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): March 14, 2023

Remark Holdings

Remark Holdings, Inc.
(Exact name of registrant as specified in its charter)

Delaware	001-33720	33-1135689
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)
800 S. Commerce Street Las Vegas, NV	89106	702-701-9514
(Address of principal executive offices)	(Zip Code)	(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report.)

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

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

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

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

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

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, $0.001 par value per share	MARK	The Nasdaq Stock Market LLC

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

☐ Emerging growth company

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

Item 1.01 Entry into Material Definitive Agreement.

Convertible Subordinated Debentures

On March 14, 2023, Remark Holdings, Inc. ("Remark," "we," "us" or "our") entered into a debenture purchase agreement (the "Debenture Purchase Agreement") with Ionic Ventures, LLC ("Ionic"), pursuant to which we authorized the issuance and sale of two convertible subordinated debentures in the aggregate principal amount of $2,778,000 for an aggregate purchase price of 2,500,000. The first debenture is in the original principal amount of $1,667,000 for a purchase price of $1,500,000 (the "First Debenture"), which was issued on March 14, 2023, and the second debenture is in the original principal amount of $1,111,000 for a purchase price of $1,000,000 (the "Second Debenture" and collectively with the First Debenture, the "Debentures"). The Second Debenture will be issued on the earlier of (x) the 30th day after the date of execution of the Debenture Purchase Agreement and (ii) the date of the filing of the initial Resale Registration Statement (as defined below) covering the Registrable Securities (as defined below), provided that all the conditions in the Debenture Purchase Agreement are satisfied or waived.

The Debentures accrue interest at a rate of 10% per annum, of which two (2) years of interest is guaranteed and deemed earned in full on the first day following the issuance date. The interest rate on the Debentures increases to a rate of 15% per annum if the Debentures are not fully paid, converted or redeemed by the second anniversary of each debenture (each, a "Maturity Date") or upon the occurrence of certain trigger events (the "Trigger Events"), including, but not limited to, the suspension from trading or the delisting of our common stock from the Nasdaq Capital Market ("Nasdaq") for three (3) consecutive trading days. If the Debentures are not fully paid or converted by their respective Maturity Dates, the original aggregate principal amount of the Debentures will be deemed to have been $3,333,600 from their issuance dates.

The Debentures automatically convert into shares of common stock at the earlier of (i) the effectiveness of the initial registration statement registering the resale of certain Registrable Securities as such term is defined in the Registration Rights Agreement (as defined below) including, without limitation, the shares issuable upon conversion of the Debentures (the "Conversion Shares") (such registration statement, the "Resale Registration Statement"), and (ii) 181 days after the issuance date of each Debenture. The number of shares of common stock issuable upon conversion of each Debenture shall be determined by dividing the outstanding balance under each Debenture (including all accrued and unpaid interest and accrued and unpaid late charges, if any) by a conversion price that is the lower of (x) 80% (or 70% if our common stock is not then trading on Nasdaq) of the average of the two lowest volume-weighted average prices ("VWAPs") over a specified measurement period following the conversion date (the "Variable Conversion Price"), and (y) $1.40 (the "Fixed Conversion Price"), subject to full ratchet anti-dilution protection in the event we issue certain equity securities at a price below the then Fixed Conversion Price. The Debentures are unsecured and expressly junior to any of our existing or future debt obligations. Notwithstanding anything to the contrary, under no circumstances shall the Variable Conversion Price be less than the floor price of $0.20 as specified in the Debentures. Additionally, in the event of a bankruptcy, we are required to redeem the Debentures in cash in an amount equal to the then outstanding balance of the Debentures multiplied by 120%. The Debentures further provide that we will not effect the conversion of any portion of the Debentures, and the holder thereof will not have the right to a conversion of any portion of the Debentures, to the extent that after giving effect to such conversion, the holder together with its affiliates would beneficially own more than 4.99% of the outstanding shares of our common stock immediately after giving effect to such conversion. Furthermore, we may not issue shares of common stock underlying the Debentures if such issuance would require us to obtain stockholder approval under the Nasdaq rules or until such stockholder approval has been obtained.

The offer and sale of the securities in connection with the Debentures described herein will be made pursuant to the exemption from registration provided by Section 4(a)(2) of the Securities Act, as amended and/or Rule 506(b) of Regulation D promulgated thereunder.

Concurrently with entering into the Debenture Purchase Agreement, we also entered into a registration rights agreement with Ionic (the "Registration Rights Agreement"), in which we agreed to file with the Securities and Exchange Commission (the "SEC") one or more registration statements, as necessary, and to the extent permissible and subject to certain exceptions, to register under the Securities Act of 1933, as amended, the resale of the shares of our common stock issuable upon conversion of the Debentures and the shares of common stock that may be issued to Ionic if we fail to comply with our obligations in the Registration Rights Agreement. The Registration Rights Agreement requires that we file, within 15 calendar days after we file our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, the Resale Registration Statement and use commercially reasonable efforts to have the Resale Registration Statement declared effective by the SEC on or before the earlier of (i) 90 days after signing of the Registration Rights Agreement (or 120 days if such registration statement is subject to full review by the SEC) and (ii) the 2nd business day after we are notified we will not be subject to further SEC review. If we fail to file or have the Resale Registration Statement declared effective by the specified deadlines, then in each instance, we will issue to Ionic 150,000 shares of our common stock within two (2) trading days after such failure, and with respect to the Conversion Shares, we will additionally pay in cash, as liquidated damages, an amount equal to 2% of the amount then currently outstanding under the Debenture for failure to file and have the Resale Registration Statement declared effective by the same deadlines set forth above for each 30-day period after each such failure.

The foregoing descriptions of the Debenture Purchase Agreement, the Debentures and the Registration Rights Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of such documents, forms of which are filed as Exhibits 10.1, 4.1, and 10.2, respectively, and are incorporated herein by reference.

Mudrick Note Purchase Agreement

On March 14, 2023, we also entered into a Note Purchase Agreement (the "Mudrick Note Agreement") with certain institutional lenders affiliated with Mudrick Capital Management, LP (collectively, the "Senior Lenders"). Subject to the terms and conditions of the Mudrick Note Agreement, we will issue and sell to each Holder (as defined in the Mudrick Note Agreement) certain notes payable (the "Senior Lender Notes) in the amount specified in the Mudrick Note Agreement in exchange for the cancellation of the outstanding principal balance on the existing loan under the Senior Secured Loan Agreement, dated as of December 3, 2021, as amended by the First Amendment to the Senior Secured Loan Agreement, dated as of August 3, 2022 (collectively, the "Loan Agreement") by and among Remark, certain of our subsidiaries as guarantors and the Senior Lenders.

The Senior Lender Notes bear interest at a rate of 20.5% per annum, which shall be payable on the last business day of each month commencing on May 31, 2023. The interest rate will increase by two percent (2%) and the principal amount outstanding under the Senior Lender Notes and any unpaid interest thereon may become immediately due and payable upon the occurrence of any event of default under the Mudrick Note Agreement.

All amounts outstanding under the Senior Lender Notes, including all accrued and unpaid interest, will be due and payable in full on October 31, 2023. To secure the payment and performance of our obligations under the Mudrick Note Agreements, we have granted to TMI Trust Company, as the collateral agent on behalf of the Holders, a continuing security interest in all assets of Remark, subject to certain exceptions as set forth in the Mudrick Note Agreement.

In connection with our entry into the Mudrick Note Agreement, we agreed to an extension fee of $750,000, which amount was paid in kind by capitalizing it to the principal of the Senior Lender Notes. All unpaid interest which had accrued under the Loan Agreement to, but not including, March 14, 2023 was capitalized to the principal of the Senior Lender Notes.

The foregoing description of the Mudrick Note Agreement does not purport to be complete and is qualified in its entirety to the full text of such document, which is filed as Exhibit 10.3 and is incorporated herein by reference.

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

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

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated into this Item 3.02 by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit	Description
4.1	Form of Subordinated Convertible Debenture, dated as of March 14, 2023, by and between Remark Holdings, Inc. and Ionic Ventures, LLC.
10.1*	Debenture Purchase Agreement, dated as of March 14, 2023, by and between Remark Holdings, Inc. and Ionic Ventures, LLC.
10.2	Registration Rights Agreement, dated as of March 14, 2023, by and between Remark Holdings, Inc. and Ionic Ventures, LLC.
10.3*	Note Purchase Agreement, dated as of March 14, 2023, by and among Remark Holdings, Inc., certain of its subsidiaries party thereto, and Mudrick Capital Management, LP.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

* Certain schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. We will furnish supplementally a copy of any omitted exhibits or schedules to the Securities and Exchange Commission upon request.

Signature

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

Remark Holdings, Inc.

Date: March 16, 2023

By: */s/ Kai-Shing Tao*

Name: Kai-Shing Tao

Title: *Chief Executive Officer*

NEITHER THIS SECURITY NOR THE SECURITIES INTO WHICH THIS SECURITY IS CONVERTIBLE HAVE 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 "ACT") AND APPLICABLE STATE SECURITIES LAWS, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. NOTWITHSTANDING THE FOREGOING, THIS SECURITY AND THE SECURITIES ISSUABLE UPON CONVERSION OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY SUCH SECURITIES. ANY TRANSFEREE OF THIS DEBENTURE SHOULD CAREFULLY REVIEW THE TERMS OF THIS DEBENTURE, INCLUDING SECTIONS 3(c)(iii) AND 16(a) HEREOF. THE PRINCIPAL AMOUNT REPRESENTED BY THIS DEBENTURE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 3(c)(iii) OF THIS DEBENTURE.

THIS DEBENTURE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID"). PURSUANT TO TREASURY REGULATION §1.1275-3(b)(1), A REPRESENTATIVE OF THE COMPANY HEREOF WILL, BEGINNING TEN DAYS AFTER THE ISSUANCE DATE OF THIS DEBENTURE, PROMPTLY MAKE AVAILABLE TO THE HOLDER UPON REQUEST THE INFORMATION DESCRIBED IN TREASURY REGULATION §1.1275-3(B)(1)(I). THE CONTACT INFORMATION OF THE COMPANY REPRESENTATIVE IS SET FORTH IN THE DEBENTURE PURCHASE AGREEMENT.

Remark Holdings, Inc.

Subordinated Convertible Debenture

Issuance Date: [ ], 2023 (the "**Issuance Date**")

Original Principal Amount: $[ ]

Original Purchase Price: $[ ]

FOR VALUE RECEIVED, Remark Holdings, Inc., a Delaware corporation (the "**Company**"), hereby promises to pay to the order of Ionic Ventures, LLC or its registered assigns (the "**Holder**") the amount set forth above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the "**Principal**") when due, whether upon the Maturity Date (as defined below), or upon acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest ("**Interest**") on any outstanding Principal at the Standard Rate (as defined below) and if not fully paid or converted or redeemed on the Maturity Date (as defined herein), at the Trigger Rate (as defined below), until the same becomes due and payable, whether upon the Maturity Date (as defined herein), or upon acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Subordinated Convertible Debenture (including all Subordinated Convertible Debentures issued in exchange, transfer or replacement hereof in accordance with the terms hereof, this "**Debenture**") is the Debenture issued pursuant to that certain Debenture Purchase Agreement, dated as of [ ], 2023 (the "**Subscription Date**"), by and between the Company and the Holder made a party thereto, as amended from time to time (the "**Debenture Purchase Agreement**"). Certain capitalized terms used herein are defined in Section 27.

The Company hereby acknowledges and agrees that if this Debenture is not fully paid or converted (including, without limitation, all Principal, Interest and other penalties and payments hereon) in accordance with the terms herein on or prior to the date of any occurrence of any Trigger Event, then the Original Principal Amount shall be deemed to have been $[ ] from the Subscription Date (and recalculations of all Interest, penalties and other payments shall be automatically adjusted accordingly).

1. PAYMENTS OF PRINCIPAL. On the Maturity Date, the Company shall pay to the Holder an amount in cash representing all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges (as defined in Section 22(c)) on such Principal and Interest. Notwithstanding anything herein to the contrary, with respect to any redemption hereunder, the Company shall redeem First, all accrued and unpaid Late Charges on any Principal and Interest hereunder, Second, all accrued and unpaid Interest hereunder, and Third, after extinguishment of all such accrued and unpaid Interest and Late Charges, if any, all unpaid Principal outstanding hereunder.

2. INTEREST; INTEREST RATES. Interest shall accrue hereunder from the Issuance Date at ten percent (10%) per annum (the "**Standard Rate**") and shall be computed on the basis of a 365/6-day year and the actual number of days elapsed. The Company shall pay Interest to the Holder as set forth above on the aggregate unconverted and then outstanding principal amount of this Debenture at the Standard Rate (with two (2) years of interest being guaranteed and deemed earned in full on the first day following the Subscription Date). If this Debenture is not fully paid or converted or redeemed by the Maturity Date or if a Trigger Event (as defined herein) shall have occurred, Interest on this Debenture shall accrue thereafter at fifteen percent (15.0%) per annum (the "**Trigger Rate**") and shall be computed on the basis of a 365/6-day year and the actual number of days elapsed. Accrued and unpaid Interest shall be payable in kind only by way of inclusion of such Interest in the Conversion Amount (as defined below) on the Automatic Conversion Date (as defined below) in accordance with Section 3(b)(i), or upon any earlier redemption in accordance with Section 10.

3. AUTOMATIC CONVERSION OF DEBENTURE. This Debenture shall be convertible into validly issued, fully paid and non-assessable Common Shares (as defined below), on the terms and conditions set forth in this Section 3.

(a) Automatic Conversion. Subject to the provisions of Section 3(d), on the Automatic Conversion Date, the outstanding and unpaid Conversion Amount shall be converted into validly issued, fully paid and non-assessable Common Shares in accordance with Section 3(c), at the Conversion Rate (as defined below). The Company shall not issue any fraction of a Common Share upon any conversion. If the issuance would result in the issuance of a fraction of a Common Share, the Company shall round such fraction of a Common Share up to the nearest whole share. The Company shall pay any and all transfer, stamp, issuance and similar taxes (except to the extent such tax is in respect of the Holder's instructions to issue Common Shares to a Person other than the Holder), costs and expenses (including, without limitation, fees and expenses of the transfer agent of the Company (the "**Transfer Agent**")) that may be payable with respect to the issuance and delivery of Common Shares upon conversion of any Conversion Amount.

(b) Conversion Rate. The number of Common Shares issuable upon conversion of the Conversion Amount pursuant to Section 3(a) shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "**Conversion Rate**"). For purposes of this Debenture, the following terms shall have the following meanings:

(i) "**Automatic Conversion Date**" means the earlier of (i) the effectiveness of the initial Registration Statement (as defined in the RRA) covering the Registrable Securities (as defined in the RRA) and (ii) 181st day after the Subscription Date.

(ii) "**Conversion Amount**" means the sum of (x) the Principal outstanding as of the Automatic Conversion Date or other date of determination and (y) all accrued and unpaid Interest with respect to such Principal and accrued and unpaid Late Charges with respect to such Principal and such Interest, if any.

(iii) "**Conversion Price**" means, with respect to the Automatic Conversion Date or other date of determination, the lower of (x) the Variable Conversion Price then in effect and (y) the Fixed Conversion Price then in effect.

(vi) "**Fixed Conversion Price**" means, as of the Automatic Conversion Date or other date of determination, the price per share equal to $1.40, subject to adjustment as provided herein.

(vii) "**Trigger Conversion Price**" means, as of the Automatic Conversion Date or other date of determination, the product of (x) 0.85 and (y) the Conversion Price.

(viii) "**Variable Conversion Price**" means, as of the Automatic Conversion Date or other relevant date of determination, 80% (or 70% if the Common Shares are not then trading on a Principal Market) of the average of the two (2) lowest VWAPs starting on the Trading Day immediately following the receipt of Pre-Settlement Conversion Shares (as defined below) following the Automatic Conversion Date or other relevant date of determination and ending the later of (a) ten (10) consecutive Trading Days after (and not including) the Automatic Conversion Date or such other relevant date of determination and (b) the Trading Day immediately after the Common Shares in the aggregate amount of at least $13,900,000 shall have traded on the Principal Market after the Subscription Date (such period, the "**Variable Conversion Measuring Period**"); provided, however, that any trading day on which Holder does not have free trading shares in its account for any reason will be excluded from the calculation of total trading. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately affects the Common Shares during such Variable Conversion Measuring Period.

(c) Mechanics of Conversion.

(i) Pre-Settlement. No later than two (2) Trading Days after the Automatic Conversion Date ("**Pre-Settlement Conversion Share Delivery Deadline**"), the Company shall (A) transmit by electronic mail an acknowledgment of confirmation and representation, in the form attached hereto as Exhibit I (an "**Acknowledgement**") and (B) cause the Transfer Agent to deliver to the Holder such number of Common Shares (the "**Pre-Settlement Conversion Shares**") equal to the product of (A) the quotient of (y) the Conversion Amount divided by (z) the Pre-Settlement Conversion Price (as defined below), and as to which the Holder shall be the owner thereof as of such time of delivery of such Pre-Settlement Conversion Shares, multiplied by (B) 125%. The "**Pre-Settlement Conversion Price**" means 80% of the Closing Price on the date immediately preceding the Automatic Conversion Date. All such determinations to be appropriately adjusted for any share split, share dividend, share combination or other similar transaction during any such measuring period. Holder shall have the right to request additional Pre-Settlement Conversion Shares during the Variable Conversion Measuring Period at any time there is an anticipated shortfall determined in Holder's sole discretion.

(ii) Settlement. No later than two (2) Trading Days after the Variable Conversion Measuring Period (the "**Conversion Settlement Date**"), the Company shall (A) transmit by electronic mail an Acknowledgment and (B) cause the Transfer Agent to deliver to the Holder such number of Common Shares (the "**Settlement Conversion Shares**" and together with the Pre-Settlement Conversion Shares, the "**Conversion Shares**") equal to the Conversion Amount divided by the Conversion Price; provided, however, that the number of Common Shares to be delivered by the Conversion Settlement Date shall be reduced by the number of Pre-Settlement Conversion Shares delivered. Notwithstanding anything herein to the contrary, if the number of Pre-Settlement Conversion Shares delivered to the Holder exceeds the number of Settlement Conversion Shares, then the Holder shall return such excess shares.

(iii) Floor Price. Notwithstanding anything herein to the contrary, in no event shall the Variable Conversion Price be below $0.20 as determined on a post reverse stock split basis (the "**Floor Price**"). In the event that the Variable Conversion Price is less than $0.20, then (A) the Holder shall be entitled to that number of Settlement Conversion Shares issuable with an assumed Variable Conversion Price of $0.20, and (B) the Company shall make a cash payment to Holder on or prior to the Maturity Date (subject to the Senior Loan Agreements) of the Balance Amount (as defined below). The "**Balance Amount**" shall be calculated by subtracting the number of Settlement Conversion Shares issuable at an assumed Variable Conversion Price of $0.20 from the number of Settlement Conversion Shares issuable at the actual Variable Conversion Price, multiplied by a price equal to the average of the two (2) lowest VWAPs during the Variable Conversion Measuring Period (provided, however, that any trading day on which Holder does not have free trading shares in its account for any reason will be excluded from the calculation of total trading). The Floor Price, and all determinations above shall be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately affects the Common Shares during such Variable Conversion Measuring Period.

(iv) Acknowledgments.

(A) Each Acknowledgement shall state that all Common Shares referenced therein are eligible to be resold pursuant to Rule 144 or Rule 144A promulgated under the 1933 Act (or a successor rule thereto) (collectively, "**Rule 144**") or an effective and available registration statement, to the Holder and the Transfer Agent which acknowledgement shall constitute an instruction to the Transfer Agent to process such issuance in accordance with the terms herein.

(B) On or before the Pre-Settlement Conversion Share Delivery Deadline and Conversion Settlement Date, as applicable (each a "**Share Delivery Deadline**"), the Company shall, (1) after the Resale Eligibility Date and provided that the Transfer Agent is participating in The Depository Trust Company's ("**DTC**") Fast Automated Securities Transfer Program, credit such aggregate number of Common Shares to which the Holder shall be entitled pursuant to such conversion to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system, which balance account Holder shall designate in writing to the Company or the Transfer Agent, or (2) prior to the Resale Eligibility Date or if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, upon the request of the Holder, issue and send (via reputable overnight courier) to the address as specified in writing to the Company or the Transfer Agent, a certificate, registered in the name of the Holder or its designee, for the number of Common Shares to which the Holder shall be entitled pursuant to such automatic conversion. The Person or

Persons entitled to receive the Common Shares issuable upon automatic conversion of this Debenture shall be treated for all purposes as the record holder or holders of such Common Shares on the Automatic Conversion Date and Conversion Settlement Date, as applicable. Notwithstanding anything to the contrary contained in this Debenture or the RRA, after the Resale Eligibility Date, the Company shall cause the Transfer Agent to deliver unlegended Common Shares to the Holder (or its designee) in connection with any sale of Conversion Shares, and for which the Holder has not yet settled.

