"SEC Reports" shall have the meaning ascribed to such term in Section 3.1(h).

"Shares" shall have the meaning ascribed to such term in Section 2.1(a).

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

"Subsidiary" means any subsidiary of the Company as set forth on Schedule 3.1(a), and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

"Transaction Documents" means this Agreement and all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

"Transfer Agent" means Continental Stock Transfer and Trust Company, with a mailing address of 1 State Street, 30th Floor, New York, NY 10004 and a telephone number of 212-509-4000, and any successor transfer agent of the Company.

"Trustee" shall have the meaning ascribed to such term in Section 2.4(b)(ii).

"Unknown Claims" shall have the meaning ascribed to such term in Section 6.1(c).

ARTICLE II.
EXCHANGE

2.1 Exchange.

(a) On the terms and subject to the conditions of this Agreement and in reliance upon the representations, warranties and agreements contained herein, at the Closing, the Holder agrees to exchange the Exchanged Notes, and to release all Liens, guarantees and other rights and interests related thereto and deem the outstanding amount under the Exchanged Notes to be paid in full and the Exchanged Notes terminated, in consideration of and in exchange for issuance by the Company to such Holder of 185,151,333 shares of Common Stock (the "Shares"), which immediately following the Closing shall constitute ninety five percent (95%) of the Company's issued and outstanding Common Stock. On the terms and subject to the conditions of this Agreement, at the Closing (i) the Company shall issue the Shares, and reflect such issuance in the Company's books and records, and (ii) the Debt and the Exchanged Notes shall be immediately, automatically and irrevocably canceled and all obligations in connection therewith and under the Exchanged Notes and the Debt shall be released, extinguished and terminated. The actions described in this Section 2.1(a), collectively, are referred to as the "Exchange".

(b) For the avoidance of doubt, the parties acknowledge that, following the Closing, the Remaining Notes shall continue by their terms in full force and effect and the Company hereby acknowledges and agrees that all of the obligations of the Company and the Subsidiaries under the Notes and the other Note Documents (as defined in the Notes), in each case with respect to the Remaining Notes and remain in full force and effect.

2.2 Closing Date. The Closing shall occur on the date hereof, (the "Closing Date"), upon the terms set forth herein, concurrently with the execution and delivery of this Agreement by the parties hereto. The Closing shall occur virtually by the exchange of signature pages.

2.3 Deliveries.

(a) On or prior to the Closing Date, the Company shall deliver or cause to be delivered to the Holder the following:

(i) this Agreement, duly executed by the Company;

(ii) the Shares credited to book-entry accounts maintained by the Transfer Agent, registered in the name of the Holder;

(iii) a copy of the irrevocable instructions to the Transfer Agent instructing the Transfer Agent to issue to the Holder, in book entry form, the Shares;

(iv) confirmation in writing to the Holder that it has updated its applicable books and records to reflect the issuance of the Shares to the Holder in the amount specified herein;

(v) resolutions of its Board of Directors in a form reasonably agreeable to the Holder authorizing (i) the transactions set forth herein, including the issuance of the Shares, and (ii) prior to the Closing Date, (A) an amendment to the Amended and Restated Bylaws of the Company dated as of March 11, 2023 (as amended from time to time, the "Bylaws"), in the form attached hereto as Exhibit A, (B) the resignations of the members of the Board of Directors listed on Schedule 2.3(a)(v)(1) hereto, and the replacement of such directors with those individuals listed on Schedule 2.3(a)(v)(2) hereto, (C) the reduction of the size of the whole Board of Directors of the Company to five (5) directors, effective upon the resignation of the members of the Board of Directors listed on Schedule 2.3(a)(v)(1) hereto, and (D) the appointment of Arun Jeldi as the Chief Executive Officer of the Company; and

(b) On or prior to the Closing Date, the Holder shall deliver or cause to be delivered to the Company, the following:

(i) this Agreement, duly executed by the Holder.

2.4 Post-Closing Deliveries.

(a) As soon as reasonably practicable following the Closing Date, the Company shall deliver or cause to be delivered to the Holder the following:

(i) the Remaining Notes, issued in the name of the Holder, in the aggregate principal amount of $4,999,969.30.

(b) As soon as reasonably practicable following the Closing Date, the Holder shall deliver or cause to be delivered to the Company, the following:

(i) a duly executed and properly completed Internal Revenue Service Form W-9 certifying as to a complete exemption from backup withholding; and

(ii) any other document or agreement requested by the Company or the trustee under the indenture governing the Notes (the "Trustee") necessary for the Company and the Trustee to document and evidence the Exchange, including the cancellation of the Exchanged Note and the issuance of a Remaining Notes in the name of the Holder.

(c) From and after the Closing Date, each of the parties agrees to take, or cause to be taken, all such actions and to assist and cooperate with the other parties in doing all such things as shall be necessary for the Company to document and evidence the cancellation and discharge of the Exchanged Notes and all obligations and indebtedness represented thereby.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. Except as set forth in any of the Most Recent SEC Reports or in the Disclosure Schedules (subject to Section 6.16), which shall be deemed a part hereof, the Company hereby makes the following representations and warranties to the Holder as of the Closing (unless as of a specific date therein, in which case they shall be accurate as of such date):

(a) Subsidiaries. All of the direct and indirect Subsidiaries of the Company are set forth on Schedule 3.1(a). The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens other than any Permitted Liens and other than restrictions on transfer under federal and state securities Laws, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities, except, in each case, as would not have and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and, if applicable under the Laws of the jurisdiction in which they are formed, in good standing under the Laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted, except, in each case, where the failure to be in such good standing would not have and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective memorandum of association, articles of association, certificate or articles of incorporation, bylaws, operating agreement, or other organizational or charter documents, except, in each case, as would not have and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in a Material Adverse Effect and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification, except as would not have and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors, any committee of the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof and assuming the due authorization, execution and delivery by the other parties hereto and thereto, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other Laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by Laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable Law ((i)-(iii) together, the "Enforceability Exceptions").

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and exchange of the Shares and the consummation by it of the transactions contemplated hereby and thereby do not and will not (i) conflict with, breach or violate any provision of the Company's memorandum of association, articles of association, certificate or articles of incorporation, operating agreement, bylaws or other organizational or charter documents, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, anti-dilution or similar adjustments, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, lease, credit facility, debt note, bond, mortgage, indenture or other instrument (evidencing a Company or Subsidiary debt or otherwise) or obligation or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any Law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject to (including federal and state securities Laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) to (iii), such as would not have and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(e) Filings, Consents and Approvals. Except as would not have and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.2 of this Agreement and (ii) such filings as are required to be made under applicable state securities Laws and under any applicable listing rules (collectively, the "Required Approvals").

(f) Issuance of the Shares; Registration. The Shares are duly authorized and, when issued and paid for by the exchange of the Exchanged Notes in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company, other than restrictions on transfer under federal and state securities Laws. The Company has reserved from its duly authorized capital stock the number of shares of Common Stock issuable pursuant to this Agreement. Subject to the accuracy of the representations and warranties of the Holder set forth in Section 3.2(e), Section 3.2(f) and Section 3.2(j), the offer and issuance by the Company of the Shares are exempt from registration under the Securities Act.

(g) Capitalization. The capitalization of the Company as of the date hereof is as set forth on Schedule 3.1(g), which Schedule 3.1(g) shall also include, to the Knowledge of the Company, the number of shares of Common Stock owned beneficially, and of record, by Affiliates of the Company as of the date hereof. The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, except as otherwise disclosed on Schedule 3.1(g) and except pursuant to the exercise of options and warrants and the settlement of restricted stock units. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as set forth on Schedule 3.1(g), there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock or the capital stock of any Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents or capital stock of any Subsidiary. The issuance and sale of the Shares will not obligate the Company or any Subsidiary to issue shares of Common Stock or other securities to any Person (other than the Holder). There are no outstanding securities or instruments of the Company or any Subsidiary with any provision that adjusts the exercise, conversion, exchange or reset price of such security or instrument upon an issuance of securities by the Company or any Subsidiary. There are no outstanding securities or instruments of the Company or any Subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary, as a result of the transactions contemplated by the Transaction Documents. The Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all applicable federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Shares. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the Knowledge of the Company, between or among any of the Company's stockholders.

(h) SEC Reports; Financial Statements. Except as set forth on Schedule 3.1(h), the Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports") for the one year preceding the date hereof on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such

extension. As of their respective dates, the SEC Reports for the one year preceding the date hereof complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of such SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except as would not have and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The financial statements of the Company included in the SEC Reports for the one year preceding the date hereof comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing, except as would not have and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Except as would not have and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, such financial statements have been prepared in accordance with GAAP, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(i) Litigation. Except as set forth on Schedule 3.1(i), there is no Proceeding pending or to the Knowledge of the Company, threatened in writing which would or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect if there were an unfavorable decision. Except as would not have and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, neither the Company, any Subsidiary, nor any director or officer thereof (in their capacities as such), is or has been the subject of any Proceeding involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. To the Knowledge of the Company, there is not pending, any investigation by the Commission involving the Company or any current or former director or officer of the Company (in their capacities as such).

(j) Compliance. Except as would not have and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, neither the Company nor any Subsidiary: (i) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (ii) is or, in the past twelve (12) months, has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local Laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters.

(k) Transactions With Affiliates and Employees. Except as set forth on Schedule 3.1(k), none of the officers or directors of the Company or any Subsidiary and, to the Knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, providing for the borrowing of money from or lending of money to or otherwise requiring payments to or from any officer, director or such employee or, to the Knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of $120,000 other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(l) Brokers. No brokerage or finder's fees or commissions are or will be payable by the Company or any Subsidiary to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents (for the avoidance of doubt, the foregoing shall not include any fees and/or commissions owed to the Transfer Agent). The Holder shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 3.1(l) that may be due in connection with the transactions contemplated by the Transaction Documents.