(v) Company's Failure to Timely Convert. If the Company shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, either (I) (x) prior to the Resale Eligibility Date or if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, to issue and deliver to the Holder (or its designee) a certificate (if requested by the Holder) for the number of Common Shares to which the Holder is entitled and register such Common Shares on the Company's share register, or (y) after the Resale Eligibility Date and if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, to credit the balance account of the Holder or the Holder's designee with DTC for such number of Common Shares to which the Holder is entitled upon the conversion of this Debenture (as the case may be) or (II) if a Registration Statement covering the resale of the Common Shares that are the subject of the automatic conversion (the "**Unavailable Conversion Shares**") is not available for the resale of such Unavailable Conversion Shares and the Company fails to promptly, but in no event later than as required pursuant to the RRA (x) so notify the Holder and (y) deliver the Common Shares electronically without any restrictive legend by crediting such aggregate number of Common Shares to which the Holder is entitled pursuant to such automatic conversion to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system (the event described in the immediately foregoing clause (II) is hereinafter referred as a "**Notice Failure**" and together with the event described in clause (I) above, a "**Conversion Failure**"), then, in addition to all other remedies available to the Holder, the Company shall pay in cash to the Holder on each Trading Day after such applicable Share Delivery Deadline that the issuance of such Common Shares is not timely effected an amount equal to 2% of the product of (A) the aggregate number of Common Shares not issued to the Holder on or prior to the applicable Share Delivery Deadline and to which the Holder is entitled, multiplied by (B) the highest trading price of the Common Shares between the Automatic Conversion Date and the actual date of delivery. In addition to the foregoing, if on or prior to the applicable Share Delivery Deadline and after the Resale Eligibility Date either (A) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, the Company shall fail to issue and deliver to the Holder (or its designee) a certificate and register such Common Shares on the Company's share register or, if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, the Transfer Agent shall fail to credit the balance account of the Holder or the Holder's designee with DTC for the number of Common Shares to which the Holder is entitled upon the automatic conversion hereunder or pursuant to the Company's obligation pursuant to clause (II) below or (B) a Notice Failure occurs, and if after such applicable Share Delivery Deadline the Holder purchases (in an open market transaction or otherwise) Common Shares corresponding to all or any portion of the number of Common Shares issuable upon such automatic conversion that the Holder is entitled to receive from the Company and has not timely received from the Company in connection with such Conversion Failure or Notice Failure, as applicable (a "**Buy-In**"), then, in addition to all other remedies available to the Holder, the Company shall, within two (2) Business Days after receipt of the Holder's request and in the Holder's discretion, either: (I) pay cash to the Holder in an amount equal to the Holder's total purchase price (including reasonable brokerage commissions, borrow fees and any other out-of-pocket expenses, if any) for the Common Shares so purchased (including, without limitation, by any other Person in respect, or on behalf, of the Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate (and to issue such Common Shares) or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of Common Shares to which the Holder is entitled upon automatic conversion hereunder (as the case may be) (and to issue such Common Shares) shall terminate, or (II) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such Common Shares or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of Common Shares to which the Holder is entitled upon automatic conversion hereunder (as the case may be) and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of Common Shares subject to conversion multiplied by (y) the price at which the Holder sold such Common Shares in anticipation of the delivery thereof upon such applicable conversion (and if the Holder shall not have sold such shares, the price for purposes of this clause (y) shall equal the Buy-In Price divided by the number of Common Shares described in the immediately preceding clause (x)) (the "**Buy-In Payment Amount**"). Nothing shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to

the Company's failure to timely deliver certificates representing Common Shares (or to electronically deliver such Common Shares) upon automatic conversion of this Debenture as required pursuant to the terms hereof.

(vi) Registration; Book-Entry. The Company shall maintain at its principal executive offices, or such other office or agency of the Company as it may designate by notice to the Holder of this Debenture, a register (the "**Register**") for the recordation of the names and addresses of the Holder of this Debenture, the principal amount of this Debenture held by the Holder, and the number of Common Shares issuable upon conversion of this Debenture held by the Holder (the "**Registered Debenture**"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the Holder of this Debenture shall treat each Person whose name is recorded in the Register as the owner of this Debenture for all purposes (including, without limitation, the right to receive payments of Principal, Interest and any Late Charges hereunder) notwithstanding notice to the contrary. Subject to compliance with applicable securities laws, a Registered Debenture may be assigned, transferred or sold in whole or in part only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell all or part of any Registered Debenture by the Holder, the Company shall record the information contained therein in the Register and issue a new Registered Debenture in the same aggregate principal amount as the principal amount of the surrendered Registered Debenture to the designated assignee or transferee pursuant to Section 16, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of a Registered Debenture within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Notwithstanding anything to the contrary set forth in this Section 3, following automatic conversion of this Debenture in accordance with the terms hereof, the Holder shall not be required to physically surrender this Debenture to the Company unless the full Conversion Amount represented by this Debenture is being converted (in which event this Debenture shall be delivered to the Company following conversion thereof). The Holder and the Company shall maintain records showing the Principal and Interest converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Debenture upon conversion. If the Company does not update the Register to record such Principal and Interest converted and/or paid (as the case may be) and the dates of such conversions, and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence.

(vii) Stockholder Approval. The Company shall not be required to issue any Conversion Shares if such issuance would cause the Company to be required to obtain the Stockholder Approval either pursuant to the rules and regulations of the Eligible Market or otherwise until such Stockholder Approval has been obtained.

(d) Limitations on Conversions. The Company shall not effect the conversion of any portion of this Debenture, and the Holder shall not have the right to a conversion of any portion of this Debenture pursuant to the terms and conditions of this Debenture and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the Common Shares outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of Common Shares beneficially owned by the Holder and the other Attribution Parties shall include the number of Common Shares held by the Holder and all other Attribution Parties plus the number of Common Shares issuable upon conversion of this Debenture with respect to which the determination of such sentence is being made, but shall exclude Common Shares which would be issuable upon (A) conversion of the remaining, nonconverted portion of this Debenture beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible debentures or convertible preferred shares or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 3(d). For purposes of this Section 3(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. For purposes of determining the number of outstanding Common Shares the Holder may acquire upon the conversion of this without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding Common Shares as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent, if any, setting forth the number of Common Shares outstanding (the "**Reported**

Outstanding Share Number"). If the actual number of outstanding Common Shares is less than the Reported Outstanding Share Number on the Automatic Conversion Date and the Conversion Settlement Date, the Company shall notify the Holder in writing of the number of Common Shares then outstanding and, to the extent that such issuances would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 3(d), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of Common Shares to be issued pursuant to such automatic conversion. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to the Holder the number of Common Shares then outstanding. In any case, the number of outstanding Common Shares shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Debenture, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of Common Shares to the Holder upon conversion of this Debenture results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding Common Shares (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61^{st}) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61^{st}) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Debentures that is not an Attribution Party of the Holder. For purposes of clarity, the Common Shares issuable pursuant to the terms of this Debenture in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) of, or Rule 16a-1(a)(1) under, the 1934 Act. No prior inability to convert this Debenture pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 3(d) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 3(d) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Debenture.

4. RIGHTS UPON TRIGGER EVENT AND EVENT OF DEFAULT.

(a) Trigger Event. Each of the following events shall constitute a "**Trigger Event**":

(i) the suspension from trading or the failure of the Common Shares to be trading or listed (as applicable) on an Eligible Market for a period of three (3) consecutive Trading Days;

(ii) the Company's notice, written or oral, to the Holder of this Debenture including, without limitation, by way of public announcement or through any of its agents, at any time, of its intention not to comply, as required, with the conversion of the Debenture into Common Shares in accordance with the provisions of this Debenture, other than pursuant to Section 3(d);

(iii) except to the extent the Company is in compliance with Section 9(b) below, at any time following the fifth (5^{th}) consecutive day that the Company shall not have reserved for issuance upon conversion of this Debenture a number of Common Shares equal to or greater than the Required Reserve Amount;

(iv) any Material Adverse Effect (as defined in the Debenture Purchase Agreement) shall have occurred; or

(v) any provision of any Transaction Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the Company or any of its Subsidiaries in any material respect, or the validity or enforceability thereof shall be contested by the Company or any of its Subsidiaries, or a proceeding shall be commenced by the Company or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Company or any Subsidiary shall

deny in writing that it has any liability or obligation purported to be created under any Transaction Document.

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

(i) the Company's failure to pay to the Holder any amount of Principal, Interest, Late Charges or other amounts when and as due under this Debenture, and such failure remains uncured for a period of more than two (2) Trading Days;

(ii) the Company, either (A) fails to cure a Conversion Failure by delivery of the required number of Common Shares within one (1) Trading Day after each applicable Share Conversion Deadline or (B) fails to remove any restrictive legend on any certificate or any Common Shares issued to the Holder upon conversion of this Debenture as and when required by this Debenture, unless otherwise then prohibited by applicable federal securities laws, and any such failure remains uncured for at least two (2) days;

(iii) the occurrence of any default under, redemption of or acceleration prior to maturity of at least an aggregate of $100,000 of Indebtedness (as defined in the Debenture Purchase Agreement) of the Company or any of its Subsidiaries;

(iv) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Significant Subsidiary and, if instituted against the Company or any Significant Subsidiary by a third party, shall not be dismissed or stayed within sixty (60) days of their initiation;

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

(vi) the entry by a court of competent jurisdiction of (i) a decree, order, judgment or other similar document in respect of the Company or any Significant Subsidiary of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or (ii) a decree, order, judgment or other similar document adjudging the Company or any Significant Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Company or any Significant Subsidiary under any applicable federal, state or foreign law or (iii) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Significant Subsidiary or of any substantial part of the Company's or any Significant Subsidiary's property, or ordering the winding up or liquidation of the Company's or any Significant Subsidiary's affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of sixty (60) consecutive days;

(vii) a final judgment or judgments from the same or affiliated entities for the payment of money aggregating in excess of $100,000 are rendered against the Company and/or any of its Significant Subsidiaries and which judgments are not, within thirty (30) days after the entry thereof,

bonded, discharged, settled or stayed pending appeal, or are not discharged within thirty (30) days after the expiration of such stay; provided, however, any judgment which is covered by insurance or an indemnity from a credit worthy party shall not be included in calculating the $100,000 amount set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the Holder) to the effect that such judgment is covered by insurance or an indemnity and the Company or such Significant Subsidiary (as the case may be) will receive the proceeds of such insurance or indemnity;

(viii) the Company and/or any Significant Subsidiary, individually or in the aggregate, either (i) fails to pay, when due, or within any applicable grace period, any payment with respect to any Indebtedness for borrowed money in excess of $100,000 due to any third party (other than, with respect to unsecured Indebtedness only, payments contested by the Company and/or such Significant Subsidiary (as the case may be) in good faith by proper proceedings and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP) or is otherwise in breach or violation of any agreement for monies owed or owing in an amount in excess of $100,000, which breach or violation permits the other party thereto to declare a default or otherwise accelerate amounts due thereunder, or (ii) suffer to exist any other circumstance or event that would, with or without the passage of time or the giving of notice, result in a default or event of default under any agreement binding the Company or any Significant Subsidiary, which default or event of default would or is likely to have a Material Adverse Effect (as defined in the Debenture Purchase Agreement);

(ix) other than as specifically set forth in another clause of this Section 4(a), any representation or warranty of the Company shall be in any material respect untrue when made or when deemed made (other than the representations or warranties subject to material adverse effect or materiality limitations, which shall not have been untrue in any respect when made or when deemed made) or the Company shall have breached any covenant or other term or condition of any Transaction Document, except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of five (5) consecutive Trading Days, provided however that a breach of Section 4(c) of the Debenture Purchase Agreement shall not be deemed curable; and

(x) any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of Section 12 of this Debenture.

(c) Notices. Subject to the terms of the Senior Loan Agreements, the Holder shall have all the rights and remedies provided in this Debenture, including those set forth in this Section 4(c) and Section 17, the other Transaction Documents and as permitted by law or at equity. Upon the occurrence of a Trigger Event or an Event of Default with respect to this Debenture or any other Transaction Document, the Company shall within two (2) Business Days of becoming aware of such Trigger Event or Event of Default deliver written notice thereof via facsimile or electronic mail and overnight courier (with next day delivery specified) (an "**Trigger Notice**") to the Holder. Notwithstanding anything to the contrary set forth in any of the Transaction Documents (including, without limitation Section 28 of this Debenture and comparable provisions contained in the other Transaction Documents), the Holder shall keep the contents of a Trigger Notice and the existence of a Trigger Event and Event of Default confidential and shall not disclose the contents of any Trigger Notice and the existence of a Trigger Event and Event of Default to any third party, regardless of whether such information constitutes material, non-public information, until the Company has made public disclosure, either through a filing made with the SEC or the issuance of a press release, regarding such matters.

(d) Notwithstanding anything to the contrary herein, if a Trigger Event or an Event of Default occurs and is continuing on the Rule 144 Eligibility Date, the outstanding and unpaid Conversion Amount as of the Rule 144 Eligibility Date shall, at Holder's option, be automatically converted into validly issued, fully paid and non-assessable Common Shares in accordance with Section 3, at the Conversion Rate using the Trigger Conversion Price, and such Rule 144 Eligibility Date shall be deemed to be an "Automatic Conversion Date" under Section 3 for purposes of this Section 4(c). In the event of automatic conversion under this Section 4(c), the parties agree that the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any conversion premium due under Section 3 and this Section 4(c) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. Any automatic conversion upon a Trigger Event and Event of Default shall not constitute an election of remedies by the Holder, and all other rights and remedies of the Holder shall be preserved.

(e) Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, and notwithstanding any conversion that is then required or in process, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash equal to the product of (i) all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges on such Principal and Interest, multiplied by (ii) 120% (the "**Event of Default Redemption Price**"), in addition to any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other Person or entity; provided that the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, any right to conversion, and any right to payment of the Event of Default Redemption Price or Change of Control Redemption Price, as applicable.

5. RIGHTS UPON FUNDAMENTAL TRANSACTION.

(a) Assumption. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Debenture and the other Transaction Documents in accordance with the provisions of this Section 5(a) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder prior to such Fundamental Transaction, including agreements to deliver to the Holder of this Debenture in exchange for this Debenture a security of the Successor Entity (if other than the Company) evidenced by a written instrument substantially similar in form and substance to this Debenture, including, without limitation, having a principal amount and interest rates equal to the principal amount then outstanding and the interest rates of this Debenture, respectively, held by the Holder, having similar conversion terms as this Debenture and having similar ranking to this Debenture, and reasonably satisfactory to the Holder and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose equity is quoted on or listed for trading on an Eligible Market. Upon the occurrence of any Fundamental Transaction, the Successor Entity (if other than the Company) shall succeed to, and be substituted for, the Company (so that from and after the date of such Fundamental Transaction, the provisions of this Debenture and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Debenture and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion or redemption of this Debenture at any time after the consummation of such Fundamental Transaction, in lieu of the Common Shares or other securities, cash, assets or other property (except such items still issuable under Sections 6 and 13, which shall continue to be receivable thereafter) issuable upon the conversion or redemption of this Debenture prior to such Fundamental Transaction, such shares of the publicly traded equity of the Successor Entity (including, if applicable, its Parent Entity) which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Debenture been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of this Debenture), as adjusted in accordance with the provisions of this Debenture. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5(a) to permit the Fundamental Transaction without the assumption of this Debenture. The provisions of this Section 5(a) shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of this Debenture.

(b) Notice of a Change of Control or Fundamental Transaction; Conversion Right. No sooner than twenty (20) Trading Days nor later than ten (10) Trading Days prior to the consummation of a Fundamental Transaction, but not prior to the public announcement of such Change of Control or Fundamental Transaction, the Company shall deliver written notice thereof via electronic mail and overnight courier to the Holder (a "**Change of Control Notice**"). At any time during the period beginning after the Holder's receipt of a Change of Control Notice or the Holder becoming aware of a Change of Control or Fundamental Transaction if a Change of Control Notice is not delivered to the Holder in accordance with the immediately preceding sentence (as applicable) and ending on the later of twenty (20) Trading Days after (A) consummation of such Change of Control or Fundamental Transaction or (B) the date of receipt of such Change of Control Notice, the Holder may convert all or any portion of this Debenture into Common Shares pursuant to Section 3 by delivering written notice thereof ("**Change of Control Conversion Notice**") to the Company, which Change of Control Conversion Notice shall indicate the Conversion Amount the Holder is electing to convert.

6. RIGHTS UPON ISSUANCE OF PURCHASE RIGHTS AND OTHER CORPORATE EVENTS.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 7 below, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to all or substantially all of the record holders of any class of Common Shares (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of Common Shares acquirable upon complete conversion of this Debenture (without taking into account any limitations or restrictions on the convertibility of this Debenture and assuming for such purpose that the Debenture was converted at the Conversion Price as of the applicable record date) immediately prior to the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Shares are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such Common Shares as a result of such Purchase Right (and beneficial ownership) to the extent of any such excess) and such Purchase Right to such extent shall be held in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable) for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right held similarly in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable)) to the same extent as if there had been no such limitation).

(b) Other Corporate Events. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of Common Shares are entitled to receive securities or other assets with respect to or in exchange for Common Shares (a "**Corporate Event**"), the Company shall make appropriate provision to ensure that the Holder will thereafter have the right to receive upon a conversion of this Debenture, at the Holder's option (i) in addition to the Common Shares receivable upon such conversion, such securities or other assets to which the Holder would have been entitled with respect to such Common Shares had such Common Shares been held by the Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of this Debenture) or (ii) in lieu of the Common Shares otherwise receivable upon such conversion, such securities or other assets received by the holders of Common Shares in connection with the consummation of such Corporate Event in such amounts as the Holder would have been entitled to receive had this Debenture initially been issued with conversion rights for the form of such consideration (as opposed to Common Shares) at a conversion rate for such consideration commensurate with the Conversion Rate. Provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Holder. The provisions of this Section 6 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion or redemption of this Debenture.

7. RIGHTS UPON ISSUANCE OF OTHER SECURITIES.

(a) Adjustment of Fixed Conversion Price upon Issuance of Common Shares. If and whenever during the period commencing immediately following the Subscription Date the Company issues or sells, or in accordance with this Section 7(a) is deemed to have issued or sold, any Common Shares (including the issuance or sale of Common Shares owned or held by or for the account of the Company, but excluding any Excluded Securities (as defined in the Debenture Purchase Agreement) issued or sold or deemed to have been issued or sold) for cash consideration per share (the "**New Issuance Price**") less than a price equal to the Fixed Conversion Price in effect immediately prior to such issuance or sale or deemed issuance or sale (such Standard Conversion Price then in effect is referred to herein as the "**Applicable Price**") (the foregoing a "**Dilutive Issuance**"), then, immediately after such Dilutive Issuance, the Fixed Conversion Price then in effect shall be reduced to an amount equal to the New Issuance Price. For all purposes of the foregoing (including, without limitation, determining the adjusted Fixed Conversion Price and the New Issuance Price under this Section 7(a)), the following shall be applicable:

(i) Issuance of Options. Subject to 7(a)(iv) below, if the Company in any manner grants or sells any Options (other than any Excluded Securities (as defined in the Debenture Purchase Agreement)) and the lowest price per share for which one Common Share is at any time issuable upon

the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof is less than the Applicable Price, then such Common Share shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Option for such price per share. For purposes of this Section 7(a)(i), the "lowest price per share for which one Common Share is at any time issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof" shall be equal to the difference of (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one Common Share upon the granting or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof and (y) the lowest exercise price set forth in such Option for which one Common Share is issuable (or may become issuable assuming all possible market conditions) upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof, minus (2) the sum of all amounts paid or payable to the holder of such Option (or any other Person) with respect to any one Common Share upon the granting or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof plus the value of any other consideration consisting of cash, debt forgiveness, assets or any other property received or receivable by, or benefit conferred on, the holder of such Option (or any other Person). Except as contemplated below, no further adjustment of the Fixed Conversion Price shall be made upon the actual issuance of such Common Share or of such Convertible Securities upon the exercise of such Options or otherwise pursuant to the terms thereof or upon the actual issuance of such Common Shares upon conversion, exercise or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. Subject to 7(a)(iv) below, if the Company in any manner issues or sells any Convertible Securities (other than any Excluded Securities (as defined in the Debenture Purchase Agreement)) and the lowest price per share for which one Common Share is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof is less than the Applicable Price, then such Common Share shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this Section 7(a)(ii), the "lowest price per share for which one Common Share is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof" shall be equal to the difference of (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to one Common Share upon the issuance or sale of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security or otherwise pursuant to the terms thereof and (y) the lowest conversion price set forth in such Convertible Security for which one Common Share is issuable upon conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof, minus (2) the sum of all amounts paid or payable to the holder of such Convertible Security (or any other Person) with respect to any one Common Share upon the issuance or sale of such Convertible Security plus the value of any other consideration received or receivable consisting of cash, debt forgiveness, assets or other property by, or benefit conferred on, the holder of such Convertible Security (or any other Person). Except as contemplated below, no further adjustment of the Fixed Conversion Price shall be made upon the actual issuance of such Common Shares upon conversion, exercise or exchange of such Convertible Securities or otherwise pursuant to the terms thereof, and if any such issuance or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Fixed Conversion Price has been or is to be made pursuant to other provisions of this Section 7(a), except as contemplated below, no further adjustment of the Fixed Conversion Price shall be made by reason of such issuance or sale.

(iii) Change in Option Price or Rate of Conversion. With respect to any Options (other than any Excluded Securities (as defined in the Debenture Purchase Agreement)) or Convertible Securities (other than any Excluded Securities (as defined in the Debenture Purchase Agreement)) issued during the period commencing immediately following the Subscription Date, if the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for Common Shares increases or decreases at any time after the issuance of such Options or Convertible Securities (other than proportional changes in conversion or exercise prices, as applicable, in connection with an event referred to in Section 7(b) below), the Fixed Conversion Price in effect at the time of such increase or decrease shall be adjusted to the Fixed Conversion Price which would have been in effect at such time

had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate (as the case may be) at the time initially granted, issued or sold. For purposes of this Section 7(a)(iii), if the terms of any Option or Convertible Security that was outstanding as of the Subscription Date are increased or decreased in the manner described in the immediately preceding sentence during the period commencing immediately following the Subscription Date, then such Option or Convertible Security and the Common Shares deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 7(a) shall be made if such adjustment would result in an increase of the Fixed Conversion Price then in effect.

(iv) Calculation of Consideration Received. If any Option and/or Convertible Security and/or Adjustment Right is issued in connection with the issuance or sale or deemed issuance or sale of Common Shares (the "**Primary Security**", and such Option and/or Convertible Security and/or Adjustment Right, the "**Secondary Securities**"), together comprising one integrated transaction (or one or more transactions if such issuances or sales or deemed issuances or sales of securities of the Company either (A) have at least one investor or purchaser in common, (B) are consummated in reasonable proximity to each other and/or (C) are consummated under the same plan of financing), the aggregate consideration per Common Share with respect to such Primary Security shall be deemed to be equal to the difference of (x) the lowest price per share for which one Common Share was issued (or was deemed to be issued pursuant to Section 7(a)(i) or 7(a)(ii) above, as applicable) in such integrated transaction solely with respect to such Primary Security, minus (y) with respect to such Secondary Securities, the sum of (I) the Black Scholes Consideration Value of each such Option, if any, (II) the fair market value (as determined by the Holder in good faith) or the Black Scholes Consideration Value, as applicable, of such Adjustment Right, if any, and (III) the fair market value (as determined by the Holder) of such Convertible Security, if any, in each case, as determined on a per share basis in accordance with this Section 7(a)(iv). If any Common Shares, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor (for the purpose of determining the consideration paid for such Common Shares, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be deemed to be the gross amount of consideration received by the Company therefor. If any Common Shares, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company (for the purpose of determining the consideration paid for such Common Shares, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company for such securities will be the arithmetic average of the VWAPs of such security for each of the five (5) Trading Days immediately preceding the date of receipt. If any Common Shares, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor (for the purpose of determining the consideration paid for such Common Shares, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Shares, Options or Convertible Securities (as the case may be). The fair value of any consideration other than cash or publicly traded securities will be determined jointly by the Company and the Holder. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the "**Valuation Event**"), the fair value of such consideration will be determined within five (5) Trading Days after the tenth (10^{th}) day following such Valuation Event by an independent, reputable appraiser jointly selected by the Company and the Holder. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company.

(v) Record Date. If the Company takes a record of the holders of Common Shares for the purpose of entitling them (A) to receive a dividend or other distribution payable in Common Shares, Options or in Convertible Securities or (B) to subscribe for or purchase Common Shares, Options or Convertible Securities, then such record date will be deemed to be the date of the issuance or sale of the Common Shares deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase (as the case may be).

(b) Adjustment of Fixed Conversion Price upon Subdivision or Combination of Common Shares. If the Company at any time on or after the Subscription Date subdivides (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) the outstanding Common Shares into a

greater number of shares, the Fixed Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company at any time on or after the Subscription Date combines (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) its outstanding Common Shares into a smaller number of shares, the Fixed Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 7(b) shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 7(b) occurs during the period that a Fixed Conversion Price is calculated hereunder, then the calculation of such Fixed Conversion Price shall be adjusted appropriately to reflect such event.

(c) Other Events. Notwithstanding anything contrary herein, for so long as this Debenture or any principal amount, interest or fees or expenses due hereunder remain outstanding and unpaid, the Company shall not enter into any public or private offering of its securities (including, without limitation, any securities convertible into Common Shares) with any person (an "**Other Investor**") that has the effect of establishing rights or otherwise benefiting such Other Investor in a manner more favorable in any material respect to such Other Investor than the rights and benefits established in favor of the Holder by this Debenture unless, in any such case, the Holder has been provided with such rights and benefits pursuant to a definitive written agreement or agreements between the Company and the Holder.

(d) Calculations. All calculations under this Section 7 shall be made by rounding to the nearest 1/100th of a cent or the nearest whole share, as applicable. The number of Common Shares outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Shares.

(e) Voluntary Adjustment by Company. The Company may at any time during the term of this Debenture, with the prior written consent of the Holder, reduce the then current Fixed Conversion Price of this Debenture to any amount and for any period of time deemed appropriate by the board of directors of the Company.

8. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation (as defined in the Debenture Purchase Agreement), its Bylaws (as defined in the Debenture Purchase Agreement) or any other organizational documents of the Company, or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Debenture, and will at all times in good faith carry out all of the provisions of this Debenture and take all action as may be required to protect the rights of the Holder of this Debenture. Without limiting the generality of the foregoing or any other provision of this Debenture or the other Transaction Documents, the Company (a) shall not increase the par value of any Common Shares receivable upon conversion of this Debenture above the Conversion Price then in effect, and (b) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Common Shares upon the conversion of this Debenture. Notwithstanding anything herein to the contrary, if the Company is not permitted to automatically convert this Debenture in full for any reason (other than pursuant to restrictions set forth in Section 3(d) hereof), the Company shall use its reasonable best efforts to promptly remedy such failure, including, without limitation, obtaining such consents or approvals as necessary to permit such conversion into Common Shares.

9. RESERVATION OF AUTHORIZED SHARES.

(a) Reservation. So long as this Debenture remains outstanding, the Company shall at all times reserve at least 150% of the number of Common Shares as shall from time to time be necessary to effect the conversion of this Debenture then outstanding (without regard to any limitations on conversions and assuming this Debenture remains outstanding until the Maturity Date) (the "**Required Reserve Amount**").

(b) Insufficient Authorized Shares. If, notwithstanding Section 9(a), and not in limitation thereof, at any time while this Debenture remains outstanding, the Company does not have a sufficient number of authorized and unreserved Common Shares to satisfy its obligation to reserve for issuance upon conversion of this Debenture at least a number of Common Shares equal to the Required Reserve Amount (an "**Authorized Share Failure**"), then the Company will use commercially reasonable efforts to, as promptly as reasonably practicable, to take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company's obligations pursuant to the Transaction Documents or to approve a reserve stock split, in the case of an insufficient number of authorized shares, obtain stockholder approval of an increase in such authorized number of shares or a reverse stock split, and causing its directors and executive officers to vote their respective shares of the Company in favor of an increase in the authorized shares of

the Company or a reverse stock split to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

10. [RESERVED].

11. VOTING RIGHTS; NO RIGHTS AS SHAREHOLDER. The Holder shall have no voting rights as the holder of this Debenture, except as required by law. This Debenture, in and of itself, shall not confer upon the Holder any rights as a holder of Common Shares or otherwise as a shareholder of the Company.

12. COVENANTS. Until this Debenture has been converted, redeemed or otherwise satisfied in accordance with its terms:

(a) Rank. This Debenture shall constitute general unsecured obligation of the Company, ranking junior in right of payment with all of the existing and future Indebtedness of the Company, together with all costs of collecting such Indebtedness (including attorneys' fees) and all interest owed with respect to such Indebtedness, including, without limitation, all interest accruing after the commencement by or against the Company of any bankruptcy, reorganization or similar proceeding and ranking senior in right of payment to any future Indebtedness of the Company that is expressly made subordinate to this Debenture by the terms of such Indebtedness.

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

(c) Preservation of Existence, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, and its material rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except to the extent that the failure to become or remain so duly qualified and in good standing would not reasonably be expected to have a Material Adverse Effect (as defined in the Debenture Purchase Agreement).

(d) Maintenance of Properties, Etc. The Company shall reasonably maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its material properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted.

(e) Maintenance of Intellectual Property. The Company will, and will cause each of its Subsidiaries to, take such action as is necessary to maintain the Intellectual Property Rights (as defined in the Debenture Purchase Agreement) of the Company and/or any of its Subsidiaries that are necessary or material to the conduct of its business in full force and effect.

(f) [Intentionally omitted]

(g) Restricted Issuances. The Company shall not, directly or indirectly, without the prior written consent of the Holder (i) issue any Debentures (other than as contemplated by the Debenture Purchase Agreement and the Debentures (as defined in the Debenture Purchase Agreement)) or (ii) issue any other securities that would cause a breach or default under this Debenture or any of the other Transaction Documents.

(h) Compliance with Holding Foreign Companies Accountable Act. As soon as practicable following the Issuance Date (or, with respect to any Successor Foreign Law (as defined below), as soon as practicable following the effective date thereof), but, in either case, in no event later than the earlier to occur of (x) 120 calendar days after the effective date of any Successor Foreign Law and (y) such date that the Common Shares would be delisted from the Principal Market with respect thereto, the Company shall take all actions necessary to cause the Company to be in compliance with the Holding Foreign Companies Accountable Act (Senate Bill S.945) in the form approved by the Senate prior to Subscription Date, assuming, for such purposes, that such bill is made into a federal law of the United States without any further changes prior to such time of determination (unless such bill or any applicable successor bill is made into a federal law of the United States on or prior to such time of determination, in which case, this clause shall apply to such successor federal law of the United States (as applicable, the "**Successor Foreign Law**"), *mutatis mutandis)*.

13. DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Section 7, if the Company shall declare or make any dividend or other distributions of its assets (or rights to acquire its assets) to any or all holders of Common Shares, by way of return of capital or otherwise (including without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (the "**Distributions**"), then the Holder will be entitled to such Distributions as if the Holder had held the number of Common Shares acquirable upon complete conversion of this Debenture (without taking into account any limitations or restrictions on the convertibility of this Debenture and assuming for such purpose that the Debenture was converted at the Conversion Price as of the applicable record date) immediately prior to the date on which a record is taken for such Distribution or, if no such record is taken, the date as of which the record holders of Common Shares are to be determined for such Distributions (provided, however, that to the extent that the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such Common Shares as a result of such Distribution (and beneficial ownership) to the extent of any such excess) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

14. AMENDING THE TERMS OF THIS DEBENTURE. The prior written consent of each of the Company and the Holder shall be required for any change, waiver or amendment to this Debenture (other than Section 3(d) which may not be amended, modified or waived hereunder). Any change, waiver or amendment so approved shall be binding upon the Holder and all and future holders of this Debenture.

15. TRANSFER. This Debenture and any Common Shares issued upon conversion of this Debenture may be offered, sold, assigned or transferred by the Holder without the consent of the Company only to an Affiliate of the Holder, subject only to the provisions of Section 2(g) of the Debenture Purchase Agreement.

16. REISSUANCE OF THIS DEBENTURE.

(a) Transfer. If this Debenture is to be transferred, the Holder shall surrender this Debenture to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Debenture (in accordance with Section 16(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Debenture (in accordance with Section 16(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Debenture, acknowledge and agree that, by reason of the provisions of Section 3(c)(iii) following conversion or redemption of any portion of this Debenture, the outstanding Principal represented by this Debenture may be less than the Principal stated on the face of this Debenture.

(b) Lost, Stolen or Mutilated Debenture. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Debenture (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Debenture, the Company shall execute and deliver to the Holder a new Debenture (in accordance with Section 16(d)) representing the outstanding Principal.

(c) Debenture Exchangeable for Different Denominations. This Debenture is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Debenture or Debentures (in accordance with Section 16(d) and in principal amounts of at least $1,000) representing in the aggregate the outstanding Principal of this Debenture, and each such new Debenture will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Debentures. Whenever the Company is required to issue a new Debenture pursuant to the terms of this Debenture, such new Debenture (i) shall be of like tenor with this Debenture, (ii) shall represent, as indicated on the face of such new Debenture, the Principal remaining outstanding (or in the case of a new Debenture being issued pursuant to Section 16(a) or Section 16(c), the Principal designated by the Holder which, when added to the principal represented by the other new Debentures issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Debenture immediately prior to such issuance of new Debentures), (iii) shall have an issuance date, as

indicated on the face of such new Debenture, which is the same as the Issuance Date of this Debenture, (iv) shall have the same rights and conditions as this Debenture, and (v) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Debenture, from the Issuance Date.

17. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Debenture shall be cumulative and in addition to all other remedies available under this Debenture and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Debenture. No failure on the part of the Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of the Holder at law or equity or under this Debenture or any of the other Transaction Documents shall not be deemed to be an election of Holder's rights or remedies under this Debenture or at law or in equity. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The Company shall provide all information and documentation to the Holder that is reasonably requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Debenture (including, without limitation, compliance with Section 7).

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

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

20. FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. Notwithstanding the foregoing, nothing contained in this Section 20 shall permit any waiver of any provision of Section 3(d).

21. Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts

sitting in Delaware, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to Holder or to enforce a judgment or other court ruling in favor of Holder. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.

22. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Debenture, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the Debenture Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Debenture, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) within 24 hours after any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least ten (10) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Shares, (B) with respect to any grant, issuances, or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of Common Shares or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

(b) Currency. All dollar amounts referred to in this Debenture are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Debenture shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Debenture, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

(c) Payments. Whenever any payment of cash is to be made by the Company to the Holder pursuant to this Debenture, unless otherwise expressly set forth herein, such payment shall be made in U.S. Dollars by a certified check drawn on the account of the Company and sent via overnight courier service to the Holder at such address as previously provided to the Company in writing (which address, in the case of the initial Holder, shall initially be as set forth in Section 9(f) of the Debenture Purchase Agreement), provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Debenture is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day. Any amount of Principal or other amounts due under this Debenture which is not paid when due (except for Interest accruing following the Maturity Date and to the extent any other such amount due under this Debenture is simultaneously accruing interest at the Trigger Rate hereunder) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of fifteen percent (15%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

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

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

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

26. MAXIMUM PAYMENTS. Without limiting Section 9(d) of the Debenture Purchase Agreement, nothing contained herein shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the Holder and thus refunded to the Company.

27. CERTAIN DEFINITIONS. For purposes of this Debenture, the following terms shall have the following meanings:

(a) "**1933 Act**" means the United States Securities Act of 1933, as amended, and the rules and regulations thereunder.

(b) "**1934 Act**" means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

(c) "**Adjustment Right**" means any right granted with respect to any securities issued in connection with, or with respect to, any issuance or sale (or deemed issuance or sale in accordance with Section 7) of Common Shares (other than rights of the type described in Section 6(a) hereof) that could result in a decrease in the net consideration received by the Company in connection with, or with respect to, such securities (including, without limitation, any cash settlement rights, cash adjustment or other similar rights).

(d) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(e) "**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issuance Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of Common Shares would or could be aggregated with the Holder's and the Persons described in foregoing clauses (i), (ii) and (iii) for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

(f) "**Black Scholes Consideration Value**" means the value of the applicable Option, Convertible Security or Adjustment Right (as the case may be) as of the date of issuance thereof calculated using the Black Scholes Option Pricing Model obtained from the "OV" function on Bloomberg utilizing (i) an underlying price per share equal to the Closing Sale Price of the Common Shares on the Trading Day immediately preceding the public announcement of the execution of definitive documents with respect to the issuance of such Option, Convertible Security or Adjustment Right (as the case may be), (ii) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of such Option, Convertible Security or Adjustment Right (as the case may be) as of the date of issuance of such Option, Convertible Security or Adjustment Right (as the case may be), (iii) a zero cost of borrow and (iv) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the "HVT"

function on Bloomberg (determined utilizing a 365 day annualization factor) as of the Trading Day immediately following the date of issuance of such Option, Convertible Security or Adjustment Right (as the case may be).

(g) "**Bloomberg**" means Bloomberg, L.P.

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

(i) "**Change of Control**" means any Fundamental Transaction other than (i) any merger of the Company or any of its, direct or indirect, wholly owned Subsidiaries with or into any of the foregoing Persons, (ii) any reorganization, recapitalization or reclassification of the Common Shares in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, or (iii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

(j) "**Closing Bid Price**" and "**Closing Sale Price**" means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price (as the case may be) then the last bid price or last trade price, respectively, of such security immediately prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price (as the case may be) of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 21. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions applicable during such period.

(k) "**Common Shares**" means (i) the Company's shares of common stock, $0.001 par value per share, and (ii) any share capital into which such Common Shares shall have been changed or any share capital resulting from a reclassification of such Common Shares.

(l) "**Convertible Securities**" means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any Common Shares.

(m) "**Eligible Market**" means The New York Stock Exchange, the NYSE American, The Nasdaq Global Select Market, The Nasdaq Global Market or the Principal Market.

(n) "**Fundamental Transaction**" means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, other than (x) any merger of the Company or any of its, direct or indirect, wholly owned Subsidiaries with or into any of the foregoing Persons, (y) any reorganization, recapitalization or reclassification of the Common Shares in which holders of the Company's voting power immediately prior to such

reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, or (z) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its Subsidiaries, taken as a whole, to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Shares be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding Common Shares, (y) 50% of the outstanding Common Shares calculated as if any Common Shares held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of Common Shares such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding Common Shares, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding Common Shares, (y) at least 50% of the outstanding Common Shares calculated as if any Common Shares held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of Common Shares such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding Common Shares, or (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding Common Shares, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Shares, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Shares not held by all such Subject Entities as of the date of this Debenture calculated as if any Common Shares held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding Common Shares or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other shareholders of the Company to surrender their Common Shares without approval of the shareholders of the Company.

(o) "**GAAP**" means United States generally accepted accounting principles, consistently applied.

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

(q) "**Indebtedness**" shall have the meaning ascribed to such term in the Debenture Purchase Agreement.

(r) "**Maturity Date**" shall mean March 14, 2025; provided, however, the Maturity Date may be extended at the option of the Holder (i) in the event that, and for so long as, an Event of Default shall have occurred and be continuing or (ii) through the date that is twenty (20) Business Days after the consummation of a Fundamental Transaction in the event that a Fundamental Transaction is publicly announced or a Change of Control Notice is delivered prior to the Maturity Date, provided further that if this Debenture shall automatically convert in accordance with the terms herein and the Conversion Amount would be limited pursuant to Section 3(d) hereunder, the Maturity Date shall automatically be extended until such time as such provision shall not limit the conversion of this Debenture.

(s) "**Options**" means any rights, warrants or options to subscribe for or purchase Common Shares or Convertible Securities.

(t) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose equity security is quoted or listed on an Eligible Market, or, if there is more than one

such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

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

(v) "**Principal Market**" means the Nasdaq Capital Market.

(w) "**Resale Eligibility Date**" means the earlier of (i) the date the initial Registration Statement (as defined in the RRA) filed pursuant to the RRA is declared effective by the SEC (and each prospectus contained therein is available for use on such date), and (ii) the Rule 144 Eligibility Date.

(x) "**RRA**" means that certain registration rights agreement, dated as of the Subscription Date, by and between the Company and the Holder made a party thereto, as may be amended from time to time.

(y) "**Rule 144 Eligibility Date**" means the initial date any of the Conversion Shares are eligible to be resold pursuant to Rule 144.

(z) "**SEC**" means the United States Securities and Exchange Commission or the successor thereto.

(aa) "**Senior Loan Agreements**" means those certain Senior Secured Loan Agreements dated as of December 3, 2021, by and among the Company, certain of the Company's subsidiaries as guarantors, and certain institutional lenders affiliated with Mudrick Capital Management, LP.