(m) Investment Company. The Company is not, and is not an Affiliate of, and immediately after exchanging the Exchanged Notes for the Shares, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

(n) Takeover Protections. The Company has not adopted, including by inclusion in its Certificate of Incorporation as is currently in effect, nor does it in any way maintain any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement which the issuance of the Shares or any of the other transactions contemplated hereby could be deemed to trigger.

(o) Acknowledgment Regarding Holder's Exchange for Shares. The Company acknowledges and agrees that the Holder is acting solely in the capacity of an arm's length Holder with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that the Holder is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by the Holder or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Holder's exchange of the Exchanged Notes for the Shares.

(p) Office of Foreign Assets Control. Neither the Company, any Subsidiary, nor to the Company's Knowledge, any director, officer, agent, employee or Affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department.

(q) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon the Holder's request.

3.2 Representations and Warranties of the Holder. The Holder hereby represents and warrants as of the Closing Date to the Company as follows (unless as of a specific date therein, in which case they shall be accurate as of such date):

(a) Organization; Authority. The Holder is an entity duly incorporated or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and performance by the Holder of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of the Holder and no further consent or authorization of the Holder, its equity holders or governing body is required. Each Transaction Document to which it is a party has been duly executed by the Holder, and when delivered by the Holder in accordance with the terms hereof, will constitute the valid and legally binding obligation of the Holder, enforceable against it in accordance with its terms, except as limited by the Enforceability Exceptions.

(b) No Conflicts. The execution, delivery and performance by the Holder of this Agreement and the other Transaction Documents to which it is a party, and the consummation by it of the transactions contemplated hereby and thereby, do not and will not (i) conflict with, breach or violate any provision of the Holder's

memorandum of association, articles of association, certificate or articles of incorporation, operating agreement, bylaws or other organizational or charter documents, or (ii) conflict with or result in a violation of any Law, injunction, decree or other restriction of any court or governmental authority to which the Holder is subject (including federal and state securities Laws and regulations); except in the case of clause (ii), such as would not materially impair the Holder's ability to perform its obligations hereunder.

(c) Filings, Consents and Approvals. Except as would not materially impair the Holder's ability to perform its obligations hereunder, the Holder is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or governmental authority or other Person in connection with the execution, delivery and performance by the Holder of the Transaction Documents.

(d) Understandings or Arrangements. The Holder understands that the Shares are "restricted securities" and have not been registered under the Securities Act or any applicable state securities Laws and is acquiring such Shares as principal for its own account and not with a view to or for distributing or reselling such Shares or any part thereof in violation of the Securities Act or any applicable state securities Laws, has no present intention of distributing any of such Shares in violation of the Securities Act or any applicable state securities Laws, and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Shares in violation of the Securities Act or any applicable state securities Laws (this representation and warranty is not limiting the Holder's right to sell such Shares pursuant to a registration statement or otherwise in compliance with applicable federal and state securities Laws).

(e) Holder Status. At the time the Holder was offered the Shares, it was, and as of the date hereof it is an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act. The Holder is acquiring the Shares for its own account for investment purposes only and without any view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act.

(f) Experience of Such Holder. The Holder has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks and benefits of the investment in the Shares, and has so evaluated the merits and risks of such investment. The Holder has no need for liquidity in this investment, is able to bear the economic risk of an investment in the Shares for an indefinite period of time and is able to afford a complete loss of such investment. The Holder is aware that an investment in the Shares is highly speculative and subject to substantial risks because, among other things, (a) the Shares are subject to transfer restrictions and have not been registered under the Securities Act and therefore cannot be sold unless subsequently registered under the Securities Act or an exemption from such registration is available and (b) it may suffer a loss of a portion or all of its investment in the Shares. The Holder understands that the Shares may not be resold unless they are registered under the Securities Act and any applicable state securities Laws or unless an exemption from such registration is available, that the availability of an exemption may depend on factors over which the Company has no control, and that unless so registered or exempt from registration the Shares may be required to be held for an indefinite period.

(g) Compliance. The Holder is in compliance with all Laws of any governmental authority applicable to its performance of its obligations hereunder, except where the failure to do so, individually or in the aggregate, would not materially impair its ability to enter into this Agreement or consummate the transactions contemplated hereby.

(h) Access to Information. The Holder acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and the Most Recent SEC Reports and has been afforded, (i) the opportunity to ask such questions 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 Shares and the merits and risks of investing in the Shares and the Company's business and prospects; (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. The Holder has received all the information it considers necessary or appropriate for deciding whether to acquire the Shares hereunder, including its own independent inquiry as to the legal, tax and accounting aspects of the transactions contemplated hereby and the Holder has not relied on the Company or its legal counsel or other advisors for legal, tax or accounting advice in connection with the transactions contemplated hereby.

(i) Confidentiality. Other than to other Persons party to this Agreement or to the Holder's representatives, including, without limitation, its officers, directors, partners, legal and other advisors, employees, agents and Affiliates, the Holder has maintained the confidentiality of all disclosures made to it in connection with the transactions contemplated hereby (including the existence and terms of the transactions contemplated hereby).

(j) General Solicitation. The Holder is not exchanging the Exchanged Notes for the Shares as a result of any advertisement, article, notice or other communication regarding the Shares published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or, to the knowledge of the Holder, any other general solicitation or general advertisement.

(k) Legal Proceedings. There are no Proceedings pending or, to the Holder's knowledge, threatened in writing, against or affecting it or its respective assets, at Law or in equity, by or before any governmental authority, or by or on behalf of any third party, which, if adversely determined, would materially impair its ability to enter into this Agreement or consummate the transactions contemplated hereby.

(l) Ownership. The Holder is the sole legal and beneficial owner of the Notes and the Notes are free and clear of any Lien or other adverse claim, other than restrictions on transfer under federal and state securities Laws.

(m) Non-Reliance; No Additional Representations. The Holder acknowledges and agrees that (i) none of the Company or any other Person has made any representation or warranty, express or implied, as to the Company or the Subsidiaries or the business, financials, operations or in any other respect or the accuracy or completeness of any information regarding the Company and the Subsidiaries furnished or made available to the Holder and its representatives, except as expressly set forth in Section 3.1, (ii) the Holder has not relied on any representation or warranty from the Company, any Subsidiary or any other Person in determining to enter into this Agreement, except as expressly set forth in Section 3.1, (iii) no officer, director, manager, stockholder, agent, Affiliate, advisor, representative or employee of the Company, any Subsidiary or any other Person has any authority, express or implied, to make any representation, warranty or agreement not specifically set forth in Section 3.1, (iv) none of the Company or any other Person has any obligation to disclose any information regarding the Company or the Subsidiaries, except as expressly set forth in Section 3.1, and (v) no other Person shall have or be subject to any liability to the Holder or any other Person resulting from the distribution to the Holder, or the Holder's use of, any such information, including any information, documents or material made available to Purchaser in any physical or electronic "data rooms", management presentations or in any other form in expectation of the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, the Holder acknowledges that none of the Company or any other Person has made any representation or warranty, express or implied, as to the financial projections, forecasts, cost estimates and other predictions relating to the Company and the Subsidiaries delivered or made available to Purchaser, if applicable or as to the probable success or profitability of the Company or the Subsidiaries.

ARTICLE IV.

OTHER AGREEMENTS OF THE PARTIES

4.1 Removal of Legends. (a) The Shares may only be disposed of in compliance with state and federal securities Laws. In connection with any transfer of Shares other than pursuant to an effective registration statement or Rule 144, to the Company or to an Affiliate of the Holder, the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company.

(a) The Holder agrees to the imprinting, so long as is required by this Section 4.1, of a legend on any of the Shares in the following form (it being agreed that if the Shares are uncertificated, other appropriate restrictions shall be implemented to give effect to the following):

THIS SECURITY HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

(b) The Company acknowledges and agrees that the Holder may from time to time pledge or grant a security interest in some or all of the 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, the Holder may transfer pledged or secured Shares to the pledgees or secured parties if permitted under the Securities Act and in all cases any transfer of Shares that requires the removal of the restrictive legend set forth in Section 4.1(a) shall require an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company. 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 with any such pledge; provided that any transfer that requires the removal of the restrictive legend set forth in Section 4.1(a) shall require an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company. 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 Shares may reasonably request in connection with a pledge or transfer of the Shares.

4.2 Securities Laws Disclosure; Publicity. The Holder and the Company acknowledge and agree that the Company shall file a Current Report on Form 8-K, with the Commission within the time required by the Exchange Act, with respect to the transactions contemplated by this Agreement and the other Transaction Documents.

4.3 Non-Public Information. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, which shall be disclosed pursuant to Section 4.2, the Company covenants and agrees that neither it, nor any other Person acting on its behalf will provide the Holder or its agents or counsel with any information that constitutes, or the Company reasonably believes constitutes, material non-public information, unless prior thereto the Holder shall have consented to the receipt of such information and agreed with the Company to keep such information confidential. The Company understands and confirms that the Holder shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.4 Indemnification of Holder.

(a) Subject to the provisions of this Section 4.4, the Company will indemnify and hold the Holder and its directors, officers, shareholders, members, partners, employees, and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls the Holder (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners, or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a "Holder Party") harmless from any and all Losses that any such Holder Party actually suffers or actually incurs as a result of or relating to (i) any breach of any of the Fundamental Representations or covenants made by the Company in this Agreement or (ii) any action instituted against the Holder Parties in any capacity, or any of them or their respective Affiliates, by any stockholder or other equityholder of the Company who is not an Affiliate or transferee of such Holder Party, with respect to any of the transactions contemplated by this Agreement (other than to the extent based upon a breach of such Holder Party's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Holder Party may have with any such stockholder or any violations by such Holder Party of state or federal securities Laws or any conduct by such Holder Party which is finally judicially determined to constitute or have resulted from any fraud, gross negligence or willful misconduct of a Holder Party).