(bb) "**Significant Subsidiary**" means any Subsidiary that is a "significant subsidiary" (within the meaning of Rule 1-02 of Regulation S-X, promulgated under the 1933 Act as such rule is in effect at the time of determination).

(cc) "**Stockholder Approval**" means the approval of such number of the holders of the outstanding shares of the Company's voting securities as required by the Company's amended and restated bylaws and the Delaware General Corporation Law, to ratify and approve all of the transactions contemplated by the Transaction Documents, including the issuance of all of the securities issued and potentially issuable to the Holder thereunder, all as may be required by the applicable rules and regulations of the Eligible Market (or any successor entity).

(dd) "**Subsidiaries**" shall have the meaning set forth in the Debenture Purchase Agreement.

(ee) **"Subject Entity**" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group, in each case that is not an Affiliate of the Company.

(ff) "**Successor Entity**" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(gg) "**Trading Day**" means, as applicable, (x) with respect to all price or trading volume determinations relating to the Common Shares, any day on which the Common Shares are traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Shares, then on the principal securities exchange or securities market on which the Common Shares are then traded, provided that "Trading Day" shall not include any day on which the Common Shares are scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Shares are suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price determinations relating to the Common Shares, any day on which Nasdaq (or any successor thereto) is open for trading of securities.

(hh) "**Transaction Documents**" shall have the meaning set forth in the Debenture Purchase Agreement.

(ii) "**VWAP**" means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then

traded) during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg through its "HP" function (set to weighted average) or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest Closing Bid Price and the lowest closing ask price of any of the market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 21. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction applicable during such period.

28. DISCLOSURE. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Debenture, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall within one (1) Business Day of such receipt or prior to (or simultaneous with) such delivery, as applicable, publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company shall so indicate to the Holder contemporaneously with delivery (or promptly following receipt by the Company) of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries. If the Company or any of its Subsidiaries provides material non-public information to the Holder that is not simultaneously filed on a Current Report on Form 8-K or otherwise and the Holder has not agreed to receive such material non-public information, the Company hereby covenants and agrees that the Holder shall not have any duty of confidentiality to the Company, any of its Subsidiaries or any of their respective officers, directors, employees, affiliates or agents with respect to, or a duty to any of the foregoing not to trade on the basis of, such material non-public information. Nothing contained in this Section 30 shall limit any obligations of the Company, or any rights of the Holder, under Section 4(i) of the Debenture Purchase Agreement.

[*signature page follows*]

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

REMARK HOLDINGS, INC.

By: _____

Name:

Title:

Exhibit I

ACKNOWLEDGMENT

The Company hereby (a) acknowledges, confirms and represents that_____, 2023 is the [Automatic Conversion Date][Rule 144 Eligibility Date][Conversion Settlement Date], (b) certifies that _____Common Shares issuable pursuant to such automatic conversion in accordance with the Debenture are eligible to be resold by the Holder either (i) pursuant to Rule 144 (subject to the Holder's execution and delivery to the Company of a customary 144 representation letter) or (ii) an effective and available registration statement and (c) hereby directs Computershare to issue the above indicated number of Common Shares in accordance with the Transfer Agent Instructions dated _____, 2023 from the Company and acknowledged and agreed to by Computershare LLC.

REMARK HOLDINGS, INC.

By: _____

Name:

Title:

DEBENTURE PURCHASE AGREEMENT

This **DEBENTURE PURCHASE AGREEMENT** (this "**Agreement**"), dated as of March 14, 2023, is by and among Remark Holdings, Inc., a Delaware corporation (the "**Company**"), and the buyer signatory made a party hereto ("**Buyer**").

RECITALS

A. Each of the Company and Buyer is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the United States Securities Act of 1933, as amended (the "**1933 Act**"), and/or Rule 506(b) of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**SEC**") under the 1933 Act.

B. The Company has authorized the issuance and sale of two convertible subordinated debentures of the Company, in the aggregate original principal amount of $2,778,000, substantially in the form attached hereto as **Exhibit A** (each, a "**Debenture**", and collectively, the "**Debentures**"), which Debentures shall be convertible into Common Shares (as defined below) (the Common Shares issuable pursuant to the terms of the Debentures, including, without limitation, upon conversion of principal and any interest, late charges or additional amounts or otherwise thereunder, collectively, the "**Conversion Shares**"), in accordance with the terms of the Debentures.

C. Buyer wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, the Debentures in the aggregate original principal amount of $2,778,000 issuable on the applicable Closing Date (as defined below).

D. On the First Closing Date (as defined below), the parties hereto shall execute and deliver a Registration Rights Agreement, in the form attached hereto as **Exhibit B** (the "**RRA**"), pursuant to which the Company shall agree to provide certain registration rights with respect to the Registrable Securities (as defined in the RRA), under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws.

G. Except as may be otherwise limited hereby or thereby, the Debentures will be unsecured and subordinated to any existing or future debt obligations of the Company.

H. The Debentures and the Conversion Shares are collectively referred to herein as the "**Securities**".

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Buyer hereby agree as follows:

1. PURCHASE AND SALE OF THE DEBENTURES.

(a) Purchase of the Debentures. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, the Company shall issue and sell to Buyer, and Buyer agrees to purchase from the Company on the applicable Closing Date (as defined below), the Debentures in the aggregate original principal amount of $2,778,000.

(b) Closings.

(i) The first closing of the purchase of a Debenture in the original principal amount of $1,667,000 (the "**First Debenture**") by Buyer (the "**First Closing**" and the date of such First Closing, the "**First Closing Date**") shall occur at the offices of Sullivan & Worcester LLP, 1633 Broadway, New York, NY 10019. The date and time of the First Closing shall be 10:00 a.m., New York time, on the first (1st) Business Day after the date on which all of the conditions to the First Closing set forth in Sections 6 and 7 below are satisfied or waived (or such other date as is mutually agreed to by the Company and Buyer). As used herein, "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

(ii) The second closing of the purchase of a Debenture in the original principal amount of $1,111,000 (the "**Second Debenture**") by Buyer (the "**Second Closing**" and together with the First Closing, each, a "**Closing**"; and the date of such Second Closing, the "**Second Closing Date**", and together with the First Closing Date, each, a "**Closing Date**") shall occur at the offices of Sullivan & Worcester LLP, 1633 Broadway, New York, NY 10019. The date and time of the Second Closing shall be 10:00 a.m., New York time, on the earlier of (x) the 30th day after the First Closing date and (ii) the date of the filing of the initial Registration Statement (as defined in the RRA) covering the Registrable Securities, provided that all of the conditions to the Second Closing set forth in Sections 6 and 7 below are satisfied or waived (or such other date as is mutually agreed to by the Company and Buyer).

(c) Purchase Price. The purchase price for the First Debenture to be purchased by Buyer (the "**First Debenture Purchase Price**") shall be $1,500,000 and the purchase price for the Second Debenture to be purchased by Buyer (the "**Second Debenture Purchase Price**" and together with the First Debenture Purchase Price, the "**Purchase Price**") shall be $1,000,000.

(d) Form of Payment.

(i) On the First Closing Date, (A) Buyer shall pay the First Debenture Purchase Price (less the amounts withheld pursuant to Section 4(g)) to the Company for the First Debenture to be issued and sold to Buyer on the First Closing Date, by wire transfer of immediately available funds in accordance with a Flow of Funds Letter (as defined below) and (B) the Company shall deliver to Buyer the First Debenture in the aggregate original principal amount of $1,667,000, duly executed on behalf of the Company and registered in the name of Buyer or its designee.

(ii) On the Second Closing Date, (A) Buyer shall pay the Second Debenture Purchase Price (less the amounts withheld pursuant to Section 4(g)) to the Company for the First Debenture to be issued and sold to Buyer on the Second Closing Date, by wire transfer of immediately available funds in accordance with a Flow of Funds Letter and (B) the Company shall deliver to Buyer the Second Debenture in the aggregate original principal amount of $1,111,000, duly executed on behalf of the Company and registered in the name of Buyer or its designee.

2. BUYER'S REPRESENTATIONS AND WARRANTIES.

Buyer represents and warrants to the Company that, as of the date hereof and as of each Closing:

(a) Organization; Authority. Buyer is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite corporate power and authority to conduct its business as currently conducted and to enter into and to consummate the transactions contemplated by the Transaction Documents to which it is a party and otherwise to carry out its obligations hereunder and thereunder.

(b) No Public Sale or Distribution. Buyer (i) is acquiring the Debentures and (ii) upon conversion of the Debentures will acquire the Conversion Shares issuable upon conversion thereof, in each case, for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof in violation of applicable securities laws, except pursuant to sales registered or exempted under the 1933 Act and any applicable state securities laws; provided, however, by making the representations herein, Buyer does not agree, or make any representation or warranty, to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption from registration under the 1933 Act and any applicable state securities laws. Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities in violation of applicable securities laws. For purposes of this Agreement, "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any Governmental Entity (as defined below) or any department or agency thereof.

(c) Accredited Investor Status. Buyer is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D.

(d) Reliance on Exemptions. Buyer understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of Buyer to acquire the Securities.

(e) Information. Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances, and operations of the Company and materials relating to the offer and sale of the Securities that have been requested by Buyer. Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigations conducted by Buyer or its advisors, if any, or its representatives shall modify, amend or affect Buyer's right to rely on the Company's representations and warranties contained herein. Buyer understands that its investment in the Securities involves a high degree of risk. Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities.

(f) No Governmental Review. Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(g) Transfer or Resale. Buyer understands that except as provided in the RRA and Section 4(h) hereof: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) Buyer shall have delivered to the Company (if requested by the Company) an opinion of counsel, in a form reasonably acceptable to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) Buyer provides the Company with reasonable assurance that such Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A promulgated under the 1933 Act (or a successor rule thereto) (collectively, "**Rule 144**"); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144, and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC promulgated thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. Notwithstanding the foregoing, the Securities may be pledged in connection with a bona fide margin account or other loan or financing arrangement secured by the Securities and such pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Buyer effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document, including, without limitation, this Section 2(g).

(h) Validity; Enforcement. This Agreement and each of the other Transaction Documents to which it is a party have been duly and validly authorized, executed and delivered on behalf of Buyer and shall constitute the legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(i) No Conflicts. The execution, delivery and performance by Buyer of this Agreement and each of the other Transaction Documents to which it is a party and the consummation by Buyer of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of Buyer, or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations hereunder.

(j) No Short Selling. The Buyer represents and warrants to the Company that at no time prior to the date of this Agreement has any of the Buyer, its agents, representatives or affiliates engaged in or effected, and shall not engage in or effect, in any manner whatsoever, directly or indirectly, any (i) "short sale" (as such term is defined in Rule 200 of Regulation SHO of the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), of the Common Shares (excluding transactions properly marked "short exempt") or (ii) hedging transaction, which establishes a net short position with respect to the Common Shares.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to Buyer that, as of the date hereof and as of each Closing:

(a) Organization and Qualification. Except as set forth on Schedule 3(a), each of the Company and each of its Subsidiaries are entities duly organized and validly existing and in good standing under the laws of the jurisdiction in which they are formed, and have the requisite corporate power and authority to own their properties and to carry on their business as now being conducted. Except as set forth on Schedule 3(a), each of the Company and each of its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary. As used in this Agreement, "**Material Adverse Effect**" means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or prospects of the Company or any Subsidiary, taken as a whole, (ii) the transactions contemplated hereby or in any of the other Transaction Documents or any other agreements or instruments to be entered into in connection herewith or therewith or (iii) the authority or ability of the Company or any of its Subsidiaries to perform any of their respective obligations under any of the Transaction Documents. The Company has no Subsidiaries except as set forth on Schedule 3(a). "**Subsidiaries**" means any Person in which the Company, directly or indirectly, (I) owns a majority of the outstanding share capital or holds a majority of the equity or similar interest of such Person or (II) controls or operates all or any part of the business, operations or administration of such Person, and each of the foregoing, is individually referred to herein as a "**Subsidiary**".

(b) Authorization; Enforcement; Validity. The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents and to issue the Securities in accordance with the terms hereof and thereof. The execution and delivery of this Agreement and the other Transaction Documents by the Company, and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Debentures and the reservation for issuance and issuance of the Conversion Shares issuable upon conversion of the Debentures) have been duly authorized by the Company's board of directors (the "**Signing Resolutions**"), and the Signing Resolutions are valid, in full force and effect, have been furnished to Buyer, and have not been modified or supplemented in any respect. Other than the filing with the SEC of one or more Registration Statements in accordance with the requirements of the RRA, the filing of a Form D with the SEC, any other filings as may be required by any state securities agencies, and the submission of a Listing of Additional Shares Notification with the Principal Market (as defined below) (collectively, the "**Required Filings**"), no further filing, consent or authorization is required by the Company, its Subsidiaries, their respective boards of directors or other governing body, as applicable, or their respective shareholders or stockholders, as applicable, in connection with the consummation of the transactions contemplated by this Agreement. This Agreement has been, and the other Transaction Documents to which the Company is a party will be prior to the each Closing, duly executed and delivered by the Company, and each constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law. "**Transaction Documents**" means, collectively, this Agreement, the Debentures, the RRA, the Irrevocable Transfer Agent Instructions (as defined below) and each of the other agreements and instruments entered into and delivered by any of the parties hereto or any of the Subsidiaries in connection with the transactions contemplated hereby and thereby, as may be amended from time to time.

(c) Issuance of Securities. The issuance of the Debentures is duly authorized and, upon issuance in accordance with the terms of the Transaction Documents, shall be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, mortgages, defects, claims, liens, pledges, charges, taxes, rights of first refusal, encumbrances, security interests and other encumbrances (collectively "**Liens**") with respect to the issuance thereof. As of the First Closing Date, the Company shall have reserved from its duly authorized share capital not less than 150% of the maximum number of Conversion Shares issuable upon conversion of the First Debenture and as of the Second Closing Date, the Company shall have reserved from its duly authorized share capital not less than 150% of the maximum number of Conversion Shares issuable upon conversion of the Debentures (assuming for purposes hereof that (x) the Debentures are convertible at the Standard Conversion Price (as defined in the Debentures) and (y) any such conversion shall not take into account any limitations on the conversion of the Debentures set forth in the Debentures). Upon issuance or conversion in accordance with the Debentures, the Conversion Shares, when issued, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights or Liens with respect to the issue thereof, with the holders thereof being entitled to all rights accorded to a holder of Common Shares. Subject to the accuracy of the representations and warranties of Buyer in this Agreement, the offer and issuance by the Company of the Securities is exempt from registration under the 1933 Act.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Debentures, the Conversion Shares and the reservation for issuance of the Conversion Shares) will not (i) result in a violation of the Certificate of Incorporation (as defined below) (including, without limitation, any certificate of designation contained therein) or the Bylaws (as defined below), (ii) except as set forth on Schedule 3(d), conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, or (iii) assuming the accuracy of the representations and warranties in Section 2 and the making of the Required Filings, result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations and the rules and regulations of the Nasdaq Capital Market (the "**Principal Market**") and including all applicable foreign, federal and state laws, rules and regulations) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, except in the case of clauses (ii) and (iii) above, for such breaches, violations or conflicts as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(e) Consents. Other than the Required Filings and such consents, authorizations, filings or registrations the absence of which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor any Subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with, any Governmental Entity or any regulatory or self-regulatory agency or any other Person in order for the Company and such Subsidiaries to execute, deliver or perform any of their respective obligations under or contemplated by the Transaction Documents, in each case, in accordance with the terms hereof or thereof. Neither the Company nor any of its Subsidiaries is aware of any facts or circumstances that might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the Required Filings or any other registrations, applications or filings contemplated by the Transaction Documents. The Company is not in violation of the requirements of the Principal Market and has no knowledge of any facts or circumstances that could reasonably lead to delisting or suspension of the Common Shares in the foreseeable future. "**Governmental Entity**" means any nation, state, province, region, county,

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

(f) Acknowledgment Regarding Buyer's Purchase of Securities. The Company acknowledges and agrees that Buyer is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that Buyer is not (i) an officer or director of the Company or any of its Subsidiaries, (ii) an "affiliate" (as defined in Rule 144) of the Company or any of its Subsidiaries or (iii) to the Company's knowledge, a "beneficial owner" (as defined for purposes of Rule 13d-3 of the 1934 Act) of more than 10% of the Common Shares. The Company further acknowledges that Buyer is not acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to Buyer's purchase of the Securities. The Company further represents to Buyer that the Company's and each Subsidiary's decision to enter into the Transaction Documents to which each is a party has been based solely on the independent evaluation by the Company, each Subsidiary and their respective representatives. For the avoidance of doubt, Company further acknowledges to Buyer that Buyer is not a broker dealer nor is Buyer registered or required to be registered as a broker dealer.

(g) No General Solicitation; Placement Agent's Fees. Neither the Company, nor any of its Subsidiaries or affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by Buyer or its investment advisor) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold Buyer harmless against, any liability, loss or expense (including, without limitation, attorneys' fees and out-of-pocket expenses) arising in connection with any such claim. Neither the Company nor any of its Subsidiaries has engaged any placement agent, broker, finder, or other agent in connection with the offer or sale of the Securities.

(h) No Integrated Offering. None of the Company, its Subsidiaries or any of their affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Securities under the 1933 Act, whether through integration with prior offerings or otherwise, or cause this offering of the Securities to require approval of stockholders of the Company in connection with the offering of the Securities for purposes of the 1933 Act or under any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated for quotation. None of the Company, its Subsidiaries, their affiliates, nor any Person acting on their behalf will take any action or steps that would require registration of the issuance of any of the Securities under the 1933 Act or cause the offering of any of the Securities to be integrated with other offerings of securities of the Company.

(i) Dilutive Effect. The Company understands and acknowledges that the number of Conversion Shares will increase in certain circumstances. The Company further acknowledges that its obligation to issue the Conversion Shares pursuant to the terms of the Debentures in accordance with this Agreement and the Debentures is, in each case, absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other shareholders of the Company, which may be substantial under various market conditions.

(j) Application of Takeover Protections; Rights Agreement. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, interested shareholder, business combination, poison pill (including, without limitation, any distribution under a rights agreement), shareholder rights plan or other similar anti-takeover provision under the Certificate of Incorporation, the Bylaws or other organizational documents or the laws of the jurisdiction of its incorporation or otherwise which is or could become applicable to any Buyer as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and any Buyer's ownership of the Securities. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any shareholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Shares or a change in control of the Company or any of its Subsidiaries.

(k) SEC Documents; Financial Statements. Since December 31, 2021, the Company has filed all reports, schedules, forms, proxy statements, information statements and other documents required to be filed or furnished by it with the SEC pursuant to the reporting requirements of the 1934 Act (reports filed in compliance with the time period specified in Rule 12b-25 promulgated under the 1934 Act shall be considered timely for this purpose) (all of the foregoing filed prior to the date hereof and all exhibits and appendices included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**SEC Documents**"). The Company has delivered or has made available to Buyer or its representatives true, correct and complete copies of each of the SEC Documents not available on the EDGAR system. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the SEC Documents (the "**Financial Statements**") complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such Financial Statements have been prepared in accordance with generally accepted accounting principles in the United States ("**U.S. GAAP**"), consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate). The reserves, if any, established by the Company or the lack of reserves, if applicable, are reasonable based upon facts and circumstances known by the Company on the date hereof and there are no loss contingencies that are required to be accrued by the Statement of Financial Accounting Standard No. 5 of the Financial Accounting Standards Board which are not provided for by the Company in its financial statements or otherwise. No other information provided by or on behalf of the Company to Buyer which is not included in the SEC Documents (including, without limitation, information referred to in Section 2(e) of this Agreement or in the disclosure schedules to this Agreement)

contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading, in the light of the circumstance under which they are or were made. The Company is not currently contemplating to amend or restate any of the Financial Statements (including, without limitation, any notes or any letter of the independent accountants of the Company with respect thereto), nor is the Company currently aware of facts or circumstances which would require the Company to amend or restate any of the Financial Statements, in each case, in order for any of the Financials Statements to be in material compliance with U.S. GAAP and the rules and regulations of the SEC. The Company has not been informed by its independent accountants that they recommend that the Company amend or restate any of the Financial Statements or that there is any need for the Company to amend or restate any of the Financial Statements.