(b) Notwithstanding anything to the contrary contained in this Agreement, in no event shall the aggregate amount of all payments made by the Company in connection with indemnification claims and other obligations under this Section 4.4 exceed the Cap.

(c) If any action shall be brought against any Holder Party in respect of which indemnity may be sought pursuant to this Agreement, such Holder Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Holder Party. Any Holder Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Holder Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable written opinion of outside counsel, a conflict on any material issue between the position of the Company and the position of such Holder Party that would require separate representation advisable, in which case the Company shall be responsible for the actual fees and expenses of no more than one such separate counsel. The Company will not be liable to any Holder Party under this Agreement (1) for any settlement by a Holder Party effected without the Company's prior written consent which shall not be unreasonably withheld or delayed or (2) to the extent, but only to the extent that such Loss is attributable to any Holder Party's breach of any of the representations, warranties, covenants, or agreements made by such Holder Party in this Agreement or in the other Transaction Documents.

(d) The indemnification provisions of this Section 4.4 shall be the sole and exclusive remedy of every Holder Party for the recovery of monetary damages for any Losses under, in connection with, or relating to this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby (whether in tort, contract or otherwise); provided that this Section 4.4(d) shall in no way limit any Holder Party or the Company from making any claim, or recovering any monetary damages, under any insurance policy or any separate right to indemnification under any Contract, the Company's Certificate of Incorporation or Bylaws, or otherwise.

4.5 Confidentiality. Each party hereto covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the Form 8-K described in Section 4.2, each party will maintain the confidentiality of the existence and terms of transactions contemplated by this Agreement and the other Transaction Documents (including the name and identity of the Holder) and the information included in the Disclosure Schedules. The Company expressly acknowledges and agrees that (a) the Holder does not make any representation, warranty or covenant hereby that it will not engage in effecting transactions in any securities of the Company after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the Form 8-K described in Section 4.2 and (b) the

Holder shall not be restricted or prohibited from effecting any transactions in any securities of the Company in accordance with applicable securities Laws from and after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the Form 8-K described in Section 4.2.

4.6 Filings. The Company shall take such action as the Company shall reasonably determine is necessary under the Securities Act of 1933 and/or applicable securities or "Blue Sky" Law of the states of the United States, and, promptly upon the request of the Holder, shall provide evidence of any such actions.

4.7 Officer and Director Indemnification and Insurance.

(a) The Holder agrees that, for a period of six (6) years following the Closing, except as required by applicable law, the Holder shall cause the organizational documents of the Company and each of the Subsidiaries to contain rights to indemnification, exculpation and advancement of expenses in favor of the directors, officers, employees, and agents of the Company and each of the Subsidiaries or any other Person indemnified by the Company or any of the Subsidiaries (collectively, the "Indemnified Persons") that are no less favorable to such Persons than provided in the organizational documents of the Company and each of the Subsidiaries in effect as of the date hereof.

(b) Effective as of the Closing, the Company shall purchase (at the Company's sole cost and expense) and maintain in effect, commencing on the Closing and for a period of six (6) years thereafter without any lapses in coverage, an officers' and directors' corporate and management liability insurance policy for the benefit of each Person who is covered by the Existing Policies covering the period from and after the Closing (the "Go-Forward D&O Policy"). The Holder acknowledges and agrees that (i) the Go-Forward D&O Policy shall be issued by an insurance carrier with the same or better credit rating as the Company's current insurance carrier for the Existing Policies in an amount, scope and on terms at least as favorable as the Existing Policies and (ii) neither the "tail" insurance policy which provides directors' and officers' liability and fiduciary insurance coverage for the benefit of each Person who is or was covered by the Existing Policies which comes into effect as of the Closing nor the Existing Policies shall be amended, cancelled, or otherwise modified during such six (6)-year period.

(c) The covenants contained in this Section 4.7 are intended to be for the benefit of, and shall be enforceable by, each of the current and former directors, managers, officers, employees, fiduciaries, and agents of the Company and the Subsidiaries and their respective heirs and legal representatives (the "Covered Parties") as third-party beneficiaries of this Section 4.7, and shall not be deemed exclusive of any other rights to which a Covered Party is entitled, whether pursuant to Law, contract or otherwise. In the event that the Holder or the Company or any of the Subsidiaries (following the Closing) or any of their respective successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any person, then, and in each such case, the Holder shall take all necessary action so that the successors or assigns of the Holder or the Company or any of the Subsidiaries (following the Closing), as the case may be, shall succeed to the obligations set forth in this Section 4.7.

(d) The obligations of the Holder and the Company under this Section 4.7 shall not be terminated or amended, waived, or modified in such a manner as to adversely affect any Covered Party to whom this Section 4.7 applies without the consent of each affected Covered Party (it being expressly agreed that the Covered Parties to whom this Section 4.7 applies shall be express intended third-party beneficiaries of this Section 4.7).

4.8 Co-Sale Right. From and after the Closing, the Holder and the Company acknowledge and agree that neither the Holder nor the Company shall, directly or indirectly, consummate a Fundamental Transaction unless each holder of Common Stock (other than the Holder, its transferees and their Affiliates), has the right to sell its Common Stock on the same terms and conditions (including with respect to form and amount of consideration) on which the Holder is selling, transferring or disposing of its capital stock in the Company in such Fundamental Transaction. The Company and the Holder shall provide no less than twenty (20) days' prior written notice to each holder of Common Stock prior to the consummation of such Fundamental Transaction which includes an irrevocable offer to each such holder to participate in such Fundamental Transaction as set forth in this Section 4.8. Each holder of Common Stock (other than the Holder, its transferees and their Affiliates) of the Company is hereby made an express third-party beneficiary to this Section 4.8 and shall be entitled to the rights and benefits provided in the same and may enforce the same as if a party hereto.

4.9 Anti-Dilution. From and after the Closing, the Holder and the Company acknowledge and agree that the Holder, its transferees and their Affiliates shall not, directly or indirectly, exchange or otherwise convert the Remaining Notes into equity of the Company, in any manner that will result in the reduction of the percentage of the Common Stock of the Company held by the other stockholders of the Company immediately prior to such conversion or exchange, as determined on a fully-diluted basis at the time of such conversion or exchange as compared to such stockholders' ownership of Common Stock as of immediately following the Exchange. The stockholders of the Company (other than the Holder, its transferees and their Affiliates), are hereby made express third-party beneficiaries to this Section 4.9 and shall be entitled to the rights and benefits provided in the same and may enforce the same as if parties hereto.

4.10 Board of Directors. From and after the Closing, the Holder and the Company acknowledge and agree that the Board of Directors shall be comprised of at least one (1) Independent Director (as defined in the rules of the OTCQX Best Market) appointed by the Holder (or, if higher, such minimum number of independent directors necessary to comply with applicable listing rules or Law) (the "Minimum Independent Director Requirement"), and until the consummation of a Fundamental Transaction, the Holder agrees to take such action as is necessary to cause the Company to be in compliance with the Minimum Independent Director Requirement. Each holder of Common Stock of the Company (other than the Holder, its transferees and their Affiliates) is hereby made an express third-party beneficiary to this Section 4.10 and shall be entitled to the rights and benefits provided in the same and may enforce the same as if a party hereto.

ARTICLE V.
REGISTRATION RIGHTS

5.1 Demand Registration.

(a) Request for Registration. Subject to Sections 5.1(c) and 5.3, the Holder may make a written demand for Registration of all or part of their Registrable Securities (and the Registrable Securities subject to such request have an anticipated aggregate offering price, before deduction for Selling Expenses, of at least $5,000,000), which written demand shall describe the amount and type of securities to be included in such Registration and the intended method(s) of distribution thereof (such written demand a "Demand Registration"). The Company shall use reasonable best efforts to file, as soon thereafter as practicable, but not more than forty five (45) days immediately after the Company's receipt of a Demand Registration, a Form S-3 or, if Form S-3 is not then available to the Company, a Form S-1 covering all Registrable Securities requested by the Holder pursuant to such Demand Registration, and the Company shall use reasonable best efforts to cause such Form S-3 or Form S-1 to be declared effective by the Commission or otherwise become effective as promptly as practicable after such filing. Under no circumstances shall the Company be obligated to effect more than an aggregate of two (2) Registrations in any twelve (12)-month period pursuant to a Demand Registration under this Section 5.1(a) with respect to any or all of the Registrable Securities.

(b) Underwritten Offering. Subject to Sections 5.1(c) and 5.3, if the Holder so advises the Company as part of their Demand Registration that the offering of the Registrable Securities pursuant to such Demand Registration shall be in the form of an Underwritten Offering, then the right of the Holder to include its Registrable Securities in such Registration shall be conditioned upon the Holder's participation in such Underwritten Offering and the inclusion of the Holder's Registrable

Securities in such Underwritten Offering to the extent provided herein. If the Holder proposes to distribute its Registrable Securities through an Underwritten Offering under this Section 5.1(b), the Holder shall enter into an underwriting agreement in customary form with the Underwriter(s) selected for such Underwritten Offering by the Company, subject to the reasonable approval of the Holder.

(c) Reduction of Underwritten Offering. If the managing Underwriter or Underwriters in an Underwritten Registration pursuant to a Demand Registration, in good faith, advises the Company, and the Holder in writing that the dollar amount or number of Registrable Securities that the Holder desires to sell, taken together with all other shares of Common Stock or other equity securities that the Company desires to sell and the shares of Common Stock, if any, as to which a Registration has been requested pursuant to separate written contractual piggyback registration rights held by any other stockholders who desire to sell, exceeds the maximum dollar amount or maximum number of equity securities that can be sold in the Underwritten Offering without adversely affecting the proposed offering price, the timing, the distribution method, or the probability of success of such offering (such maximum dollar amount or maximum number of such securities, as applicable, that can be sold in an Underwritten Offering contemplated by this Section 5.1(c) or Section 5.2(b), as applicable, the "Maximum Number of Securities"), then the Company shall include in such Underwritten Offering, as follows: (i) the Registrable Securities as to which Demand Registration has been requested by the Holder (pro rata in accordance with the number of shares that each such Person has requested be included in such Registration, regardless of the number of shares held by each such Person (such proportion is referred to herein as "Pro Rata")) that can be sold without exceeding the Maximum Number of Securities, (ii) to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (i), the shares of Common Stock or other equity securities that the Company desires to sell, which can be sold without exceeding the Maximum Number of Securities, and (iii) to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i) and (ii), the shares of Common Stock or other equity securities of other Persons or entities that the Company is obligated to register in a Registration pursuant to separate written contractual arrangements with such Persons and that can be sold without exceeding the Maximum Number of Securities.