(l) Absence of Certain Changes. Since the date of the Company's most recent audited Financial Statements filed with the SEC, there has been no material adverse change and no material adverse development in the business, assets, liabilities, properties, operations (including results thereof), condition (financial or otherwise) or prospects of the Company or any of its Subsidiaries. Since the date of the Company's most recent audited Financial Statements filed with the SEC, except as set forth on Schedule 3(l), neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, outside of the ordinary course of business or (iii) made any capital expenditures, individually or in the aggregate, outside of the ordinary course of business. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up, nor does the Company or any Subsidiary have any knowledge or reason to believe that any of their respective creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so. The Company and its Subsidiaries, individually and on a consolidated basis, are not as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at each Closing, will not be Insolvent (as defined below). For purposes of this Section 3(l), "**Insolvent**" means, (i) with respect to the Company and its Subsidiaries, on a consolidated basis, (A) the present fair saleable value of the Company's and its Subsidiaries' assets is less than the amount required to pay the Company's and its Subsidiaries' total Indebtedness (as defined below), (B) the Company and its Subsidiaries are unable to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company and its Subsidiaries intend to incur or believe that they will incur debts that would be beyond their ability to pay as such debts mature; and (ii) with respect to the Company and each Subsidiary, individually, (A) the present fair saleable value of the Company's or such Subsidiary's (as the case may be) assets is less than the amount required to pay its respective total Indebtedness, (B) the Company or such Subsidiary (as the case may be) is unable to pay its respective debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company or such Subsidiary (as the case may be) intends to incur or believes that it will incur debts that would be beyond its respective ability to pay as such debts mature. Neither the Company nor any of its Subsidiaries has engaged in any business or in any transaction, and is not about to engage in any business or in any transaction, for which the Company's or such Subsidiary's remaining assets constitute unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted.

(m) No Undisclosed Events, Liabilities, Developments or Circumstances. Except as set forth on Schedule 3(m), no event, liability, development or circumstance has occurred or exists, or is reasonably expected to exist or occur with respect to the Company, any of its Subsidiaries or any of their respective businesses, properties, liabilities, prospects, operations (including results thereof) or condition (financial or otherwise), that (i) would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form

S-1 filed with the SEC relating to an issuance and sale by the Company of its Common Shares and which has not been publicly announced or (ii) could have a Material Adverse Effect.

(n) Violations; Regulatory Permits. Neither the Company nor any of its Subsidiaries is in violation of any term of or in default under the Certificate of Incorporation, the Bylaws, any certificate of designation, preferences or rights of any outstanding series of preferred shares or other special shares of the Company or any of its Subsidiaries or the certificate of formation, memorandum of association, articles of association, articles of incorporation, certificate of incorporation, bylaws or other organizational documents of any of the Subsidiaries, as applicable. Neither the Company nor any of its Subsidiaries is in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries will conduct its business in violation of any of the foregoing, except in all cases for possible violations which could not, individually or in the aggregate, have a Material Adverse Effect. Without limiting the generality of the foregoing, the Company is not in violation of any of the rules, regulations or requirements of the Principal Market and has no knowledge of any facts or circumstances that could reasonably lead to delisting or suspension of the Common Shares by the Principal Market in the foreseeable future. Since December 31, 2021, (i) the Common Shares have been listed or designated for quotation on the Principal Market, (ii) trading in the Common Shares has not been suspended by the SEC or the Principal Market and (iii) the Company has received no communication, written or oral, from the SEC or the Principal Market regarding the suspension or delisting of the Common Shares from the Principal Market. The Company and each of its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit. There is no agreement, commitment, judgment, injunction, order or decree binding upon the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries is a party which has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of the Company or any of its Subsidiaries, any acquisition of property by the Company or any of its Subsidiaries or the conduct of business by the Company or any of its Subsidiaries as currently conducted other than such effects, individually or in the aggregate, which have not had and would not reasonably be expected to have a Material Adverse Effect.

(o) Foreign Corrupt Practices. Neither the Company any of its Subsidiaries or to the Company's knowledge any director, officer, agent, employee, nor any other Person acting for or on behalf of the foregoing (individually and collectively, a "**Company Affiliate**") have violated the U.S. Foreign Corrupt Practices Act or any other applicable anti-bribery or anti-corruption laws, nor to the Company's knowledge has any Company Affiliate offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, to any officer, employee or any other Person acting in an official capacity for any Governmental Entity to any political party or official thereof or to any candidate for political office (individually and collectively, a "**Government Official**") or to any Person under circumstances where such Company Affiliate knew or was aware of a high probability that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any Government Official, for the purpose of:

(i) (A) influencing any act or decision of such Government Official in his/her official capacity, (B) inducing such Government Official to do or omit to do any act in violation of his/her lawful duty, (C) securing any improper advantage, or (D) inducing such Government Official to influence or affect any act or decision of any Governmental Entity, or

(ii) assisting the Company or its Subsidiaries in obtaining or retaining business for or with, or directing business to, the Company or its Subsidiaries.

(p) Sarbanes-Oxley Act. The Company and each Subsidiary is in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002, as amended, and any and all applicable rules and regulations promulgated by the SEC thereunder.

(q) Transactions With Affiliates. No current or former employee, partner, director, officer of the Company or its Subsidiaries, or equityholder of any Subsidiary, or 5% or greater equityholder (direct or indirect) of the Company (an "**Equityholder**"), or any associate, or, to the knowledge of the Company, any affiliate of any of the foregoing, or, to the knowledge of the Company, any relative with a relationship no more remote than first cousin of any of the foregoing, is presently, or has ever been, (i) a party to any transaction with the Company or its Subsidiaries (including any contract, agreement or other arrangement providing for the furnishing of services by, or rental of real or personal property from, or otherwise requiring payments to, any such director, officer, equityholder or Equityholder or such associate or affiliate or relative (other than for ordinary course services as employees, officers or directors of the Company or any of its Subsidiaries)) or (ii) the direct or indirect owner of an interest in any corporation, firm, association or business organization which is a competitor, supplier or customer of the Company or its Subsidiaries (except for a passive investment (direct or indirect) in less than 5% of the common equity of a company whose securities are traded on or quoted through an Eligible Market (as defined herein)), nor does any such Person receive income from any source other than the Company or its Subsidiaries which relates to the business of the Company or its Subsidiaries or should properly accrue to the Company or its Subsidiaries. No employee, officer, or director of the Company or any of its Subsidiaries or any Equityholder of the Company or equityholder of any Subsidiary or member of any of the foregoing's immediate family is indebted to the Company or its Subsidiaries, as the case may be, nor is the Company or any of its Subsidiaries indebted (or committed to make loans or extend or guarantee credit) to any of them, other than (i) for payment of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on behalf of the Company, and (iii) for other standard employee benefits made generally available to all employees or executives (including share option agreements outstanding under any share option plan approved by the Board of Directors of the Company).

(r) Equity Capitalization.

(i) Definition: "**Common Shares**" means (x) the Company's shares of common stock, $0.001 par value per share, and (y) any share capital into which such Common Shares shall have been changed or any share capital resulting from a reclassification of such Common Shares.

(ii) Authorized and Outstanding Share Capital. As of the date hereof, the authorized share capital of the Company consists of 1,000,000 shares of preferred stock, par value $0.001 per share, and 175,000,000 Common Shares, of which 13,633,992 shares are issued and outstanding and 8,865,940 shares are reserved for issuance pursuant to outstanding securities exercisable or exchangeable for, or convertible into, Common Shares. No Common Shares are held in the treasury of the Company.

(iii) Valid Issuance; Available Shares; Affiliates. All of such outstanding shares are duly authorized and have been validly issued and are fully paid and nonassessable. All shares underlying Convertible Securities are duly authorized and, upon issuance in accordance with the terms of the agreements governing such Convertible Securities, will be validly issued, fully paid and nonassessable. Schedule 3(r)(iii) sets forth the number of Common Shares that are (A) reserved for issuance

pursuant to Convertible Securities (other than the Debentures) and (B) as of the date hereof, owned by Persons who are "affiliates" (as defined in Rule 405 of the 1933 Act and calculated based on the assumption that only officers, directors and holders of at least 10% of the Company's issued and outstanding Common Shares are "affiliates" without conceding that any such Persons are "affiliates" for purposes of federal securities laws) of the Company or any of its Subsidiaries. To the Company's knowledge, no Person owns 10% or more of the Company's issued and outstanding Common Shares (calculated based on the assumption that all Convertible Securities, whether or not presently exercisable or convertible, have been fully exercised or converted (as the case may be) taking account of any limitations on exercise or conversion (including "blockers") contained therein without conceding that such identified Person is a 10% shareholder for purposes of federal securities laws).

(iv) Existing Securities; Obligations. Except as disclosed on Schedule 3(r)(iv): (A) none of the Company's or any Subsidiary's shares, interests or share capital is subject to preemptive rights or any other similar rights or Liens suffered or permitted by the Company or any Subsidiary; (B) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or share capital of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares, interests or share capital of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or share capital of the Company or any of its Subsidiaries; (C) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act (except pursuant to the RRA); (D) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (E) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; and (F) neither the Company nor any Subsidiary has any share appreciation rights or "phantom share" plans or agreements or any similar plan or agreement.

(v) Organizational Documents. The Company has furnished to Buyer true, correct and complete copies of the Company's Certificate of Incorporation, as amended through, and as in effect on, the date hereof (the "**Certificate of Incorporation**"), and the Company's bylaws, as amended through, and as in effect on, the date hereof (the "**Bylaws**"), and the material terms of all Convertible Securities and the material rights of the holders thereof in respect thereto that are not described in the SEC Documents.

(s) Indebtedness and Other Contracts. Neither the Company nor any of its Subsidiaries, (i) except as disclosed on Schedule 3(s), has any outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound, (ii) except as disclosed in Schedule 3(s), is a party to any contract, agreement or instrument, the violation of which, or default under which, by the other party or parties to such contract, agreement or instrument could reasonably be expected to result in a Material Adverse Effect, (iii) has any financing statements securing obligations in any amounts filed in connection with the Company or any of its Subsidiaries; (iv) is in violation of any term of, or in default under, any contract, agreement or instrument relating to any

Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (v) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries have any liabilities or obligations required to be disclosed in the SEC Documents which are not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company's or its Subsidiaries' respective businesses and which, individually or in the aggregate, do not or could not have a Material Adverse Effect. For purposes of this Agreement: (x) "**Indebtedness**" of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, "capital leases" in accordance with U.S. GAAP) (other than trade payables entered into in the ordinary course of business consistent with past practice), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with U.S. GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; and (y) "**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(t) Litigation. There is no material action, suit, arbitration, proceeding, inquiry or investigation before or by the Principal Market, any court, public board, other Governmental Entity, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, the Common Shares or any of the Company's or its Subsidiaries' officers or directors, whether of a civil or criminal nature or otherwise, in their capacities as such. To the Company's knowledge, no director, officer or employee of the Company or any of its Subsidiaries has willfully violated 18 U.S.C. §1519 or engaged in spoliation in reasonable anticipation of litigation. Without limitation of the foregoing, there has not been, there is not pending, and to the knowledge of the Company, there is not contemplated, any investigation by the SEC involving the Company, any of its Subsidiaries or any current or former director or officer of the Company or any of its Subsidiaries. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the 1933 Act or the 1934 Act. The Company has no knowledge of any fact that might result in or form the basis for any such action, suit, arbitration, investigation, inquiry or other proceeding. Neither the Company nor any of its Subsidiaries is subject to any order, writ, judgment, injunction, decree, determination, or award of any Governmental Entity.

(u) Employee Relations. Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or employs any member of a union. The Company and its Subsidiaries believe that their relations with their employees are good. No executive officer (as defined in Rule 501(f) promulgated under the 1933 Act) or other key employee of the Company or any of its Subsidiaries has notified the Company or any such Subsidiary that such officer or employee intends to leave the Company or any such Subsidiary or otherwise terminate such officer's or employee's employment with the Company or any such Subsidiary. No executive officer or other key employee of the Company or any of its Subsidiaries is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer or other key employee (as the case may be) does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(v) Title.

(i) Real Property. Except as set forth in Schedule 3(v)(i), each of the Company and its Subsidiaries holds good title to all real property, leases in real property, facilities or other interests in real property owned or held by the Company or any of its Subsidiaries (the "**Real Property**") owned by the Company or any of its Subsidiaries (as applicable). Except as set forth in Schedule 3(v)(i), such Real Property is free and clear of all Liens and is not subject to any rights of way, building use restrictions, exceptions, variances, reservations, or limitations of any nature except for (a) Liens for current taxes not yet due, (b) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto and (c) those that are not likely to result in a Material Adverse Effect. Any Real Property held under lease by the Company or any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere in any material respect with the use made and proposed to be made of such property and buildings by the Company or any of its Subsidiaries.

(ii) Fixtures and Equipment. Each of the Company and its Subsidiaries (as applicable) has good title to, or a valid leasehold interest in, the tangible personal property, equipment, improvements, fixtures, and other personal property and appurtenances that are used by the Company or such Subsidiaries in connection with the conduct of their respective businesses (the "**Fixtures and Equipment**"). The Fixtures and Equipment are structurally sound, are in good operating condition and repair, are adequate for the uses to which they are being put, are not in need of maintenance or repairs except for ordinary, routine maintenance and repairs and are sufficient for the conduct of the Company's and/or its Subsidiaries' businesses (as applicable) in the manner as conducted prior to each Closing. Each of the Company and its Subsidiaries owns all of their respective Fixtures and Equipment free and clear of all Liens except for (a) liens for current taxes not yet due and (b) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto.

(iii) Intellectual Property Rights. The Company and its Subsidiaries own or possess adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, original works of authorship, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor

("**Intellectual Property Rights**") necessary to conduct their respective businesses as now conducted. Each of the patents owned by the Company or any of its Subsidiaries is set forth on Schedule 3(v)(iii). The Company does not have any knowledge of any infringement by the Company or its Subsidiaries of Intellectual Property Rights of others. There is no claim, action or proceeding being made or brought, or to the knowledge of the Company or any of its Subsidiaries, being threatened, against the Company or any of its Subsidiaries regarding its Intellectual Property Rights except where such claim, action or proceeding is not likely to result in a Material Adverse Effect. Neither the Company nor any of its Subsidiaries is aware of any facts or circumstances that might give rise to any of the foregoing infringements or claims, actions or proceedings. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality, and value of all of their Intellectual Property Rights.

(w) Environmental Laws. To the Company's knowledge, the Company and its Subsidiaries (A) are in compliance with any and all Environmental Laws (as defined below), (B) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (C) are in compliance with all terms and conditions of any such permit, license or approval except where, in each of the foregoing clauses (A), (B) and (C), the failure to so comply would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. The term "**Environmental Laws**" means all federal, state, local or foreign laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "**Hazardous Materials**") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(x) Subsidiary Rights. The Company or one of its Subsidiaries has the unrestricted right to vote, and (subject to limitations imposed by applicable law) to receive dividends and distributions on, all capital securities of its Subsidiaries as owned by the Company or such Subsidiary.

(y) Tax Status. The Company and each of its Subsidiaries (i) have made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) have paid all material taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and for which reserves required by U.S. GAAP have been created in the financial statements of the Company and (iii) have set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company and its Subsidiaries know of no basis for any such claim. The Company is not operated in such a manner as to qualify as a passive foreign investment company, as defined in Section 1297 of the United States Internal Revenue Code, as amended (the "**Code**"). The net operating loss carryforwards ("**NOLs**") for United States federal income tax purposes of the consolidated group of which the Company is the common parent, if any, shall not be adversely affected by the transactions contemplated hereby. The transactions contemplated hereby do not constitute an "ownership change" within the meaning of Section 382 of the Code, thereby preserving the Company's ability to utilize such NOLs.

(z) Internal Accounting and Disclosure Controls. Except as set forth in Schedule 3(aa), the Company and each of its Subsidiaries maintains internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the 1934 Act) that is effective to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. GAAP, including that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with U.S. GAAP and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. Except as set forth in Schedule 3(z), the Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the 1934 Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. Except as set forth in Schedule 3(z), neither the Company nor any of its Subsidiaries has received any notice or correspondence from any accountant, Governmental Entity or other Person relating to any potential material weakness or significant deficiency in any part of the internal controls over financial reporting of the Company or any of its Subsidiaries.

(aa) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company or any of its Subsidiaries and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its 1934 Act filings and is not so disclosed or that otherwise could be reasonably likely to have a Material Adverse Effect.

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

(ac) Manipulation of Price. Neither the Company nor any of its Subsidiaries has, and, to the knowledge of the Company, no Person acting on their behalf has, directly or indirectly, (i) taken any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company or any of its Subsidiaries to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company or any of its Subsidiaries or (iv) paid or agreed to pay any Person for research services with respect to any securities of the Company or any of its Subsidiaries.

(ff) U.S. Real Property Holding Corporation. Neither the Company nor any of its Subsidiaries is, or has ever been, and so long as any of the Securities are held by Buyer, shall become, a United States real property holding corporation within the meaning of Section 897 of the Code, and the Company and each Subsidiary shall so certify upon Buyer's request.

(ad) Registration Eligibility. The Company is eligible to register the Registrable Securities for resale by Buyer using Form S-1 promulgated under the 1933 Act.

(ae) Transfer Taxes. On or prior to each Closing, all share transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the issuance, sale and transfer of the Debentures to be sold to Buyer hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

(af) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries is subject to the Bank Holding Company Act of 1956, as amended (the "**BHCA**") and to regulation by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**"). Neither the Company nor any of its Subsidiaries or affiliates owns or controls, directly or indirectly, 5% or more of the outstanding shares of any class of voting securities or 25% or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(ag) Shell Company Status. The Company is not, and has never been, an issuer identified in, or subject to, Rule 144(i).

(ah) Illegal or Unauthorized Payments; Political Contributions. Neither the Company nor any of its Subsidiaries nor, to the best of the Company's knowledge (after reasonable inquiry of its officers and directors), any of the officers, directors, employees, agents or other representatives of the Company or any of its Subsidiaries or any other business entity or enterprise with which the Company or any Subsidiary is or has been affiliated or associated, has, directly or indirectly, made or authorized any payment, contribution or gift of money, property, or services, whether or not in contravention of applicable law, (i) as a kickback or bribe to any Person or (ii) to any political organization, or the holder of or any aspirant to any elective or appointive public office except for personal political contributions not involving the direct or indirect use of funds of the Company or any of its Subsidiaries.

(ai) Money Laundering. The Company and its Subsidiaries are in compliance with, and have not previously violated, the USA Patriot Act of 2001 and all other applicable U.S. and non-U.S. anti-money laundering laws and regulations, including, without limitation, the laws, regulations and Executive Orders and sanctions programs administered by the U.S. Office of Foreign Assets Control, including, but not limited, to (i) Executive Order 13224 of September 23, 2001 entitled, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (66 Fed. Reg. 49079 (2001)); and (ii) any regulations contained in 31 CFR, Subtitle B, Chapter V.

(aj) Management. During the past five-year period, no current officer or director or, to the knowledge of the Company, no former officer or director or current 10% or greater equityholder of the Company or any of its Subsidiaries has been the subject of:

(i) a petition under bankruptcy laws or any other insolvency or moratorium law or the appointment by a court of a receiver, fiscal agent or similar officer for such Person, or any partnership in which such Person was a general partner at or within two years before the filing of such petition or such appointment, or any corporation or business association of which such Person was an executive officer at or within two years before the time of the filing of such petition or such appointment;

(ii) a conviction in a criminal proceeding or a named subject of a pending criminal proceeding (excluding traffic violations that do not relate to driving while intoxicated or driving under the influence);

(iii) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining any such Person from, or otherwise limiting, the following activities:

(1) acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other Person regulated by the United States Commodity Futures Trading Commission or an associated Person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated Person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(2) engaging in any particular type of business practice; or

(3) engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of securities laws or commodities laws;

(iv) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any authority barring, suspending or otherwise limiting for more than sixty (60) days the right of any such Person to engage in any activity described in the preceding sub paragraph, or to be associated with Persons engaged in any such activity;

(v) a finding by a court of competent jurisdiction in a civil action or by the SEC or other authority to have violated any securities law, regulation or decree and the judgment in such civil action or finding by the SEC or any other authority has not been subsequently reversed, suspended or vacated; or

(vi) a finding by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding has not been subsequently reversed, suspended, or vacated.

(ak) Share Option Plans. Each share option granted by the Company was granted (i) in accordance with the terms of the applicable share option plan of the Company and (ii) with an exercise price at least equal to the fair market value of the Common Shares on the date such share option would be considered granted under U.S. GAAP and applicable law. No share option granted under the Company's share option plan has been backdated. The Company has not knowingly granted, and there is no and has been no policy or practice of the Company to knowingly grant, share options prior to, or otherwise knowingly coordinate the grant of share options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(al) No Disagreements with Accountants and Lawyers. There are no material disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents. In addition, on or prior to the date hereof, the Company has had discussions with its accountants about its financial statements previously filed with the SEC. Based on those discussions, the Company has no reason to believe that it will need to restate any such financial statements or any part thereof.