5.2 Piggyback Registration.

(a) Piggyback Rights. If the Company proposes to file a Registration Statement under the Securities Act with respect to an offering of equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into equity securities, for its own account or for the account of stockholders of the Company (or by the Company and by the stockholders of the Company other than pursuant to Section 5.1), other than a Registration Statement (i) filed in connection with any employee stock option or other benefit plan or employee stock purchase plan, (ii) for an offering in connection with a merger, consolidation or other acquisition, an exchange offer or offering of securities solely to the Company's existing stockholders (including any rights offering with a backstop or standby commitment), (iii) for an offering of debt that is convertible into or exchangeable for equity securities of the Company, (iv) for a dividend reinvestment plan or (v) an Other Coordinated Offering, then the Company shall give written notice of such proposed filing to the Holder holding Registrable Securities as soon as practicable but not less than ten (10) days before the anticipated filing date of such Registration Statement, which notice shall (A) describe the amount and type of securities to be included in such offering, the intended method(s) of distribution, and the name of the proposed managing Underwriter or Underwriters, if any, in such offering, and (B) offer to the Holder holding Registrable Securities the opportunity to register the sale of such number of Registrable Securities as the Holder may request in writing within three (3) business days after receipt of such written notice (such Registration a "Piggyback Registration") and such written request shall specify the amount of Registrable Securities to be included in such Piggyback Registration; provided that if such request is not delivered within such period, the Holder shall be deemed to have irrevocably waived any and all rights under this Section 5.2 with respect to such Registration (but not with respect to future Registrations in accordance with this Section 5.2). The Company shall, in good faith, cause such Registrable Securities to be included in such Piggyback Registration and shall use commercially reasonable efforts to cause the managing Underwriter or Underwriters of a proposed Underwritten Offering to permit the Registrable Securities requested by the Holder pursuant to this Section 5.2(a) to be included in a Piggyback Registration on the same terms and conditions as any similar securities of the Company included in such Registration and to permit the sale or other disposition of such Registrable Securities in accordance with the intended method(s) of distribution thereof. If the Holder proposes to distribute its Registrable Securities through an Underwritten Offering under this Section 5.2(a), the Holder shall enter into an underwriting agreement in customary form with the Underwriter(s) selected for such Underwritten Offering by the Company. The Company shall have the right to terminate or withdraw any Registration Statement initiated by it under this Section 5.2(a) before the effective date of such Registration, whether or not the Holder has elected to include Registrable Securities in such Registration.

(b) Reduction of Piggyback Registration. If the managing Underwriter or Underwriters in an Underwritten Registration that is to be a Piggyback Registration, in good faith, advises the Company and the Holder holding Registrable Securities participating in the Piggyback Registration in writing that the dollar amount or number of the equity securities that the Company desires to sell, taken together with (i) the shares of Common Stock, if any, as to which Registration has been demanded pursuant to separate written contractual arrangements with Persons other than the Holder holding Registrable Securities hereunder and (ii) the Registrable Securities as to which Registration has been requested pursuant to Section 5.2 hereof, exceeds the Maximum Number of Securities, then:

(i) If the Registration is undertaken for the Company's account, the Company shall include in any such Registration (A) first, the shares of Common Stock or other equity securities that the Company desires to sell, which can be sold without exceeding the Maximum Number of Securities and (B) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (A), the Registrable Securities of the Holder exercising its rights to register its Registrable Securities pursuant to Section 5.2(a), Pro Rata, which can be sold without exceeding the Maximum Number of Securities and (C) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A) and (B), the shares of Common Stock or other equity securities for the account of other Persons that the Company is obligated to register, if any, as to which Registration has been requested pursuant to separate written contractual arrangements with such Persons, which can be sold without exceeding the Maximum Number of Securities;

(ii) If the Registration is pursuant to a request by Persons other than the Holder holding Registrable Securities, then the Company shall include in any such Registration (A) first, the shares of Common Stock or other equity securities, if any, of such requesting Persons or entities, other than the Holder holding Registrable Securities, which can be sold without exceeding the Maximum Number of Securities, (B) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (A), the Registrable Securities of the Holder exercising its rights to register its Registrable Securities pursuant to Section 5.2(a), Pro Rata, which can be sold without exceeding the Maximum Number of Securities, and (C) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A) and (B), the shares of Common Stock or other equity securities that the Company desires to sell, which can be sold without exceeding the Maximum Number of Securities.

(c) Unlimited Piggyback Registration Rights. For purposes of clarity, any Registration effected pursuant to Section 5.2 shall not be counted as a Registration pursuant to a Demand Registration effected under Section 5.1.

5.3 Restrictions on Registration Rights. If (A) during the period starting with the date thirty (30) days prior to the Company's good faith estimate of the date of the filing of, and ending on a date one hundred and twenty (120) days after the effective date of, a Company initiated Registration and provided that the Company continues to actively employ, in good faith, commercially reasonable efforts to cause the applicable Registration Statement to become and/or remain effective, (B) the Holder has requested an Underwritten Registration and the Company and the Holder is unable to obtain the commitment of underwriters to firmly underwrite the offer or (C) in the good faith judgment of the Board of Directors such Registration would be seriously detrimental to the Company and the Board of Directors concludes as a result that it is essential to defer the filing of such Registration Statement at such time, then in each case the Company shall furnish to the Holder a certificate signed by the Chair of the Board of Directors stating that in the good faith judgment of the Board of Directors it would be seriously detrimental to the Company for such Registration Statement to be filed in the near future and that it is therefore essential to defer the filing of such Registration Statement. In such event, the Company shall have the right to defer such filing for a period of not more than ninety (90) days.

5.4 Company Procedures.

(a) General Procedures. If at any time on or after the Closing, the Company is required to effect the Registration of Registrable Securities, the Company shall use its commercially reasonable efforts to effect such Registration to permit the sale of such Registrable Securities in accordance with the intended plan of distribution thereof, and pursuant thereto the Company shall, as expeditiously as possible:

(i) use its commercially reasonable efforts to prepare and file with the Commission after receipt of a request for a Demand Registration pursuant to Section 5.1 a Registration Statement on any form for which the Company then qualifies or which counsel for the Company shall deem appropriate and which form shall be available for the sale of all Registrable Securities to be registered thereunder in accordance with the intended method(s) of distribution thereof, with respect to such Registrable Securities and shall use its commercially reasonable efforts to cause such Registration Statement to become effective and remain effective until all Registrable Securities covered by such Registration Statement have been sold or otherwise cease to be Registrable Securities;

(ii) prepare and file with the Commission such amendments and post-effective amendments to the Registration Statement, and such supplements to the Prospectus, as may be requested by the Holder or any Underwriter of Registrable Securities or as may be required by the rules, regulations or instructions applicable to the registration form used by the Company or by the Securities Act or rules and regulations thereunder to keep the Registration Statement effective until all Registrable Securities covered by such Registration Statement are sold in accordance with the intended plan of distribution set forth in such Registration Statement or supplement to the Prospectus;

(iii) prior to filing a Registration Statement or Prospectus, or any amendment or supplement thereto (other than by way of a document incorporated by reference), furnish without charge to the Underwriters, if any, and the Holder, and the Holder's legal counsel, copies of such Registration Statement as proposed to be filed, each amendment and supplement to such Registration Statement (other than by way of a document incorporated by reference), the Prospectus included in such Registration Statement (including each preliminary Prospectus), and such other documents as the Underwriters and the Holder or its legal counsel may request in order to facilitate the disposition of the Holder's Registrable Securities; provided, however, that the Company shall be under no obligation to provide any document that is incorporated by reference in any Registration Statement or Prospectus, or any amendment or supplement thereto, to the extent such document is publicly available on the Commission's EDGAR system;

(iv) prior to any public offering of Registrable Securities, use commercially reasonable efforts to (A) register or qualify the Registrable Securities covered by the Registration Statement under such securities or "blue sky" laws of such jurisdictions in the United States as the Holder (in light of its intended plan of distribution) may request and (B) take such action necessary to cause such Registrable Securities covered by the Registration Statement to be registered with or approved by such other governmental authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be necessary or advisable to enable any Holder of Registrable Securities included in such Registration Statement to consummate the disposition of such Registrable Securities in such jurisdictions; provided, however, that the Company shall not be required to qualify generally to do business or to qualify as a dealer in any jurisdiction where it would not otherwise be required to qualify or take any action to which it would be subject to general service of process or taxation in any such jurisdiction where it is not then otherwise so subject;

(v) use its commercially reasonable efforts to cause all such Registrable Securities to be listed on each securities exchange or automated quotation system on which similar securities issued by the Company are then listed;

(vi) provide a transfer agent and registrar for all such Registrable Securities no later than the effective date of such Registration Statement;