(am) No Disqualification Events. With respect to Securities to be offered and sold hereunder in reliance on Rule 506(b) under the 1933 Act ("**Regulation D Securities**"), none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering contemplated hereby, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the 1933 Act) connected with the Company in any capacity at the time of sale (each, an "**Issuer Covered Person**") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the 1933 Act (a "**Disqualification Event**"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to Buyer a copy of any disclosures provided thereunder.

(an) Other Covered Persons. The Company is not aware of any Person that has been or will be paid (directly or indirectly) remuneration for solicitation of Buyer or potential purchasers in connection with the sale of any Regulation D Securities.

(ao) No Additional Agreements. The Company does not have any agreement or understanding with Buyer with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.

(ap) Public Utility Holding Act. None of the Company nor any of its Subsidiaries is a "holding company," or an "affiliate" of a "holding company," as such terms are defined in the Public Utility Holding Act of 2005.

(aq) Federal Power Act. None of the Company nor any of its Subsidiaries is subject to regulation as a "public utility" under the Federal Power Act, as amended.

(ar) Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided Buyer or Buyer's agents or counsel with any information that constitutes or could reasonably be expected to constitute material, non-public information concerning the Company or any of its Subsidiaries, other than the existence of the transactions contemplated by this Agreement and the other Transaction Documents and the disclosures contained in the Company's disclosure schedules to this Agreement. The Company understands and confirms that Buyer will rely on the foregoing representations in effecting transactions in securities of the Company. All disclosure provided to Buyer in the Transaction Documents regarding the Company and its Subsidiaries, their businesses and the transactions contemplated hereby and thereby, including the disclosures schedules to this Agreement, furnished by or on behalf of the Company or any of its Subsidiaries is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. All of the written information furnished after the date hereof by or on behalf of the Company or any of its Subsidiaries to Buyer pursuant to or in connection with this Agreement and the other Transaction Documents, taken as a whole, will be true and correct in all material respects as of the date on which such information is so provided and will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. No event or circumstance has occurred or information exists with respect to the Company or any of its Subsidiaries or its or their business, properties, liabilities, prospects, operations (including results thereof) or conditions (financial or otherwise), which, under applicable law, rule or regulation, requires public disclosure at or before the date hereof or announcement by the Company but which has not been so publicly disclosed. All financial projections and forecasts that have been prepared by or on behalf of the Company or any of its Subsidiaries and made available to Buyer

have been prepared in good faith based upon reasonable assumptions and represented, at the time each such financial projection or forecast was delivered to Buyer, the Company's best estimate of future financial performance (it being recognized that such financial projections or forecasts are not to be viewed as facts and that the actual results during the period or periods covered by any such financial projections or forecasts may differ from the projected or forecasted results). The Company acknowledges and agrees that Buyer has not made and is not making any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.

4. COVENANTS.

(a) Reasonable Best Efforts. Buyer shall use its reasonable best efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 6 of this Agreement. The Company shall use its reasonable best efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 7 of this Agreement.

(b) Form D and Blue Sky. The Company shall file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof to Buyer promptly after such filing. The Company shall, on or before each Closing, take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to, qualify the Securities for sale to Buyer at each Closing, pursuant to this Agreement under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to Buyer on or prior to each Closing. Without limiting any other obligation of the Company under this Agreement, the Company shall make all filings and reports relating to the offer and sale of the Securities required under all applicable securities laws (including, without limitation, all applicable federal securities laws and all applicable "Blue Sky" laws), and the Company shall comply with all applicable foreign, federal, state and local laws, statutes, rules, regulations and the like relating to the offering and sale of the Securities to Buyer.

(c) Reporting Status. Until the date on which Buyer shall have sold all of the Registrable Securities (the "**Reporting Period**"), the Company shall timely file all reports required to be filed with the SEC pursuant to the 1934 Act, in accordance with the requirements of the 1934 Act (reports filed in compliance with the time period specified in Rule 12b-25 promulgated under the 1934 Act shall be considered timely for this purpose), and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would otherwise permit such termination. From the time Form S-1 is available to the Company for the registration of the Registrable Securities, the Company shall take all actions reasonably necessary to maintain its eligibility to register the Registrable Securities for resale by Buyer on Form S-1.

(d) Use of Proceeds. The Company will use the proceeds from the sale of the Securities for general corporate purposes, but not, directly or indirectly, for (i) except as set forth on Schedule 4(d), the satisfaction of any Indebtedness of the Company or any of its Subsidiaries, (ii) the redemption or repurchase of any securities of the Company or any of its Subsidiaries, or (iii) the settlement of any outstanding litigation.

(e) Financial Information. The Company agrees to send the following to an Investor (as defined in the RRA) during the Reporting Period (i) unless the following are filed or furnished with the SEC through EDGAR and are available to the public through the EDGAR system, within one (1) Business Day after the filing or furnishing thereof with the SEC, a copy of its Annual Report on Form 10-K, any Current Report on Form 8-K, any other interim reports or any consolidated balance sheets, income statements, shareholders' equity statements and/or cash

flow statements for any period other than annual contained in such reports, and any registration statements or amendments filed pursuant to the 1933 Act, (ii) unless the following are either filed with the SEC through EDGAR or are otherwise widely disseminated via a recognized news release service (such as PR Newswire), on the same day as the release thereof, email copies of all press releases issued by the Company or any of its Subsidiaries and (iii) unless the following are filed with the SEC through EDGAR, copies of any notices and other information made available or given to the shareholders of the Company generally, contemporaneously with the making available or giving thereof to such shareholders.

(f) Listing. The Company shall promptly secure the listing or designation for quotation (as the case may be) of all of the Registrable Securities upon each national securities exchange (as such term is used in Section 6 of the 1934 Act) and automated quotation system, if any, upon which the Common Shares is then listed or designated for quotation (as the case may be) (subject to official notice of issuance) and shall maintain such listing or designation for quotation (as the case may be) of all Registrable Securities from time to time issuable under the terms of the Transaction Documents on such national securities exchange or automated quotation system. The Company shall use reasonable best efforts to maintain the Common Shares' listing or authorization for quotation (as the case may be) on the Principal Market, The New York Stock Exchange, the NYSE American, the Nasdaq Global Market or the Nasdaq Global Select Market (each, an "**Eligible Market**"). Neither the Company nor any of its Subsidiaries shall take any action that could be reasonably expected to result in the delisting or suspension of the Common Shares on an Eligible Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(f).

(g) Fees. The Company shall reimburse Buyer for all actual costs and expenses incurred by it or its affiliates in connection with the structuring, documentation, negotiation and closing of the transactions contemplated by the Transaction Documents (including, without limitation, as applicable, all reasonable legal fees of outside counsel and disbursements of Sullivan & Worcester LLP, counsel to Buyer, any other reasonable fees and expenses in connection with the structuring, documentation, negotiation and closing of the transactions contemplated by the Transaction Documents and due diligence and regulatory filings in connection therewith) (the "**Transaction Expenses**") and the Transaction Expenses accrued to the applicable Closing Date, less any fees previously paid by the Company to Buyer, shall be withheld by Buyer from the First Debenture Purchase Price or Second Debenture Purchase Price, as applicable, at the applicable Closing; provided, that the aggregate legal fees of outside counsel and disbursements of Sullivan & Worcester LLP shall not exceed $25,000 (the "**Fee Cap**") and the Company shall promptly reimburse Sullivan & Worcester LLP on demand for all Transaction Expenses not so reimbursed through withholding at each Closing. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, transfer agent fees, DTC (as defined below) fees or broker's commissions (other than for Persons engaged by Buyer) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold Buyer harmless against, any liability, loss or expense (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses) arising in connection with any claim relating to any such payment. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Securities to Buyer.

(h) Pledge of Securities. Notwithstanding anything to the contrary contained in this Agreement, the Company acknowledges and agrees that the Securities may be pledged by an Investor in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Investor effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document, including,

without limitation, Section 2(g) hereof; provided that an Investor and its pledgee shall be required to comply with the provisions of Section 2(g) hereof in order to effect a sale, transfer or assignment of Securities to such pledgee. The Company hereby agrees to execute and deliver such documentation as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by Buyer.

(i) Disclosure of Transactions and Other Material Information.

(i) Disclosure of Transaction. The Company, on or before 9:30 a.m., New York time, on the first (1st) Business Day after the date of this Agreement, may issue a press release (the "**Press Release**") reasonably acceptable to Buyer disclosing all the material terms of the transactions contemplated by the Transaction Documents. On or before 9:30 a.m., New York time, on the first (1st) Business Day after the date of this Agreement, the Company shall furnish a Current Report on Form 8-K describing all the material terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act and attaching all the material Transaction Documents (including, without limitation, this Agreement, the form of Debenture and the form of the RRA) (including all attachments, the "**8-K Filing**"). From and after the furnishing of the 8-K Filing, the Company shall have disclosed all material, non-public information (if any) provided to Buyer by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the furnishing of the 8-K Filing, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and Buyer or any of its affiliates, on the other hand, shall terminate.

(ii) Limitations on Disclosure. The Company shall not, and the Company shall cause each of its Subsidiaries and each of its and their respective officers, directors, employees and agents not to, provide Buyer with any material, non-public information regarding the Company or any of its Subsidiaries from and after the date hereof without the express prior written consent of Buyer (which may be granted or withheld in Buyer's sole discretion). In the event of a breach of any of the foregoing covenants or any of the covenants or agreements contained in any other Transaction Document, by the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees and agents (as determined in the reasonable good faith judgment of Buyer), in addition to any other remedy provided herein or in the Transaction Documents, Buyer shall have the right to make a public disclosure, in the form of a press release, public advertisement or otherwise, of such breach or such material, non-public information, as applicable, without the prior approval by the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees or agents. Buyer shall not have any liability to the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees, affiliates, equityholders or agents, for any such disclosure. To the extent that the Company delivers any material, non-public information to Buyer without Buyer's consent, the Company hereby covenants and agrees that Buyer shall not have any duty of confidentiality with respect to, or a duty not to trade on the basis of, such material, non-public information. Subject to the foregoing, neither the Company, its Subsidiaries nor Buyer shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, the Company shall be entitled, without the prior approval of Buyer, to make the Press Release and any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing and contemporaneously therewith and (ii) as is required by applicable law and regulations (provided that in the case of clause (i) Buyer shall be consulted by the

Company in connection with any such press release or other public disclosure prior to its release). Notwithstanding anything contained in this Agreement to the contrary and without implication that the contrary would otherwise be true, the Company expressly acknowledges and agrees that Buyer shall not have (unless expressly agreed to by Buyer after the date hereof in a written definitive and binding agreement executed by the Company and Buyer), any duty of confidentiality with respect to, or a duty not to trade on the basis of, any material, non-public information regarding the Company or any of its Subsidiaries.

(iii) Other Confidential Information. Disclosure Failures; Disclosure Delay Payments. In addition to other remedies set forth in this Section 4(i), and without limiting anything set forth in any other Transaction Document, at any time after each Closing Date if the Company, any of its Subsidiaries, or any of their respective officers, directors, employees or agents, provides Buyer with material non-public information relating to the Company or any of its Subsidiaries (each, the "**Confidential Information**"), the Company shall, on or prior to the applicable Required Disclosure Date (as defined below), publicly disclose such Confidential Information on a Current Report on Form 8-K or otherwise (each, a "**Disclosure**"). From and after such Disclosure, the Company shall have disclosed all Confidential Information provided to Buyer by the Company or any of its Subsidiaries or any of their respective officers, directors, employees, or agents in connection with the transactions contemplated by the Transaction Documents. In the event that the Company fails to effect such Disclosure on or prior to the Required Disclosure Date and Buyer shall have possessed Confidential Information for at least five (5) consecutive Trading Days (as defined in the Debentures) (each, a "**Disclosure Failure**"), then, as partial relief for the damages to Buyer by reason of any such delay in, or reduction of, its ability to buy or sell Common Shares after such Required Disclosure Date (which remedy shall not be exclusive of any other remedies available at law or in equity), the Company shall pay to Buyer an amount in cash equal to the greater of (I) 2% of the aggregate Purchase Price and (II) the applicable Disclosure Restitution Amount (as defined below), on each of the following dates (each, a "**Disclosure Delay Payment Date**"): (i) on the date of such Disclosure Failure and (ii) on every thirty (30) day anniversary of such Disclosure Failure until the earlier of (x) the date such Disclosure Failure is cured and (y) such time as all such non-public information provided to Buyer shall cease to be Confidential Information (as evidenced by a certificate, duly executed by an authorized officer of the Company to the foregoing effect) (such earlier date, as applicable, a "**Disclosure Cure Date**"). Following the initial Disclosure Delay Payment for any particular Disclosure Failure, without limiting the foregoing, if a Disclosure Cure Date occurs prior to any thirty (30) day anniversary of such Disclosure Failure, then such Disclosure Delay Payment (prorated for such partial month) shall be made on the second (2nd) Business Day after such Disclosure Cure Date. The payments to which Buyer shall be entitled pursuant to this Section 4(i)(iii) are referred to herein as "**Disclosure Delay Payments**". In the event the Company fails to make Disclosure Delay Payments in a timely manner in accordance with the foregoing, such Disclosure Delay Payments shall bear interest at the rate of 2% per month (prorated for partial months) until paid in full.

(iv) For the purpose of this Agreement the following definitions shall apply:

(1) "**Disclosure Failure Market Price**" means, as of any Disclosure Delay Payment Date, the price computed as the quotient of (I) the sum of the five (5) highest VWAPs (as defined in the Debentures) of the Common Shares during the applicable Disclosure Restitution Period (as defined below), divided by (II) five (5) (such period, the **"Disclosure Failure Measuring Period**"). All such determinations shall be appropriately adjusted for any share dividend, share split, share combination, reclassification, or similar transaction

that proportionately decreases or increases the Common Shares during such Disclosure Failure Measuring Period.

(2) "**Disclosure Restitution Amount**" means, as of any Disclosure Delay Payment Date, the product of (x) difference of (I) the Disclosure Failure Market Price less (II) the lowest purchase price, per Common Shares, of any Common Shares issued or issuable to Buyer pursuant to this Agreement or any other Transaction Documents, multiplied by (y) 10% of the aggregate daily dollar trading volume (as reported on Bloomberg, L.P.) of the Common Shares on the Principal Market for each Trading Day either (1) with respect to the initial Disclosure Delay Payment Date, during the period commencing on the applicable Required Disclosure Date through and including the Trading Day immediately prior to the initial Disclosure Delay Payment Date or (2) with respect to each other Disclosure Delay Payment Date, during the period commencing the immediately preceding Disclosure Delay Payment Date through and including the Trading Day immediately prior to such applicable Disclosure Delay Payment Date (such applicable period, the "**Disclosure Restitution Period**").

(3) "**Required Disclosure Date**" means (x) if Buyer authorized the delivery of such Confidential Information, either (I) if the Company and Buyer have mutually agreed upon a date (as evidenced by an e-mail or other writing) of Disclosure of such Confidential Information, such agreed upon date or (II) otherwise, the seventh (7th) calendar day after the date Buyer first received any Confidential Information or (y) if Buyer did not authorize the delivery of such Confidential Information, the first (1st) Business Day after Buyer's receipt of such Confidential Information.

(j) Additional Registration Statements. Until the Applicable Date (as defined below) and at any time thereafter while any Registration Statement (as defined in the RRA) is not effective or the prospectus contained therein is not available for use, the Company shall not file a registration statement or an offering statement under the 1933 Act relating to securities that are not the Registrable Securities (other than such supplements or amendments to registration statements that are outstanding and have been declared effective by the SEC as of the date hereof (solely to the extent necessary to keep such registration statements effective and available and not with respect to any Subsequent Placement) and such other registration statements (and prospectuses relating thereto) that the Company is required to file under the existing agreements which are identified in Schedule 4(j), that the Company entered into prior to the date of this Agreement). "**Applicable Date**" means the first date on which the resale by Buyer of all the Registrable Securities required to be filed on the initial Registration Statement pursuant to the RRA is declared effective by the SEC (and each prospectus contained therein is available for use on such date).

(k) Additional Issuance of Securities. So long as Buyer beneficially owns any Securities, the Company will not, without the prior written consent of Buyer, issue any Debenture (other than to Buyer as contemplated hereby) and the Company shall not issue any other securities that would cause a breach or default under the Debentures. The Company agrees that for the period commencing on the date hereof and ending on the date immediately following the 90th calendar day after the Applicable Date (provided that such period shall be extended by the number of calendar days during such period and any extension thereof contemplated by this proviso on which any Registration Statement is not effective or any prospectus contained therein is not available for use or any Current Public Information Failure exists) (the "**Restricted Period**"), neither the Company nor any of its Subsidiaries shall directly or indirectly issue, offer, sell, grant any option or right to purchase, or otherwise dispose of (or announce any issuance, offer, sale, grant of any option or right to purchase or other disposition of) any equity security or

any equity-linked or related security (including, without limitation, any "equity security" (as that term is defined under Rule 405 promulgated under the 1933 Act), any Convertible Securities, any debt, any preferred shares or other special shares or any purchase rights) (any such issuance, offer, sale, grant, disposition or announcement (whether occurring during the Restricted Period or at any time thereafter) is referred to as a "**Subsequent Placement**"), except with respect to (x) any such transaction with Buyer, or (y) any entry into an equity financing agreement in relation to a factoring line of credit, accounts receivable line of credit, acquisition seller note or commercial line of credit. Notwithstanding the foregoing, this Section 4(k) shall not apply in respect of the issuance of (i) Common Shares or standard options to purchase Common Shares to directors, officers, employees or other service providers of the Company in their capacity as such pursuant to an Approved Share Plan (as defined below), provided that (1) all such issuances (taking into account the Common Shares issuable upon exercise of such options) after the date hereof pursuant to this clause (i) do not, in the aggregate, exceed more than 5% of the Common Shares issued and outstanding immediately prior to the date hereof and (2) the exercise price of any such options is not lowered, none of such options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such options are otherwise materially changed in any manner that adversely affects Buyer; (ii) Common Shares issued upon the conversion or exercise of Convertible Securities (other than standard options to purchase Common Shares issued pursuant to an Approved Share Plan that are covered by clause (i) above) issued prior to or after the date hereof, provided that the conversion, exercise or other method of issuance (as the case may be) of any such Convertible Security is made solely pursuant to the conversion, exercise or other method of issuance (as the case may be) provisions of such Convertible Security that were in effect on the date immediately prior to the date of this Agreement, the conversion, exercise or issuance price of any such Convertible Securities (other than standard options to purchase Common Shares issued pursuant to an Approved Share Plan that are covered by clause (i) above) is not lowered, none of such Convertible Securities (other than standard options to purchase Common Shares issued pursuant to an Approved Share Plan that are covered by clause (i) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Convertible Securities (other than standard options to purchase Common Shares issued pursuant to an Approved Share Plan that are covered by clause (i) above) are otherwise materially changed in any manner that adversely affects Buyer; (iii) the Conversion Shares, (iv) any Common Shares issued and sold by the Company to Buyer not pursuant to the Transaction Documents, (v) any Common Shares or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on Common Shares, and (vi) any Common Shares issuable in connection with acquisitions, strategic partnerships and other such transactions not for purposes of raising capital (each of the foregoing in clauses (i) through (vi), collectively the "**Excluded Securities**"). "**Approved Share Plan**" means any employee benefit or equity incentive plan which has been approved by the board of directors of the Company prior to or subsequent to the date hereof pursuant to which Common Shares and standard options to purchase Common Shares may be issued to any employee, officer, or director for services provided to the Company in their capacity as such. "**Convertible Securities**" means any share capital or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any share capital or other security of the Company (including, without limitation, Common Shares) or any of its Subsidiaries.

(l) Reservation of Shares. So long as any of the Debentures remain outstanding, the Company shall take all action necessary to at all times have authorized, and reserved for the purpose of issuance, no less than 150% of the maximum number of Common Shares issuable upon conversion of all the Debentures then outstanding (assuming for purposes hereof that (x) the Debentures are convertible at the Standard Conversion Price, and (y) any such conversion shall not take into account any limitations on the conversion of the Debentures set forth in the Debentures) (collectively, the "**Required Reserve Amount**"); provided that at no time shall the

number of Common Shares reserved pursuant to this Section 4(l) be reduced other than proportionally in connection with any conversion and/or redemption, as applicable, of Debentures or any reverse stock split. If at any time the number of Common Shares authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, the Company will use commercially reasonable efforts to, as promptly as reasonably practicable, take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company's obligations pursuant to the Transaction Documents or to approve a reserve stock split, in the case of an insufficient number of authorized shares, obtain stockholder approval of an increase in such authorized number of shares or a reverse stock split, and causing its directors and executive officers to vote their respective shares of the Company in favor of an increase in the authorized shares of the Company or a reverse stock split to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

(m) Conduct of Business. The business of the Company and its Subsidiaries shall not be conducted in violation of any law, ordinance, or regulation of any Governmental Entity, except where such violations would not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect.

(n) Insurance. The Company shall promptly, but in no case later than the 30th day after the First Closing Date, meet insurance coverage requirements against losses and risk to the respective businesses of itself and its subsidiaries, as have such other similarly situated companies.

(o) Good Standing. Each of the Company and each of its Subsidiaries shall promptly obtain good standing under the laws of the jurisdiction in which they are formed and in every jurisdiction in which their respective ownership of property or the nature of the business conducted by them make such qualification necessary.

(p) Other Debentures; Variable Securities. So long as the Debentures remain outstanding, the Company and each Subsidiary shall be prohibited from effecting or entering into an agreement to affect any Subsequent Placement involving a Variable Rate Transaction, except with respect to any such transaction with Buyer. "**Variable Rate Transaction**" means a transaction in which the Company or any Subsidiary (i) issues or sells any Convertible Securities either (A) at a conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the Common Shares at any time after the initial issuance of such Convertible Securities, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such Convertible Securities or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Shares, other than pursuant to a customary "weighted average" anti-dilution provision or (ii) enters into any agreement (including, without limitation, an equity line of credit or an "at-the-market" offering) whereby the Company or any Subsidiary may sell securities at a future determined price (other than standard and customary "preemptive" or "participation" rights). Buyer shall be entitled to obtain injunctive relief against the Company and its Subsidiaries to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

(q) Passive Foreign Investment Company. The Company shall conduct its business, and shall cause its Subsidiaries to conduct their respective businesses, in such a manner as will ensure that the Company will not be deemed to constitute a passive foreign investment company within the meaning of Section 1297 of the Code.

(r) Corporate Existence. So long as Buyer beneficially owns the Debentures, the Company shall not be party to any Fundamental Transaction (as defined in the Debentures)

unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Debentures.

(s) Regulation M. The Company will not take any action prohibited by Regulation M under the 1934 Act, in connection with the distribution of the Securities contemplated hereby.

(t) General Solicitation. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act) or any Person acting on behalf of the Company or such affiliate will solicit any offer to buy or offer or sell the Securities by means of any form of general solicitation or general advertising within the meaning of Regulation D, including: (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio; and (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(u) Integration. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act), or any Person acting on behalf of the Company or such affiliate has or will sell, offer for sale, or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the 1933 Act) which will be integrated with the sale of the Securities in a manner which would require the registration of the Securities under the 1933 Act or require stockholder approval under the rules and regulations of the Principal Market and the Company will take all action that is appropriate or necessary to assure that its offerings of other securities will not be integrated for purposes of the 1933 Act or the rules and regulations of the Principal Market, with the issuance of Securities contemplated hereby.

(v) Notice of Disqualification Events. The Company will notify Buyer in writing, prior to each Closing of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person.

(w) Closing Documents. On or prior to fourteen (14) calendar days after each Closing, the Company agrees to deliver, or cause to be delivered, to Buyer and Sullivan & Worcester LLP a complete closing set of the Transaction Documents executed at each Closing, the Securities issued at each Closing and any other document required to be delivered to any party pursuant to Section 7 hereof or otherwise.

(x) Prohibition of Short Sales and Hedging Transactions. Buyer agrees that while the Debentures remains outstanding, Buyer and its agents, representatives and affiliates shall not in any manner whatsoever enter into or effect, directly or indirectly, any (i) “short sale” (as such term is defined in Rule 200 of Regulation SHO of the Exchange Act) of the Common Shares or (ii) hedging transaction, which establishes a net short position with respect to the Common Shares.

(y) Stockholder Approval. If required by the applicable rules and regulations of the Eligible Market (or any successor entity), the Company shall hold a special meeting of stockholders (which may also be at the annual meeting of stockholders) as soon as practicable, but in no event later than April 30, 2023, for the purpose of obtaining the Stockholder Approval (as defined below); provided, however, such date shall be increased by an additional thirty (30) calendar days in the event that the Company receives comments to its proxy statement from the SEC, with the recommendation of the Company’s board of directors that such proposal be approved, and the Company shall solicit proxies from its stockholders in connection therewith in the same manner as all other management proposals in such proxy statement and all management-appointed proxyholders shall vote their proxies in favor of such proposal. If the Company does not obtain Stockholder Approval at the first meeting, the Company shall call a meeting every four months thereafter to seek Stockholder Approval until the date the

Stockholder Approval is obtained. Prior to any such stockholder meeting, the Company shall timely file a proxy statement pursuant to Section 14(a) of the 1934 Act in compliance in all material respects with the provisions of the Bylaws and all applicable law. The Company shall not be required to issue any Conversion Shares if such issuance would cause the Company to be required to obtain the Stockholder Approval either pursuant to the rules and regulations of the Trading Market or otherwise until such Stockholder Approval has been obtained. As used herein, "**Stockholder Approval**" means the approval of such number of the holders of the outstanding shares of the Company's voting securities as required by the Bylaws and the Delaware General Corporation Law, to ratify and approve all of the transactions contemplated by the Transaction Documents, including the issuance of all of the Securities, all as may be required by the applicable rules and regulations of the Eligible Market (or any successor entity).

5. REGISTER; TRANSFER AGENT INSTRUCTIONS; LEGEND.

(a) Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to the holder of the Debentures), a register for the Debentures in which the Company shall record the name and address of the Person in whose name the Debentures have been issued (including the name and address of each transferee), the principal amount of the Debentures held by such Person, and the number of Conversion Shares issuable pursuant to the terms of the Debentures held by such Person. The Company shall keep the register open and available at all times during business hours for inspection of the holder of the Debentures or its legal representatives.

(b) Transfer Agent Instructions. The Company shall issue irrevocable instructions to its transfer agent and any subsequent transfer agent (as applicable, the "**Transfer Agent**") in a form acceptable to Buyer (the "**Irrevocable Transfer Agent Instructions**") to issue certificates or credit shares to the applicable balance accounts at The Depository Trust Company ("**DTC**"), registered in the name of Buyer or its nominee(s), for the Conversion Shares in such amounts as specified from time to time by Buyer to the Company upon automatic conversion of the Debentures. The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 5(b), and stop transfer instructions to give effect to Section 2(g) hereof, will be given by the Company to its transfer agent with respect to the Securities, and that the Securities shall otherwise be freely transferable on the books and records of the Company, as applicable, to the extent provided in this Agreement and the other Transaction Documents. If Buyer effects a sale, assignment or transfer of the Securities in accordance with Section 2(g), the Company shall permit the transfer and shall promptly instruct its transfer agent to issue one or more certificates or credit shares to the applicable balance accounts at DTC in such name and in such denominations as specified by Buyer to effect such sale, transfer or assignment. In the event that such sale, assignment, or transfer involves Conversion Shares sold, assigned, or transferred pursuant to an effective registration statement or in compliance with Rule 144, the transfer agent shall issue such shares to Buyer, assignee or transferee (as the case may be) without any restrictive legend in accordance with Section 5(d) below. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to Buyer. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5(b) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5(b), that Buyer shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required. The Company shall cause its counsel to issue the legal opinion referred to in the Irrevocable Transfer Agent Instructions to the Company's transfer agent on each Effective Date (as defined in the RRA). Any fees (with respect to the transfer agent, counsel to the Company or otherwise) associated with the issuance of such opinion or the removal of any legends on any of the Securities shall be borne by the Company.

(c) Legends. Buyer understands that the Securities have been issued (or will be issued in the case of the Conversion Shares) pursuant to an exemption from registration or qualification under the 1933 Act and applicable state securities laws, and except as set forth below, the Securities shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such share certificates):

> [NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN] [THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

(d) Removal of Legends. Certificates evidencing Securities shall not be required to contain the legend set forth in Section 5(c) above or any other legend (i) while a registration statement (including a Registration Statement) covering the resale of such Securities is effective under the 1933 Act, (ii) following any sale of such Securities pursuant to Rule 144 (assuming the transferor is not an affiliate of the Company), (iii) if such Securities are eligible to be sold, assigned or transferred under Rule 144 (provided that Buyer provides the Company with reasonable assurances that such Securities are eligible for sale, assignment or transfer under Rule 144 which shall not be required to include an opinion of Buyer's counsel), (iv) in connection with a sale, assignment or other transfer (other than under Rule 144), provided that Buyer provides the Company with an opinion of counsel to Buyer, in a generally acceptable form, to the effect that such sale, assignment or transfer of the Securities may be made without registration under the applicable requirements of the 1933 Act or (v) if such legend is not required under applicable requirements of the 1933 Act (including, without limitation, controlling judicial interpretations and pronouncements issued by the SEC). If a legend is not required pursuant to the foregoing, the Company shall no later than two (2) Trading Days (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the date Buyer delivers such legended certificate representing such Securities to the Company) following the delivery by Buyer to the Company or the transfer agent (with notice to the Company) of a legended certificate representing such Securities (endorsed or with share powers attached, signatures guaranteed, and otherwise in form necessary to effect the reissuance and/or transfer, if applicable), together with any other deliveries from Buyer as may be required above in this Section 5(d), as directed by Buyer, either: (A) provided that the Company's transfer agent is participating in the DTC Fast Automated Securities Transfer Program and such Securities are Conversion Shares, credit the aggregate number of Common Shares to which Buyer shall be entitled to Buyer's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system or (B) if the Company's transfer agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver (via reputable overnight courier) to Buyer, a certificate representing such Securities

that is free from all restrictive and other legends, registered in the name of Buyer or its designee (the date by which such credit is so required to be made to the balance account of Buyer's or Buyer's designee with DTC or such certificate is required to be delivered to Buyer pursuant to the foregoing is referred to herein as the "**Required Delivery Date**", and the date such Common Shares are actually delivered without restrictive legend to Buyer or Buyer's designee with DTC, as applicable, the "**Share Delivery Date**"). The Company shall be responsible for any transfer agent fees or DTC fees with respect to any issuance of Securities or the removal of any legends with respect to any Securities in accordance herewith.

(e) Failure to Timely Deliver; Buy-In. If the Company fails, for any reason or for no reason, to issue and deliver (or cause to be delivered) to Buyer (or its designee) such Securities that are not required to be legended pursuant to Section 5(d) above by the Required Delivery Date, either (I) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, a certificate for the number of Conversion Shares to which Buyer is entitled and register such Conversion Shares on the Company's share register or, if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, to credit the balance account of Buyer or Buyer's designee with DTC for such number of Conversion Shares submitted for legend removal by Buyer pursuant to Section 5(d) above or (II) if the Registration Statement covering the resale of the Conversion Shares submitted for legend removal by Buyer pursuant to Section 5(d) above (the "**Unavailable Shares**") is not available for the resale of such Unavailable Shares and the Company fails to promptly, but in no event later than as required pursuant to the RRA (x) so notify Buyer and (y) deliver the Conversion Shares electronically without any restrictive legend by crediting such aggregate number of Conversion Shares submitted for legend removal by Buyer pursuant to Section 5(d) above to Buyer's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system (the event described in the immediately foregoing clause (II) is hereinafter referred as a "**Notice Failure**" and together with the event described in clause (I) above, a "**Delivery Failure**"), then, in addition to all other remedies available to Buyer, the Company shall pay in cash to Buyer on each day after the Share Delivery Date and during such Delivery Failure an amount equal to 2% of the product of (A) the aggregate number of Common Shares not issued to Buyer on or prior to the Required Delivery Date and to which Buyer is entitled, multiplied by (B) the highest trading price of the applicable Conversion Shares for the period between the Required Delivery Date and the Share Delivery Date. In addition to the foregoing, if on or prior to the Required Delivery Date either (I) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, the Company shall fail to issue and deliver a certificate to Buyer and register such Common Shares on the Company's share register or, if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit the balance account of Buyer or Buyer's designee with DTC for the number of Common Shares to which Buyer submitted for legend removal by Buyer pursuant to Section 5(d) above or clause (ii) below or (II) a Notice Failure occurs, and if on or after such Trading Day Buyer purchases (in an open market transaction or otherwise) Common Shares to deliver in satisfaction of a sale by Buyer of Common Shares submitted for legend removal by Buyer pursuant to Section 5(d) above that Buyer is entitled to receive from the Company (a "**Buy-In**"), then the Company shall, within two (2) Business Days after Buyer's request and in Buyer's discretion, either (i) pay cash to Buyer in an amount equal to Buyer's total purchase price (including reasonable brokerage commissions and other out-of-pocket expenses, if any, for the Common Shares so purchased) (the "**Buy-In Price**"), at which point the Company's obligation to so deliver such certificate or credit Buyer's balance account shall terminate and such shares shall be cancelled, or (ii) promptly honor its obligation to so deliver to Buyer a certificate or certificates or credit the balance account of Buyer or Buyer's designee with DTC representing such number of Common Shares that would have been so delivered if the Company timely complied with its obligations hereunder and pay cash to Buyer in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of Conversion Shares that the Company was required to deliver to Buyer by the Required Delivery Date multiplied by (B) the price at which Buyer sold such Conversion Shares

in anticipation of the Company's timely compliance with its delivery obligations hereunder. Nothing shall limit Buyer's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing Common Shares (or to electronically deliver such Common Shares) as required pursuant to the terms hereof. Notwithstanding anything herein to the contrary, with respect to any given Notice Failure and/or Delivery Failure, this Section 5(e) shall not apply to Buyer the extent the Company has already paid such amounts in full to Buyer with respect to such Notice Failure and/or Delivery Failure, as applicable, pursuant to the analogous sections of the Debentures held by Buyer.

(f) FAST Compliance. While the Debentures remains outstanding, the Company is eligible to participate in, and shall remain eligible to participate in, the DTC Fast Automated Securities Transfer Program. Upon any resignation or replacement of Computershare as the Company's transfer agent, the Company agrees to provide to any successor transfer agent new irrevocable transfer agent instructions in a form mutually agreed to by the Company and Buyer.

6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.

(a) The obligation of the Company hereunder to issue and sell the applicable Debenture to Buyer on the applicable Closing Date is subject to the satisfaction, at or before each Closing, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing Buyer with prior written notice thereof:

(i) Buyer shall have executed each of the other Transaction Documents to which it is a party and delivered the same to the Company.

(ii) Buyer shall have delivered to the Company the First Debenture Purchase Price or the Second Debenture Purchase Price, as applicable (less the amounts withheld pursuant to Section 4(g)) for the applicable Debenture being purchased by Buyer on the applicable Closing Date by wire transfer of immediately available funds in accordance with the applicable Flow of Funds Letter.

(iii) The representations and warranties of Buyer shall be true and correct in all material respects as of the date when made and as of each Closing as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by Buyer at or prior to each Closing.

(iv) The Company shall have obtained the waiver and consent of Mudrick Capital Management, LP to the transactions contemplated by this Agreement.

(v) The Senior Secured Loan Agreements, dated as of December 3, 2021 (the "**Senior Loan Agreements**"), that the Company, together with certain of its Subsidiaries as guarantors, are party to with certain institutional lenders affiliated with Mudrick Capital Management, LP, shall have been exchanged for a senior secured note with a maturity date of October 31, 2023.

7. CONDITIONS TO BUYER'S OBLIGATION TO PURCHASE.

(a) The obligation of Buyer hereunder to purchase the applicable Debenture at the applicable Closing is subject to the satisfaction, at or before the date of the applicable Closing, of

each of the following conditions, provided that these conditions are for Buyer's sole benefit and may be waived by Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(i) The Company shall have duly executed and delivered to Buyer each of the Transaction Documents to which it is a party and the Company shall have duly executed and delivered to Buyer the applicable Debenture purchased by Buyer at the applicable Closing, pursuant to this Agreement.

(ii) Buyer shall have received the opinion of the Company's corporate counsel, dated as of the date of each Closing, in a form reasonably acceptable to Buyer.

(iii) [Reserved].

(iv) The Company shall have delivered to Buyer a certificate of good standing evidencing the formation and good standing of the Company issued by the Secretary of State of Delaware as of a date within ten (10) days of the Second Closing Date.

(v) The Company shall have delivered to Buyer a certificate evidencing the Company's qualification as a foreign corporation and good standing issued by the Secretary of State (or comparable office) of each jurisdiction in which the Company conducts business in the United States, if any, and is required to so qualify, as of a date within ten (10) days of the Second Closing Date.

(vi) The Company shall have delivered to Buyer a certified copy of the Certificate of Incorporation as certified by the Secretary of State of Delaware within ten (10) days of each Closing.

(vii) The Company shall have delivered to Buyer a certificate, in a form acceptable to Buyer, executed by the Chief Executive Officer of the Company and dated as of each Closing, as to (i) the Signing Resolutions consistent with Section 3(b) as adopted by the Company's board of directors in a form reasonably acceptable to Buyer, (ii) the Certificate of Incorporation of the Company and (iii) the Bylaws of the Company, each as in effect at each Closing.

(viii) Each and every representation and warranty of the Company shall be true and correct as of the date when made and as of the date of each Closing as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the date of each Closing. Buyer shall have received a certificate, duly executed by the Chief Executive Officer of the Company, dated as of the date of each Closing, to the foregoing effect and as to such other matters as may be reasonably requested by Buyer in a form acceptable to Buyer.

(ix) The Company shall have delivered to Buyer a letter from the Company's transfer agent certifying the number of Common Shares outstanding on the date immediately prior to each Closing.

(x) The Common Shares (A) shall be designated for quotation or listed (as applicable) on the Principal Market and (B) shall not have been suspended, as of the date of each Closing, by the SEC or the Principal Market from trading on the Principal Market.

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

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

(xiii) Since the date of execution of this Agreement, no event or series of events shall have occurred that reasonably would have or result in a Material Adverse Effect.

(xiv) The Company shall have obtained, if required, approval of the Principal Market to list or designate for quotation (as the case may be) the Conversion Shares.

(xv) Buyer shall have received a letter on the letterhead of the Company, duly executed by the Chief Executive Officer of the Company, setting forth the wire amounts of Buyer and the wire transfer instructions of the Company for each Closing (each, a "**Flow of Funds Letter**").

(xvi) The Company shall have delivered to Buyer a certificate, duly executed by the auditor of the Company, in a form reasonably acceptable to Buyer, certifying that such auditor is registered with the Public Company Accounting Oversight Board.

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

8. POST CLOSING MATTERS.

Following each Closing and in all events before any Common Shares are required to be delivered by the Company under this Agreement, the Company and Buyer shall use commercially reasonable efforts to agree on the Irrevocable Transfer Agent Instructions, with the Company's transfer agent.

9. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Delaware, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude Buyer from

bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to Buyer or to enforce a judgment or other court ruling in favor of Buyer. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.**

(b) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

(c) Headings; Gender. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular, and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Agreement instead of just the provision in which they are found.

(d) Severability; Maximum Payment Amounts. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s). Notwithstanding anything to the contrary contained in this Agreement or any other Transaction Document (and without implication that the following is required or applicable), it is the intention of the parties that in no event shall amounts and value paid by the Company and/or any of its Subsidiaries (as the case may be), or payable to or received by Buyer, under the Transaction Documents (including without limitation, any amounts that would be characterized as "interest" under applicable law) exceed amounts permitted under any applicable law. Accordingly, if any obligation to pay, payment made to Buyer, or collection by any Buyer pursuant the Transaction Documents is finally judicially determined to be contrary to any such applicable law, such obligation to pay, payment or collection shall be deemed to have been made by mutual mistake of Buyer, the Company and its Subsidiaries and such amount shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the applicable law. Such adjustment shall be effected, to the extent necessary, by reducing or refunding, at the option of Buyer, the amount of interest or any other amounts that would constitute unlawful amounts required to be paid or actually paid to Buyer under the Transaction Documents. For greater certainty, to the extent that any interest, charges, fees, expenses or other amounts required to be paid to or received by Buyer under any of the

Transaction Documents or related thereto are held to be within the meaning of "interest" or another applicable term to otherwise be violative of applicable law, such amounts shall be pro-rated over the period of time to which they relate.