(vii) after the filing of a Registration Statement, the Company shall promptly, and in no event more than three (3) Business Days after such filing, notify the Holder of such filing, and shall further notify the Holder promptly and confirm such advice in writing in all events within three (3) Business Days of the occurrence of any of the following: (A) when such Registration Statement becomes effective; (B) when any post-effective amendment to such Registration Statement becomes effective; (C) the issuance or threatened issuance by the Commission of any stop order (and the Company shall take all actions required to prevent the entry of such stop order or to remove it if entered); and (D) when a Prospectus relating to such Registration Statement 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 a Misstatement, and then to correct such Misstatement as set forth in Section 5.4(d) hereof, and promptly make available to the Holder any such supplement or amendment; except that before filing with the Commission a Registration Statement or Prospectus or any amendment or supplement thereto, including documents incorporated by reference, the Company shall furnish to the Holder and to its legal counsel, copies of all such documents proposed to be filed sufficiently in advance of filing to provide the Holder and its legal counsel with a reasonable opportunity to review such documents and comment thereon;

(viii) promptly following the filing of any Registration Statement or Prospectus or any amendment or supplement to such Registration Statement or Prospectus (other than by way of a document incorporated by reference) furnish a copy thereof to each seller of such Registrable Securities or its counsel;

(ix) permit a representative of the Holder, the Underwriters, if any, and any attorney or accountant retained by the Holder or such Underwriter to participate, at each such person's own expense, in the preparation of the Registration Statement, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such representative, Underwriter, attorney or accountant in connection with the Registration; provided, however, that such representatives or Underwriters enter into a confidentiality agreement, in form and substance reasonably satisfactory to the Company, prior to the release or disclosure of any such information;

(x) obtain a "cold comfort" letter from the Company's independent registered public accountants in the event of an Underwritten Registration or other sale by a broker, placement agent or sales agent pursuant to such Registration in customary form and covering such matters of the type customarily covered by "cold comfort" letters as the managing Underwriter may reasonably request, and reasonably satisfactory to the Holder;

(xi) on the date the Registrable Securities are delivered for sale, in the event of an Underwritten Registration or other sale by a broker, placement agent or sales agent pursuant to such Registration, obtain an opinion, dated such date, of one (1) counsel representing the Company for the purposes of such Registration, addressed to the Holder, the placement agent or sales agent, if any, and the Underwriters, if any, covering such legal matters with respect to the Registration in respect of which such opinion is being given as the Holder, placement agent, sales agent or Underwriter may reasonably request and as are customarily included in such opinions, and reasonably satisfactory to the Holder;

(xii) enter into customary agreements (including, if applicable, an underwriting agreement in customary form) and take such other actions as are reasonably required in order to expedite or facilitate the disposition of such Registrable Securities. The representations, warranties and covenants of the Company in any underwriting agreement which are made to or for the benefit of any Underwriters, to the extent applicable, shall also be made to and for the

benefit of the Holder, and the representations, warranties and covenants of the Holder included in such registration statement in any underwriting agreement which are made to or for the benefit of any Underwriters, to the extent applicable, shall also be made to and for the benefit of the Company;

(xiii) make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months beginning with the first day of the Company's first full calendar quarter after the effective date of the Registration Statement which satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any successor rule promulgated thereafter by the Commission);

(xiv) if the Registration involves the Registration of Registrable Securities with a total offering price (including piggyback securities and before deducting underwriting discounts) in excess of $50,000,000, use its commercially reasonable efforts to make available senior executives of the Company to participate in customary "road show" presentations that may be reasonably requested by the Underwriter in any Underwritten Offering;

(xv) upon execution of confidentiality agreements, make available for inspection by any Underwriter participating in any disposition pursuant to such registration statement and any attorney, accountant or other professional retained by any such Underwriter, all financial and other records, pertinent corporate documents and properties of the Company, as shall be necessary to enable them to exercise their due diligence responsibility; and

(xvi) otherwise, in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested by the Holder, in connection with such Registration.

(b) Information. The Holder shall promptly provide such information as may reasonably be requested by the Company, or the managing Underwriter, if any, in connection with the preparation of any Registration Statement, including amendments and supplements thereto, in order to effect the registration of any Registrable Securities under the Securities Act and in connection with the Company's obligation to comply with federal and applicable state securities Laws.

(c) Requirements for Participation in Underwritten Offerings. No Person may participate in any Underwritten Offering for equity securities of the Company pursuant to a Registration initiated by the Company hereunder unless such Person (i) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Company and (ii) completes and executes all customary questionnaires, powers of attorney, indemnities, lock-up agreements, underwriting agreements and other customary documents as may be reasonably required under the terms of such underwriting arrangements.

(d) Suspension of Sales; Adverse Disclosure. Upon receipt of written notice from the Company that a Registration Statement or Prospectus contains a Misstatement, the Holder shall forthwith discontinue disposition of Registrable Securities until it has received copies of a supplemented or amended Prospectus correcting the Misstatement, or until it is advised in writing by the Company that the use of the Prospectus may be resumed. If the filing, initial effectiveness, or continued use of a Registration Statement or, if applicable, any amendment thereto in respect of any Registration at any time would require the Company to make an Adverse Disclosure or would require the inclusion in such Registration Statement of financial statements that are unavailable to the Company for reasons beyond the Company's control, the Company may, upon giving prompt written notice of such action to the Holder, delay the filing or initial effectiveness of, or suspend use of, such Registration Statement (a "Suspension Event") for the shortest period of time, but in no event more than an aggregate of ninety (90) days in any 12 month period, determined in good faith by the Company to be necessary for such purpose; and provided further that the Company shall not register any securities for its own account or that of any other stockholder during any such Suspension Event, other than pursuant to a registration relating to the sale or grant of securities to employees or directors of the Company or a subsidiary pursuant to a stock option, stock purchase, equity incentive or similar plan; or a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered. In the event the Company exercises its rights under the preceding sentence, the Holder agrees to suspend, immediately upon their receipt of the notice referred to above, their use of the Prospectus relating to any Registration in connection with any sale or offer to sell Registrable Securities. The Company shall immediately notify the Holder in writing upon the termination of any Suspension Event, amend or supplement the Prospectus, if necessary, so it does not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein not misleading and furnish to the Holder such numbers of copies of the Prospectus as so amended or supplemented as the Holder may reasonably request.

(e) Lock-Up Agreements. In connection with each Registration or sale of Registrable Securities pursuant to Section 5.1 or Section 5.2 conducted as an Underwritten Offering, the Holder agrees, if requested, to become bound by and to execute and deliver a lock-up agreement with the Underwriter(s) of such Underwritten Offering restricting the Holder's right to (a) Transfer, directly or indirectly, any Registrable Securities or (b) enter into any swap or other arrangement that transfers to another any of the economic consequences of ownership of Registrable Securities during the period commencing on the date of the underwriting agreement relating to the Underwritten Offering and ending on the date specified by the Underwriters (such period not to exceed 90 days plus such additional period as may be requested by the Company or an Underwriter to accommodate regulatory restrictions on the publication or other distribution of research reports and analyst recommendations and opinions, if applicable). The terms of such lock-up agreements shall be negotiated among the Holder, the Company and the Underwriters and shall include customary carve-outs from the restrictions on Transfer set forth therein.

(f) Registration Expenses. The Registration Expenses of all Registrations shall be borne by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 5.1 if the registration request is subsequently withdrawn at the request of the Holder (in which case the Holder shall bear such expenses); provided, further, however, that if, at the time of such withdrawal, the Holder shall have learned of a material adverse change in the condition, business, or prospects of the Company not known (and not reasonably available upon request from the Company or otherwise) to the Holder at the time of its request and have withdrawn the request with reasonable promptness after learning of such information, then the Holder shall not be required to pay any of such expenses. It is acknowledged by the Holder that the Holder shall bear all Selling Expenses with respect to Registrable Securities included by the Holder in such Registration, and other than as set forth in the definition of "Registration Expenses," all reasonable fees and expenses of any legal counsel representing the Holder.

5.5 Indemnification.

(a) In connection with any Registration Statement in which the Holder holding Registrable Securities is participating, the Holder shall furnish to the Company in writing such information and affidavits as the Company reasonably requests for use in connection with any such Registration Statement or Prospectus and shall indemnify, to the fullest extent permitted by Law, the Company, each of its directors and officers and agents and each Person who controls the Company (within the meaning of the Securities Act) (each, a "Company Indemnified Party") against any Losses resulting from any Violation, but only to the extent, in each case, that such Violation was made in reliance upon and in conformity with information furnished in writing to the Company by the Holder expressly for use in the Registration Statement, Prospectus (including any preliminary Prospectus, final Prospectus or summary Prospectus) contained in the Registration Statement, or any amendment or supplement thereof, and shall reimburse the Company, its directors and officers, and each other controlling Person for any documented legal or other expenses reasonably incurred by any of them in connection with investigating or defending any such Loss. The Holder shall indemnify the Underwriters, their officers, directors and each Person who controls such Underwriters (within the meaning of the Securities Act) (each, an "Underwriter Indemnified Party") to the same extent as provided in the foregoing with respect to the indemnification of the Company. The Holder's total indemnification obligations hereunder to all Company Indemnified Parties and all

Underwriter Indemnified Parties shall be limited, in the aggregate, to the amount of any net proceeds actually received by the Holder in such offering giving rise to such liability.

(b) In connection with any Registration Statement in which the Holder holding Registrable Securities is participating, the Company agrees to indemnify, to the fullest extent permitted by Law, Holder, its officers, employees, affiliates, directors, partners, members, attorneys and agents, and each Person, if any, who controls Holder (within the meaning of the Securities Act) (each, a "Holder Indemnified Party"), against all Losses resulting from any Violation, except to the extent that such Violation was made in reliance by the Company upon and in conformity with information furnished in writing to the Company by the Holder expressly for use in the Registration Statement, Prospectus (including any preliminary Prospectus, final Prospectus or summary Prospectus) contained in the Registration Statement, or any amendment or supplement thereof, and shall promptly reimburse each such Holder Indemnified Party for any documented legal or other expenses reasonably incurred by any of them in connection with investigating or defending any such Loss.

(c) Any Person entitled to indemnification under this Section 5.5 shall (i) give prompt written notice to the indemnifying party of any Loss with respect to which it seeks indemnification (provided that the failure to give prompt notice shall not impair any Person's right to indemnification or relieve any party from any liability hereunder to the extent such failure has not materially prejudiced the indemnifying party) and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party, to the extent that it wishes, jointly with all other Persons entitled to indemnification, to assume control of the defense thereof with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless, based upon the written opinion of counsel of any indemnified party, representation of an indemnified party and any other such indemnified party by the same counsel would be inappropriate due to actual or potential differing interests between them. No indemnifying party shall, without the consent of the indemnified party, consent to the entry of any judgment or enter into any settlement which cannot be settled in all respects by the payment of money (and such money is so paid by the indemnifying party pursuant to the terms of such settlement) or which settlement does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

(d) The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling Person of such indemnified party and shall survive the Transfer of securities.

(e) If the indemnification provided under Section 5.5 from the indemnifying party is unavailable or insufficient to hold harmless an indemnified party in respect of any Loss, then the indemnifying party, in lieu of indemnifying the indemnified party, shall contribute to the amount paid or payable by the indemnified party as a result of such Losses in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, was made by, or relates to information supplied by, such indemnifying party or indemnified party, and the indemnifying party's and indemnified party's relative intent, knowledge, access to information and opportunity to correct or prevent such action; provided, however, that the liability of the Holder under this Section 5.5(e) shall be limited to the amount of the net proceeds actually received by the Holder in such offering giving rise to such liability except in the case of fraud or willful misconduct by the Holder. The amount paid or payable by a party as a result of the Losses referred to above shall be deemed to include, subject to the limitations set forth in Sections 5.5(a), 5.5(c) and this Section 5.5(e), any legal or other fees, charges or expenses reasonably incurred by such party in connection with any investigation or proceeding. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5.5(e) were determined by Pro Rata allocation or by any other method of allocation, which does not take account of the equitable considerations referred to in this Section 5.5(e). No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution pursuant to this Section 5.5(e) from any Person who was not guilty of such fraudulent misrepresentation.

5.6 Term. The rights and obligations under Article V shall terminate on the date that the Holder no longer holds any Registrable Securities (but in no event prior to the applicable period referred to in Section 4(a)(3) of the Securities Act and Rule 174 thereunder (or any successor rule promulgated thereafter by the United States Securities and Exchange Commission)). Section 5.5 shall survive any termination.

5.7 Permitted Transfers. The rights and obligations of the Holder under this Article V may be freely assigned or delegated, in whole or in part, by the Holder to any transferee of the Shares, so long as such Shares continue to be Registrable Securities.

5.8 Definitions. Capitalized terms used but not otherwise defined in Article V or elsewhere in this Agreement shall have the meanings set forth below.

(a) "**Adverse Disclosure**" means any public disclosure of material non-public information, which disclosure, in the good faith judgment of the principal executive officer or principal financial officer of the Company, after consultation with counsel to the Company, (i) would be required to be made in any Registration Statement or Prospectus in order for the applicable Registration Statement or Prospectus not to contain any Misstatement, (ii) would not be required to be made at such time if the Registration Statement were not being filed, and (iii) the Company has a bona fide business purpose for not making such information public.

(b) "**Misstatement**" means an untrue statement of a material fact or an omission to state a material fact required to be stated in a Registration Statement or Prospectus, or necessary to make the statements in a Registration Statement or Prospectus (in the case of a Prospectus, in the light of the circumstances under which they were made) not misleading.

(c) "**Other Coordinated Offering**" means an "at the market" or similar registered offering through a broker, sales agent or distribution agent, whether as agent or principal.

(d) "**Prospectus**" means the prospectus included in any Registration Statement, as supplemented by any and all prospectus supplements and as amended by any and all post-effective amendments and including all material incorporated by reference in such prospectus.

(e) "**Registrable Security**" means (a) the Shares, and (b) any other equity security of the Company issued or issuable with respect to any such share of Common Stock referred to in clause (a) by way of a share capitalization or share split or in connection with a combination of shares, recapitalization, merger, consolidation or reorganization; provided, however, that, as to any particular Registrable Security, such securities shall cease to be Registrable Securities when: (i) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been Transferred in accordance with such Registration Statement, (ii) such securities shall have been otherwise Transferred, new certificates or book entry positions for such securities not bearing a legend restricting further Transfer shall have been delivered by the Company and subsequent public distribution of such securities shall not require registration under the Securities Act, (iii) such securities shall have ceased to be outstanding, (iv) such securities have been sold to, or through, a broker, dealer or underwriter in a

public distribution or other public securities transaction or (v) with respect to the Holder, when all such securities held by the Holder could be sold without restriction on volume or manner of sale in any three (3) month period without registration under Rule 144 promulgated under the Securities Act (or any successor rule promulgated thereafter by the Commission).

(f) "**Registration**" means a registration effected by preparing and filing a registration statement or similar document in compliance with the requirements of the Securities Act, and the applicable rules and regulations promulgated thereunder, and such registration statement becoming effective.

(g) "**Registration Expenses**" shall mean the out-of-pocket expenses of a Registration, including, without limitation, the following (but excluding Selling Expenses):

(i) all registration and filing fees (including fees with respect to filings required to be made with the Financial Industry Regulatory Authority, Inc.) and any securities exchange on which the Common Stock is then listed;

(ii) the fees and expenses of compliance with state securities or blue sky laws (including reasonable fees and disbursements of counsel for the Underwriters in connection with blue sky qualifications of Registrable Securities);

(iii) printing, messenger, telephone and delivery expenses;

(iv) the Company's internal expenses (including, without limitation, all salaries and expenses of its officers and employees);

(v) the fees and expenses incurred in connection with the listing of the Registrable Securities as required bysubsection 5.4(a)(v);

(vi) the fees and disbursements of counsel for the Company;

(vii) the fees and expenses of all independent registered public accountants retained by the Company incurred specifically in connection with such Registration;

(viii) the fees and expenses of any special experts retained by the Company in connection with such registration; and

(ix) the reasonable fees and expenses of one legal counsel to the Holder (the "Selling Holder Counsel") in connection with a Registration pursuant to Section 5.1 in an amount not to exceed $100,000.

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

(i) "**Selling Expenses**" means all underwriting discounts, selling commissions, and stock transfer taxes applicable to the sale of Registrable Securities and fees and disbursements of counsel for the Holder, except for the fees and disbursements of the Selling Holder Counsel borne and paid by the Company as provided in Section 5.4(f).

(j) "**Transfer**" means, with respect to any Registrable Security, any interest therein, or any other securities or equity interests relating thereto, a direct or indirect transfer, sale, exchange, assignment, pledge, hypothecation or other encumbrance or other disposition thereof, including the grant of an option or other right, whether directly or indirectly, whether voluntarily, involuntarily, by operation of law, pursuant to judicial process or otherwise.

(k) "**Underwriter**" means a securities dealer who purchases any Registrable Securities as principal in an Underwritten Offering and not as part of such dealer's market-making activities.

(l) "**Underwritten Registration**" or "**Underwritten Offering**" means a Registration in which securities of the Company are sold to an Underwriter in a firm commitment underwriting for distribution to the public.

(m) "**Violation**" means (i) any untrue or alleged untrue statement of material fact contained in any Registration Statement, any Prospectus (including any preliminary Prospectus, final Prospectus or summary Prospectus) contained in the Registration Statement, or any amendment or supplement thereof 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, in the light of the circumstances under which they were made) not misleading, or (ii) any violation by the Company of the Securities Act or any rule or regulation promulgated thereunder applicable to the Company and relating to action or inaction required of the Company in connection with any such Registration.

ARTICLE VI.
MISCELLANEOUS

6.1 Release.

(a) Effective on the Closing Date immediately upon giving effect to the Closing, without the need for further action by any party, the Company on its behalf and on behalf of each of its Related Parties (collectively, the "Company Releasing Parties"), hereby conclusively, absolutely, unconditionally, irrevocably, and forever waives, releases, absolves, acquits, and discharges any and all Claims which the Company Releasing Parties (or any of them) have, had, now have, or may hereafter have, on any ground whatsoever, including, without limitation, at common law, in equity, in tort, or under any contract, agreement, statute, rule, regulation, or order, against the Holder and its Related Parties (collectively, the "Holder Released Parties") arising out of acts, facts and circumstances occurring on or before the Closing against the Holder Released Parties or any of them, based on, related to, or in any manner arising from, in whole or in part, the Company, the Exchanged Notes, the Retained Notes or the transactions contemplated hereby (collectively, the "Holder Released Claims"); provided, however, that the foregoing release shall not (i) be construed to prohibit a party from seeking to enforce the terms of, or be construed to release any duties, obligations, or liabilities of any of the Holder Released Parties under (but only to the extent such Released Party is a party to any of the following agreements), the Transaction Documents; (ii) apply to any breaches of this Agreement by any of the Holder Released Parties; or (iii) apply to any Claim for Fraud.

(b) Subject to the occurrence and consummation of the Closing and effective on the Closing Date immediately upon giving effect to the Closing, without the need for further action by any party, the Holder on behalf of itself and each of its Related Parties (collectively, the "Holder Releasing Parties"), hereby conclusively, absolutely, unconditionally, irrevocably, and forever waives, releases, absolves, acquits, and discharges any and all Claims which the Holder Releasing Parties (or any of them) have, had, now have, or may hereafter have, on any ground whatsoever, including, without limitation, at common law, in equity, in tort, or under any contract, agreement, statute, rule, regulation, or order, against the Company, its Subsidiaries and their Related Parties (collectively, the " Company Released Parties") arising out

of acts, facts and circumstances occurring on or before the Closing against the Company Released Parties or any of them, based on, related to, or in any manner arising from, in whole or in part, the Company, the Exchanged Notes, the Retained Notes or the transactions contemplated hereby (collectively, the "Company Released Claims"); provided, however, that the foregoing release shall not (i) be construed to prohibit a party from seeking to enforce the terms of, or be construed to release any duties, obligations, or liabilities of any of the Company Released Parties under (but only to the extent such Released Party is a party to any of the following agreements), the Transaction Documents; (ii) apply to any breaches of this Agreement by any of the Company Released Parties for which the Holder may seek indemnification pursuant to Section 4.4; (iii) apply to the Company's obligations with respect to the Remaining Notes, or any indentures, security agreements, and other documents or agreements relating thereto as set forth in the indenture for the Remaining Notes; (iv) apply to any Claims by the Holder acting in its capacity as a stockholder of the Company after the Closing to the extent arising out of facts and circumstances first occurring after the Closing; or (v) apply to any Claim for Fraud.

(c) Each Releasing Party expressly acknowledges and agrees, to the fullest extent permitted by law and after having been advised by their legal counsel with respect thereto, that the Releasing Parties have expressly waived and relinquished (i) any and all Claims that any Releasing Party does not know or suspect to exist in its favor at the time of executing this Agreement and that, if known by it, would have materially affected its decision with respect to entry into this Agreement (collectively, "Unknown Claims") that constitute Released Claims and (ii) any and all provisions, rights, and benefits conferred by or under Cal. Civ. Code § 1542 or any Law of the United States or any state or territory of the United States (including, without limitation, New York), or any statute, rule, regulation, or principle of public policy or common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

(d) Each Releasing Party hereby irrevocably covenants to refrain from, directly or indirectly, asserting any Released Claim, or commencing, instituting or causing to be commenced, any proceeding of any kind against any Released Party, based upon any Released Claim.

(e) Each Releasing Party represents and warrants that it has the full power and authority to release the Released Claims released by such Releasing Party under this Section 6.1, as applicable, and that no such Released Claim, as applicable, have been sold, assigned, conveyed, pledged, encumbered or otherwise transferred by it.

(f) Each Company Released Party and each Holder Released Party is hereby made an express third-party beneficiary to this Section 6.1 and shall be entitled to the rights and benefits provided in the same and may enforce the same as if a party hereto.

6.2 No Recourse. Notwithstanding anything to the contrary contained in this Agreement, the Holder and the Company each acknowledge and agree (each on behalf of itself and its Affiliates and Related Parties) that, with respect to the obligations of the Company and the Holder hereunder and under the other Transaction Documents, (i) this Agreement and the other Transaction Documents may only be enforced against, and any Claims that may be based upon, arise out of or relate to this Agreement and the other Transaction Documents or the negotiation, execution or performance of this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby or any breach or violation of this Agreement or the other Transaction Documents, or the failure of any of the transactions contemplated hereunder or thereunder, may only be made against the Company or the Holder, as applicable, and (ii) no recourse shall be sought or had against and no liability shall incur against any former or current or future direct or indirect affiliate, director, officer, employee, representative or advisor of the Company or the Holder (each, a "Non-Recourse Party"), as applicable, for any claim based on, arising out of, in respect of, or by reason of, any duties or obligations of the Company or the Holder, as applicable, hereunder or relating to the transactions contemplated hereby, whether by enforcement of any judgment, fine or penalty, by any legal or equitable action, suit or proceeding, in tort, by virtue of any applicable Law or otherwise. Each Non-Recourse Party is hereby made an express third-party beneficiary to this Section 6.2 and shall be entitled to the rights and benefits provided in the same and may enforce the same as if a party hereto.

6.3 Fees and Expenses. Except as expressly set forth in the Transaction Documents to the contrary, following the Closing, the Company shall pay all fees and expenses of the advisers, counsel, accountants and other experts, if any, of each party hereto, and shall pay all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement, including any Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company stamp taxes and other taxes and duties levied in connection with the delivery of any Shares to the Holder).

6.4 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

6.5 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the time of transmission, if such notice or communication is delivered via email at the email address set forth below at or prior to 5:30 p.m. (Pacific time) on a Business Day (provided no automated "bounce-back" message is received), (b) the next Business Day after the time of transmission, if such notice or communication is delivered via email at the email address as set forth on the signature pages attached hereto on a day that is not a Business Day or later than 5:30 p.m. (Pacific time) on any Business Day (provided no automated "bounce-back" message is received), (c) the first (1st) Business Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications is as follows:

If to the Company:

2710 Lakeview Court
Fremont, CA 945318
Attention: Nancy Krystal
Email: nancy.krystal@velo3d.com

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

Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019
Attention: Chaim Theil, Anthony Grossi, Derek Zaba and Patrick Venter
Email: ctheil@sidley.com, agrossi@sidley.com, dzaba@sidley.com and pventer@sidley.com

If to the Holder:

c/o Arrayed Additive Inc.
6119 Guin Road
Indianapolis, IN 47254
Attention: Arun Jeldi
Email: ajeldi@arrayedadditive.com

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

Arnold & Porter Kaye Scholer LLP
70 West Madison Street, Suite 4200
Chicago, IL 60602-4321
Attention: Mike Messersmith; Matt Micheli
Email: michael.messersmith@arnoldporter.com; matthew.micheli@arnoldporter.com

and

Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, NY 10019
Attention: Mark Kingsley
Email: mark.kingsley@arnoldporter.com;

6.6 Amendments; Waivers. Subject to Section 6.19, no provision of this Agreement may be waived, modified, supplemented, or amended except in a written instrument signed, in the case of an amendment, by the Company and the Holder or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought; provided, however, that any amendment, waiver, supplement or modification to Section 4.4, Section 4.7, Section 4.8, Section 4.9, Section 4.10, Section 5.5, Section 6.1, this Section 6.6, Section 6.8, Section 6.9, Section 6.11, Section 6.14 and Section 6.16, and any applicable definition contained therein shall require the prior written consent of the holders of a majority of Common Stock (other than the Holder, its transferees and their Affiliates). No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right. No amendment to Section 4.7, Section 6.1, Section 6.2, Section 6.10, Section 6.18, or Section 6.19 shall be made without the prior written consent of a majority of the independent directors as of immediately prior to the Closing. Each holder of Common Stock of the Company (other than the Holder, its transferees and their Affiliates), and each independent directors as of immediately prior to the Closing, is hereby made an express third-party beneficiary to this Section 6.6 and shall be entitled to the rights and benefits provided in the same and may enforce the same as if a party hereto.

6.7 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement, and shall not be deemed to limit or affect any of the provisions hereof.

6.8 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Holder. The Holder may assign any or all of its rights under this Agreement to any Person to whom such Holder assigns or transfers any Shares, provided that such transferee agrees in writing to be bound, with respect to the transferred Shares, by the provisions of the Transaction Documents that apply to the "Holder"; and provided, further, that no such assignment shall relieve Holder of its obligations hereunder.

6.9 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise expressly set forth in Sections 4.7, 4.8, 4.9, 4.10, 6.1, 6.2, 6.6, this Section 6.9 and Section 6.19.

6.10 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal Laws of the State of New York, without regard to the principles of conflicts of Law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York, Borough of Manhattan. Each party 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 (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this 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 other manner permitted by Law.

6.11 Survival. The representations and warranties contained herein and all claims for indemnification with respect thereto shall survive the Closing and terminate on the date that is the six (6) month anniversary of the Closing Date. All of the covenants or other agreements of the parties contained in this Agreement and all claims for indemnification with respect thereto shall expire as of the Closing, except that those covenants and other agreements that by their nature are required to be performed after the Closing (the "Post-Closing Covenants") shall survive the Closing and terminate in accordance with their terms. Any claim for indemnification not made by the Person to be indemnified before the termination of the applicable survival period set forth in this Section 6.11 will be irrevocably and unconditionally released and waived, and the parties hereto hereby agree that the statute of limitations shall be shortened to the applicable survival period set forth in this Section 6.11. Notwithstanding the foregoing, any claims for indemnification that are brought in good faith during the applicable survival periods set forth herein shall not expire until the dispute is resolved or finally adjudicated by a court of competent jurisdiction.

6.12 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by e-mail delivery of a ".pdf" format data file, or by electronic signature such signature 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 facsimile or ".pdf" signature page or electronic signature were an original thereof.

6.13 Severability. If any term, provision, covenant, or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants, and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired

or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant, or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants, and restrictions without including any of such that may be hereafter declared invalid, illegal, void, or unenforceable.

6.14 Remedies. In addition to being entitled to exercise all rights provided herein or granted by Law, including recovery of damages, the Holder and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any Proceeding for specific performance of any such obligation the defense that a remedy at Law would be adequate. Any right to specific performance by the Company shall be held by holders of a majority of the Common Stock (excluding the Holder, its transferees and Affiliates).

6.15 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

6.16 Disclosure Schedules. Any disclosure set forth in any Disclosure Schedule shall be deemed set forth for purposes of any other Schedule where applicability of such disclosure to such Schedule is reasonably apparent on the face of such disclosure. Unless the context requires otherwise, capitalized terms used in any Schedule or Exhibit, but not otherwise defined therein, shall have the meaning as defined herein. No disclosure in the Disclosure Schedules shall be deemed to create any rights in any third party.

6.17 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto.

6.18 WAIVER OF JURY TRIAL. **IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.**

6.19 Provision Respecting Legal Representation.

(a) Each of the parties hereby agrees that Sidley Austin LLP ("Company Counsel") has served as counsel to the Company in connection with the negotiation, preparation, execution, and delivery of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby (each, an "Existing Representation"), and that, following the Closing, Sidley Austin LLP (or any successor) may serve as counsel to the Company, the Subsidiaries, the Board of Directors, or other Affiliates thereof (each such Person, a "Designated Person") in connection with any litigation, claim or obligation arising out of or relating to this Agreement or the Transaction Documents or the transactions contemplated hereby or thereby (each, a "Post-Closing Representation"). Notwithstanding any Existing Representation, each of the parties hereby consents to and waives any conflict of interest arising from, any Post-Closing Representation, and each such party shall cause any Affiliate thereof to consent to waive any conflict of interest arising from any such Post-Closing Representation.

(b) The Holder shall not have a right of access to any books, records or other documents of the Company or the Subsidiaries containing any advice or communication that is subject to any attorney-client or other privilege relating to any Existing Representation or any Post-Closing Representation (collectively, the "Privileged Information"). The Holder (on behalf of itself and its Affiliates) agrees not to, directly or indirectly, assert or waive any attorney-client or other privilege relating to the Privileged Information including in connection with a dispute between any Designated Person, on the one hand, and the Holder or its respective Affiliates, on the other hand, it being agreed by the parties that all rights to such Privileged Information, and all rights to waive or otherwise control such Privileged Information, shall be exclusively retained by the independent directors on the Board of Directors as of immediately prior to the Closing, and shall not pass to or be claimed or used, directly or indirectly, by the Holder or its Affiliates following the Closing.

(c) The Holder hereby acknowledges that it has had the opportunity (including on behalf of its Affiliates) to discuss and obtain adequate information concerning the significance and material risks of, and reasonable available alternatives to, the waivers, permissions and other provisions of this Agreement, including with Arnold & Porter Kaye Scholer LLP.

(d) The covenants contained in this Section 6.19 are intended to be for the benefit of, and shall be enforceable by, each of the Designated Persons and the Company Counsel which are hereby made an express third-party beneficiaries of this Section 6.19, and shall not be deemed exclusive of any other rights to which a Designated Person or the Company Counsel, as applicable, is entitled, whether pursuant to Law, contract or otherwise. The obligations of the Holder and the Company under this Section 6.19 shall not be terminated or amended, waived or modified without the consent of each affected Designated Person or the Company Counsel, as applicable.

(e) This Section 6.19 may not be amended, waived, supplemented or modified without the prior written consent of Company Counsel which is hereby made an express third party beneficiary hereto.

6.20 Further Assurances. Each party shall take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to carry out the intent and purposes of this Agreement and the other Transaction Documents.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Exchange Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

VELO 3D INC.

By: */s/ Bradley Kreger*
Name: Bradley Kreger
Title: Chief Executive Officer and Principal Executive

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SIGNATURE PAGE FOR HOLDER FOLLOWS]

ARRAYED NOTES ACQUISITION CORP.

By: */s/ Arun Jeldi*
Name: Arun Jeldi
Title: Chief Executive Officer and President

Exhibit 99.1

Velo3D Announces Debt for Equity Exchange Transaction
Significantly Delevers Balance Sheet
Arrayed Notes Acquisition Corp to Become Majority Equity Holder of Velo3D

- *81.7% of the outstanding senior secured notes to be cancelled*
- *Velo3D Board of Directors Unanimously Approved the Transaction*
- *Velo3D to remain a public Company and continue to serve its customers*

FREMONT, California – December 24, 2024 – Velo3D, Inc. (OTCQX: VLDX) ("Velo3D" or the "Company"), the leader in scalable metal 3D printing technology for production manufacturing, today announced a debt for equity exchange where approximately $22.4 million or 81.7% in principal amount of its outstanding senior secured notes, plus approximately $369 thousand of accrued interest on such notes, held by Arrayed Notes Acquisition Corp. (the "Holder") will be cancelled in exchange for an issuance of 185,151,333 newly issued shares of the Company's common stock to the Holder. The Holder will continue to hold approximately $5 million of the outstanding senior secured notes following the transaction. With the completion of this transaction, the Holder will hold 95% of Velo3D's issued and outstanding common stock. Shares of Velo3D's issued and outstanding common stock not held by the Holder will remain publicly traded on OTCQX.

Arun Jeldi, CEO of Arrayed Additive, Inc., parent company of the Holder, will be appointed as CEO of Velo3D and as a member of Velo3D's Board of Directors. In connection with the exchange transaction, Mr. Carl Bass, Ms. Ellen Smith, Ms. Gabrielle Toledano, Mr. Matthew Walters, Mr. Benyamin Buller and Mr. Darryl Porter have resigned from Velo3D's Board of Directors and, if applicable, all committees of the Board of Directors on which they serve. Velo3D's Board of Directors will be reduced from 10 to 5 members upon the closing of the exchange transaction. Brad Kreger will remain with the Company as its Chief Operating Officer.

The significant reduction in the outstanding senior secured notes greatly alleviates Velo3D's overall debt obligations and allows the Company to focus on its operations and continue to deliver its market leading solutions to its customers.

"I am excited to work with Arun and the Arrayed Additive team to reposition the Company for future success," said Brad Kreger, the newly appointed Chief Operating Officer of Velo3D. "With the majority of our senior secured notes cancelled, we are now in a stronger financial position, enabling us to focus our efforts on the future of Velo3D and delivering unparalleled large-format metal 3D printing capabilities to our global customer base,"

"Velo3D's industry leading technology and capabilities allow Arrayed Additive to greatly expand our services and product offering to our customers. Velo3D's focus on defense, space / aerospace and technology end-markets is complementary to Arrayed Additive's customer base and our leading technology in light weight precision manufacturing using magnesium and aluminum alloy further expands Velo3D's capabilities. I am thrilled to lead Velo3D into a new chapter of growth", said Arun Jeldi, Arrayed Additive CEO.

Advisors:

In connection with the exchange transaction, Sidley Austin LLP is serving as legal advisor and Berkeley Research Group, LLC is serving as financial advisor to the Company. Arnold & Porter Kaye Scholer LLP is serving as legal advisor to Arrayed Additive.

Forward-Looking Statements:

This press release includes "forward-looking statements" within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. The Company's actual results may differ from its expectations, estimates and projections and consequently, you should not rely on these forward-looking statements as predictions of future events. Words such as "expect", "estimate", "project", "budget", "forecast", "anticipate", "intend", "plan", "may", "will", "could", "should", "believes", "predicts", "potential", "continue", and similar expressions are intended to identify such forward-looking statements. These forward-looking statements include, without limitation, the Company's expectations regarding its performance, the Company's strategic realignment and initiatives, the Company's expectations regarding its liquidity and capital requirements, the Company's expectations regarding the timing of deferred orders, the Company's expectations regarding its potential cost savings, and the Company's other expectations, beliefs, intentions or strategies for the future. These forward-looking statements involve significant risks and uncertainties that could cause the actual results to differ materially from the expected results. You should carefully consider the risks and uncertainties described in the "Risk Factors" section of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2023 (the "FY 2023 10-K"), which was filed by the Company with the Securities and Exchange Commission (the "SEC") on April 3, 2024, the "Risk Factors" section of the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2024, which was filed by the Company on August 14, 2024 (the "Q2 2024 10-Q"), and the other documents filed by the Company from time to time with the SEC. These filings identify and address other important risks and uncertainties that could cause actual events and results to differ materially from those contained in the forward-looking statements. Most of these factors are outside the Company's control and are difficult to predict. Factors that may cause such differences include, but are not limited to: (1) the inability of the Company to execute its business plan, which may be affected by, among other things, competition, the Company's liquidity position/lack of available cash, the ability of the Company to grow and manage growth profitably, maintain relationships with customers and suppliers and retain its key employees; (2) the Company's ability to continue as a going concern; (3) the Company's ability to service and comply with its indebtedness; (4) the Company's ability to raise additional capital in the near-term; (5) the possibility that the Company may be adversely affected by other economic, business, and/or competitive factors; and (6) other risks and uncertainties described in the FY 2023 10-K and the Q2 2024 10-Q, including those under "Risk Factors" therein, and in the Company's other filings with the SEC. The Company cautions that the foregoing list of factors is not exclusive and not to place undue reliance upon any forward-looking statements, including projections, which speak only as of the date made. The Company does not undertake or accept any obligation to release publicly any updates or revisions to any forward-looking statements to reflect any change in its expectations or any change in events, conditions or circumstances on which any such statement is based.

About Velo3D:

Velo3D is a metal 3D printing technology Company. 3D printing—also known as additive manufacturing (AM)—has a unique ability to improve the way high-value metal parts are built. However, legacy metal AM has been greatly limited in its capabilities since its invention almost 30 years ago. This has prevented the technology from being used to create the most valuable and impactful parts, restricting its use to specific niches where the limitations were acceptable.

Velo3D has overcome these limitations so engineers can design and print the parts they want. The Company's solution unlocks a wide breadth of design freedom and enables customers in space exploration, aviation, energy, and semiconductor to innovate the future in their respective industries. Using Velo3D, these customers can now build mission-critical metal parts that were previously impossible to manufacture. The fully integrated solution includes the Flow print preparation software, the Sapphire family of printers, and the Assure quality control system. Through this vertically integrated approach, the Velo3D ecosystem facilitates scalable metal AM using the same print file across any Sapphire system, ensuring repeatable outcomes without the need for additional optimization. This enhances manufacturing scalability and supply chain flexibility, allowing Velo3D customers to seamlessly adapt to fluctuating demand. The Company delivered its first Sapphire system in 2018 and has been a strategic partner to innovators such as SpaceX, Aerojet Rocketdyne, Lockheed Martin, Avio, and General Motors. Velo3D has been named as one of Fast Company's Most Innovative Companies for 2023. For more

information, please visit Velo3D.com, or follow the Company on LinkedIn or Twitter.

VELO, VELO3D, SAPPHIRE and INTELLIGENT FUSION, are registered trademarks of Velo3D, Inc.; and WITHOUT COMPROMISE, FLOW, FLOW DEVELOPER, and ASSURE are trademarks of Velo3D, Inc. All Rights Reserved © Velo3D, Inc.

About Arrayed Additive, Inc.

Arrayed Additive, Inc. is a leader in lightweight additive manufacturing technologies in the aerospace and defense sectors. It is focused on developing key technologies using magnesium and aluminum lightweight alloys.

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Investor Relations:

Velo3D
Bob Okunski, VP Investor Relations
investors@velo3d.com

Media Contact:

Velo3D
press@velo3d.com