(e) Entire Agreement; Amendments. This Agreement, the other Transaction Documents and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all other prior oral or written agreements between Buyer, the Company, the Subsidiaries, their affiliates and Persons acting on their behalf, including, without limitation, any transactions by Buyer with respect to Common Shares or the Securities, and the other matters contained herein and therein, and this Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein contain the entire understanding of the parties solely with respect to the matters covered herein and therein; provided, however, nothing contained in this Agreement or any other Transaction Document shall (or shall be deemed to) (i) have any effect on any agreements Buyer has entered into with, or any instruments Buyer has received from, the Company or any of its Subsidiaries prior to the date hereof with respect to any prior investment made by Buyer in the Company or (ii) waive, alter, modify or amend in any respect any obligations of the Company or any of its Subsidiaries, or any rights of or benefits to Buyer or any other Person, in any agreement entered into prior to the date hereof between or among the Company and/or any of its Subsidiaries and Buyer, or any instruments Buyer received from the Company and/or any of its Subsidiaries prior to the date hereof, and all such agreements and instruments shall continue in full force and effect. Except as specifically set forth herein or therein, neither the Company nor Buyer makes any representation, warranty, covenant, or undertaking with respect to such matters. For clarification purposes, the Recitals are part of this Agreement. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and Buyer, and any amendment to any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on Buyer and all holders of Securities, as applicable; provided that no such amendment shall be effective to the extent that it (A) applies to less than all of the holders of the Securities then outstanding or (B) imposes any obligation or liability on Buyer without Buyer's prior written consent (which may be granted or withheld in Buyer's sole discretion). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. The Company has not, directly or indirectly, made any agreements with Buyer relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents. Without limiting the foregoing, the Company confirms that, except as set forth in this Agreement and the other Transaction Documents, Buyer has not made any commitment or promise, and Buyer does not have any other obligation, to provide any financing to the Company, any Subsidiary or otherwise. As a material inducement for Buyer to enter into this Agreement, the Company expressly acknowledges and agrees that (x) no due diligence or other investigation or inquiry conducted by Buyer, any of its advisors or any of its representatives shall affect Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document and (y) unless a provision of this Agreement or any other Transaction Document is expressly preceded by the phrase "except as disclosed in the SEC Documents," nothing contained in any of the SEC Documents shall affect Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by electronic mail (provided that such sent email is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's email server that such e-mail could not be delivered to

such recipient); or (iii) one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses, e-mail addresses for such communications shall be:

If to the Company:

Remark Holdings, Inc.
800 S. Commerce St.
Las Vegas, NV 89106
Telephone: (702) 701-9514
Attention: Kai-Shing Tao
Email: stao@remarkholdings.com

If to the Transfer Agent:

Computershare LLC
150 Royall Street
Canton, MA 02021
Attention: Consuelo Galicia
Email: consuelo.galicia@computershare.com

If to Buyer:

As set forth on Schedule 9(f) attached hereto.

with a copy (for informational purposes only) to:

Sullivan & Worcester LLP
1633 Broadway
New York, NY 10019
Telephone: (212) 660-3012
Attention: David E. Danovitch, Esq.
Email: ddanovitch@sullivanlaw.com

or to such other address, and/or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's e-mail containing the time and date, or (C) provided by an overnight courier service shall be rebuttable evidence of personal service or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of any of the Debentures. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of Buyer. Buyer may assign some or all of its rights hereunder in connection with any transfer of any of its Securities made in accordance with the terms of the Transaction Documents without the consent of the Company, in which event such assignee shall be deemed to be a purchaser hereunder with respect to such assigned rights.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, other than the Indemnitees referred to in Section 9(k).

(i) Survival. The representations, warranties, agreements, and covenants shall survive each Closing.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as may be reasonably necessary in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification. In consideration of Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless Buyer and each holder of any Securities and all of their (including Buyer's) respective shareholders, partners, managers, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (i) any misrepresentation or breach of any representation or warranty made by the Company or any Subsidiary in any of the Transaction Documents, (ii) any breach of any covenant, agreement or obligation of the Company or any Subsidiary contained in any of the Transaction Documents or (iii) any cause of action, suit, proceeding or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company or any Subsidiary) or which otherwise involves such Indemnitee that arises out of or results from (A) the execution, delivery, performance or enforcement of any of the Transaction Documents, (B) any disclosure properly made by Buyer pursuant to Section 4(i), or (C) the status of Buyer or holder of the Securities either as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents or as a party to this Agreement (including, without limitation, as a party in interest or otherwise in any action or proceeding for injunctive or other equitable relief). To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities, which is permissible under applicable law. Except as otherwise set forth herein, the mechanics and procedures with respect to the rights and obligations under this Section 9(k) shall be the same as those set forth in Section 6 of the RRA.

(l) Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty. Each and every reference to share prices, Common Shares and any other numbers in this Agreement that relate to the Common Shares shall be automatically adjusted for any share splits, share dividends, share combinations, recapitalizations or other similar transactions that occur with respect to the Common Shares after the date of this Agreement. It is expressly understood and agreed that for all purposes of this Agreement, and without implication that the contrary would otherwise be true, neither transactions nor purchases nor sales shall include the location and/or reservation of borrowable Common Shares.

(m) Remedies. Buyer and in the event of assignment by Buyer of its rights and obligations hereunder, each holder of Securities, shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any

time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company recognizes that in the event that it or any Subsidiary fails to perform, observe, or discharge any or all of its or such Subsidiary's (as the case may be) obligations under the Transaction Documents, any remedy at law would inadequate relief to Buyer. The Company therefore agrees that Buyer shall be entitled to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The remedies provided in this Agreement and the other Transaction Documents shall be cumulative and in addition to all other remedies available under this Agreement and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief).

(n) Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever Buyer exercises a right, election, demand or option under a Transaction Document and the Company or any Subsidiary does not timely perform its related obligations within the periods therein provided, then Buyer may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company or such Subsidiary (as the case may be), any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

(o) Payment Set Aside; Currency. To the extent that the Company makes a payment or payments to Buyer hereunder or pursuant to any of the other Transaction Documents or Buyer enforces or exercises its rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred. Unless otherwise expressly indicated, all dollar amounts referred to in this Agreement and the other Transaction Documents are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Agreement and all other Transaction Documents shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Agreement, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation.

(p) Judgment Currency.

(i) If for the purpose of obtaining or enforcing judgment against the Company in connection with this Agreement or any other Transaction Document in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 9(p) referred to as the "**Judgment Currency**") an amount due in U.S. Dollars under this Agreement, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

(1) the date actual payment of the amount due, in the case of any proceeding in the courts of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date: or

(2) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 9(p)(i)(2) being hereinafter referred to as the "**Judgment Conversion Date**").

(ii) If in the case of any proceeding in the court of any jurisdiction referred to in Section 9(p)(i)(2) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of U.S. Dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(iii) Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Agreement or any other Transaction Document.

[*signature pages follow*]

IN WITNESS WHEREOF, Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

COMPANY:

REMARK HOLDINGS, INC.

By: */s/ Kai-Shing Tao*
Name: Kai-Shing Tao
Title: Authorized Signatory

[Signature Page to Debenture Purchase Agreement]

IN WITNESS WHEREOF, Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

BUYER:

IONIC VENTURES, LLC

By: */s/ Brendan O'Neil*
Name: Brendan O'Neil
Title: Authorized Signatory

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of March 14, 2023 (the "Signing Date"), by and between Remark Holdings, Inc., a Delaware corporation (the "Company"), and the undersigned signatory hereto (together with it permitted assigns, the "Buyer"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Debenture Purchase Agreement, dated the date hereof, by and between the Company and the Buyer (the "Debenture Purchase Agreement").

WHEREAS:

The Company has agreed, upon the terms and subject to the conditions of the Debenture Purchase Agreement, to issue and sell to Buyer the Debenture (as defined in the Debenture Purchase Agreement) which are convertible into Conversion Shares (as defined in the Debenture Purchase Agreement) in accordance with the terms of the Debentures, and to induce the Buyer to enter into the Debenture Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "Securities Act"), and applicable state securities laws.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Buyer hereby agree as follows:

1. DEFINITIONS.

As used in this Agreement, the following terms shall have the following meanings:

a. "Effective Date" means the date that the applicable Registration Statement has been declared effective by the SEC.

b. "Filing Deadline" means (i) with respect to the initial Registration Statement required to be filed pursuant to Section 2(a), the 15th calendar day after the filing of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022, and (ii) with respect to any additional Registration Statements that may be required to be filed by the Company pursuant to this Agreement, the date on which the Company is required to file such additional Registration Statement pursuant to the terms of this Agreement.

c. "Investor" means the Buyer, any transferee or assignee thereof to whom a Buyer assigns its rights under this Agreement in accordance with Section 9 and who agrees to become bound by the provisions of this Agreement, and any transferee or assignee thereof to whom a transferee or assignee assigns its rights under this Agreement in accordance with Section 9 and who agrees to become bound by the provisions of this Agreement.

d. "Person" means any individual or entity including but not limited to any corporation, a limited liability company, an association, a partnership, an organization, a business, an individual, a governmental or political subdivision thereof or a governmental agency.

e. "Register," "registered," and "registration" refer to a registration effected by preparing and filing one or more registration statements of the Company in compliance with the Securities Act and pursuant to Rule 415 under the Securities Act or any successor rule providing for offering securities on a continuous basis ("Rule 415"), and the declaration or ordering of effectiveness of such registration statement(s) by the United States Securities and Exchange Commission (the "SEC").

f. "Registrable Securities" means (i) any and all Filing Default Shares or Effectiveness Default Shares to which Investor may be entitled under this Agreement, and any and all Common Shares (as defined in the Debenture Purchase Agreement) issued or issuable with respect to the Filing Default Shares or Effectiveness Default Shares as a result of any share split, share dividend, recapitalization, exchange or similar event or otherwise, and (ii) the Conversion Shares and any Common Shares issued or issuable with respect to the Conversion Shares, including, without limitation, (1) as a result of any share split, share dividend, recapitalization, exchange or similar event or otherwise and (2) any share capital of the Company into which the Common Shares are converted or exchanged, in each case, without regard to any limitations on conversion of the Debentures.

g. "Registration Statement" means one or more registration statements of the Company covering only the sale of the Registrable Securities.

2. REGISTRATION.

a. Mandatory Registration. The Company shall prepare and, as soon as practicable, but in no event later than the Filing Deadline, file with the SEC an initial Registration Statement covering the maximum number of Registrable Securities as shall be permitted to be included thereon in accordance with applicable SEC rules, regulations and interpretations so as to permit the resale of such Registrable Securities by the Investor under Rule 415 under the Securities Act at then prevailing market prices (and not fixed prices), as mutually determined by both the Company and the Investor in consultation with their respective legal counsel, subject to the aggregate number of authorized shares then available for issuance in its Certificate of Incorporation. The initial Registration Statement shall register only the Registrable Securities, unless otherwise approved by Investor. The Investor and its counsel shall have a reasonable opportunity to review and comment upon such Registration Statement and any amendment or supplement to such Registration Statement and any related prospectus prior to its filing with the SEC, and the Company shall give due consideration to all such comments. The Investor shall promptly furnish all information reasonably requested by the Company for inclusion therein. The Company shall use its commercially reasonable efforts to have the Registration Statement and any amendment declared effective by the SEC no later than the Effectiveness Deadline. The Company shall use commercially reasonable efforts to keep the Registration Statement effective pursuant to Rule 415 promulgated under the Securities Act and available for the resale by the Investor of all of the Registrable Securities covered thereby at all times until the date on which the Investor shall have resold all the Registrable Securities covered thereby (the "Registration Period"). The Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading.

b. Rule 424 Prospectus. The Company shall, as required by applicable securities regulations, from time to time file with the SEC, pursuant to Rule 424 promulgated under the Securities Act, the prospectus and prospectus supplements, if any, to be used in connection with sales of the Registrable Securities under the Registration Statement. The Investor and its counsel shall have a reasonable opportunity to review and comment upon such prospectus prior to its filing with the SEC, and the Company shall give due consideration to all such comments. The Investor shall use its commercially reasonable efforts to comment upon such prospectus within one (1) Business Day from the date the Investor receives the final pre-filing version of such prospectus. By 8:30 a.m. (New York time) on the Business Day immediately following each Effective Date, the Company shall file with the SEC in accordance with Rule 424(b) under the 1933 Act the final prospectus to be used in connection with sales pursuant to the applicable Registration Statement (whether or not such a prospectus is technically required by such rule).

c. Sufficient Number of Shares Registered. In the event the number of shares available under the Registration Statement is insufficient to cover all of the Registrable Securities, the Company shall amend the Registration Statement or file a new Registration Statement (a "New Registration Statement"), so as to cover all of such Registrable Securities (subject to the limitations set forth in Section 2(a)) as soon as practicable, but in any event not later than fourteen (14) calendar days after the necessity therefor arises, subject to any limits that may be imposed by the SEC pursuant to Rule 415 under the Securities Act. The Company shall use its reasonable best efforts to cause such amendment and/or New Registration Statement to become effective as soon as practicable following the filing thereof.

d. Offering. If the staff of the SEC (the "Staff") or the SEC seeks to characterize any offering pursuant to a Registration Statement filed pursuant to this Agreement as constituting an offering of securities that does not permit such Registration Statement to become effective and be used for resales by the Investor under Rule 415 at then-prevailing market prices (and not fixed prices), or if after the filing of the initial Registration Statement with the SEC pursuant to Section 2(a), the Company is otherwise required by the Staff or the SEC to reduce the number of Registrable Securities included in such initial Registration Statement, then the Company shall reduce the number of Registrable Securities to be included in such initial Registration Statement (with the prior consent of the Investor and its legal counsel as to the specific Registrable Securities to be removed therefrom) until such time as the Staff and the SEC shall so permit such Registration Statement to become effective and be used as aforesaid. In the event of any reduction in Registrable Securities pursuant to this paragraph, the Company shall file one or more New Registration Statements in accordance with Section 2(c) until such time as all Registrable Securities have been included in Registration Statements that have been declared effective and the prospectus contained therein is available for use by the Investor. Notwithstanding any provision herein or in the Debenture Purchase Agreement to the contrary, the Company's obligations to register Registrable Securities (and any related conditions to the Investor's obligations) shall be qualified as necessary to comport with any requirement of the SEC or the Staff as addressed in this Section 2(d).

e. Effect of Failure to File and Obtain and Maintain Effectiveness of any Registration Statement.

(i) If a Registration Statement covering the resale of all of the Registrable Securities required to be covered thereby (disregarding any reduction pursuant to Section 2(d)) and required to be filed by the Company pursuant to this Agreement is not filed with the SEC on or before the Filing Deadline for such Registration

Statement (a "Filing Failure") (it being understood that any delay as the result of the Investor's failure to promptly furnish all information reasonably requested by the Company for inclusion in such Registration Statement shall not constitute a Filing Failure), then, as partial relief for the damages to Investor by reason of any such delay in its ability to sell the underlying Common Shares (which remedy shall not be exclusive of any other remedies available at law or in equity, including, without limitation, specific performance), (A) the Company shall issue to the Investor 150,000 Common Shares ("Filing Default Shares"), not later than two (2) Trading Days after such Filing Failure and (B) to the extent no Conversion Shares have been registered, the Company shall be obligated to make payments to Investor, as liquidated damages and not as a penalty, in an amount equal to 2% of the amount then currently outstanding under the Debentures (including, without limitation, all Principal, Interest and other payments due thereon as such terms are defined in the Debentures) for each 30-day period following the Filing Deadline, or pro rata for any portion thereof following the Filing Deadline, and such payments shall be made to Investor in cash not later than two (2) Trading Days after the end of each 30-day period.

(ii) If a Registration Statement covering the resale of all of the Registrable Securities required to be covered thereby (disregarding any reduction pursuant to Section 2(d)) and required to be filed by the Company pursuant to this Agreement (x) is not declared effective by the SEC on or before the Effectiveness Deadline (as defined below) for such Registration Statement (an "Effectiveness Failure") (it being understood that any delay as the result of the Investor's failure to promptly furnish all information reasonably requested by the Company for inclusion in such Registration Statement shall not constitute an Effectiveness Failure), and (y) if on the Business Day immediately following the Effective Date for such Registration Statement the Company shall not have filed a "final" prospectus for such Registration Statement with the SEC under Rule 424 in accordance with Section 2(b) (whether or not such a prospectus is technically required by such rule), then, as partial relief for the damages to Investor by reason of any such delay in its ability to sell the underlying Common Shares (which remedy shall not be exclusive of any other remedies available at law or in equity, including, without limitation, the remedies set forth in Section 2(e)(i) above) the Company shall be deemed to not have satisfied this clause (ii) and such event shall be deemed to be an Effectiveness Failure), then (A) the Company shall promptly issue to the Investor 150,000 Common Shares ("Effectiveness Default Shares"), but not later than two (2) Trading Days after such Effectiveness Failure and (B) to the extent no Conversion Shares have been registered, the Company shall be obligated to make payments to Investor, as liquidated damages and not as a penalty, in an amount equal to 2% of the amount then currently outstanding under the Debentures (including, without limitation, all Principal, Interest and other payments due thereon as such terms are defined in the Debentures) for each 30-day period or pro rata for any portion thereof following the Effectiveness Deadline, and such payments shall be made to Investor in cash not later than two (2) Trading Days after the end of each 30-day period. "Effectiveness Deadline" means (i) with respect to the initial Registration Statement required to be filed pursuant to Section 2(a), the earlier of the (A) 90th calendar day following the Signing Date (or, if such Registration Statement is subject to a full review by the SEC, the 120th calendar day after the Signing Date) and (B) 2nd Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Registration Statement will not be reviewed or will not be subject to further review and (ii) with respect to any additional Registration Statements that may be required to be filed by the Company pursuant to this Agreement, the earlier of the (A) 30th calendar day following the date on which the Company is required to file such additional Registration Statement (or, if such Registration Statement is subject to a full review by the SEC, the 90th calendar day after such required filing date) and (B) 2nd Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Registration Statement will not be reviewed or will not be subject to further review.

3. RELATED OBLIGATIONS.

With respect to the Registration Statement and whenever any Registrable Securities are to be registered pursuant to Section 2 including on any New Registration Statement, the Company shall use its reasonable best efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof and, pursuant thereto, the Company shall have the following obligations:

a. The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to any registration statement and the prospectus used in connection with such registration statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the Securities Act, as may be necessary to keep the Registration Statement or any New Registration Statement effective at all times during the Registration Period, and, during such period, comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities of the Company covered by the Registration Statement or any New Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the Investor as set forth in such registration statement.

b. The Company shall permit the Investor to review and comment upon the Registration Statement or any New Registration Statement and all amendments and supplements thereto at least two (2) Business Days prior to their filing with the SEC, and not file any document in a form to which Investor reasonably objects. The Investor shall use its commercially reasonable efforts to comment upon the Registration Statement or any New Registration

Statement and any amendments or supplements thereto within two (2) Business Days from the date the Investor receives the final version thereof. The Company shall furnish to the Investor, without charge any correspondence from the SEC or the staff of the SEC to the Company or its representatives relating to the Registration Statement or any New Registration Statement.

c. Upon request of the Investor, the Company shall furnish to the Investor, (i) promptly after the same is prepared and filed with the SEC, at least one copy of such registration statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits, (ii) upon the effectiveness of any registration statement, a copy of the prospectus included in such registration statement and all amendments and supplements thereto (or such other number of copies as the Investor may reasonably request) and (iii) such other documents, including copies of any preliminary or final prospectus, as the Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by the Investor. For the avoidance of doubt, any filing available to the Investor via the SEC's EDGAR system shall be deemed "furnished to the Investor" hereunder.

d. The Company shall use commercially reasonable efforts to (i) register and qualify, unless an exemption from registration and qualification is available, the Registrable Securities covered by a registration statement under such other securities or "blue sky" laws of such jurisdictions in the United States as the Investor reasonably requests, (ii) prepare and file in those jurisdictions, such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(d), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify the Investor who holds Registrable Securities of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

e. As promptly as reasonably practicable after becoming aware of such event or facts, the Company shall notify the Investor in writing of the happening of any event or existence of such facts as a result of which the prospectus included in any registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, non-public information regarding the Company), and, as promptly as reasonably practicable, prepare a supplement or amendment to such registration statement to correct such untrue statement or omission, and deliver a copy of such supplement or amendment to the Investor (or such other number of copies as the Investor may reasonably request). The Company shall also promptly notify the Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, and when a registration statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to the Investor by email on the same day of such effectiveness and by overnight mail), (ii) of any request by the SEC for amendments or supplements to any registration statement or related prospectus or related information, and (iii) of the Company's reasonable determination that a post-effective amendment to a registration statement would be appropriate.

f. The Company shall use its commercially reasonable efforts to prevent the issuance of any stop order or other suspension of effectiveness of any registration statement, or the suspension of the qualification of any Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and to notify the Investor of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

g. The Company shall use commercially reasonable efforts to (i) cause all the Registrable Securities to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange, or (ii) secure designation and quotation of all the Registrable Securities on the Principal Market. The Company shall pay all fees and expenses in connection with satisfying its obligation under this Section 3.

h. The Company shall cooperate with the Investor to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to any registration statement and enable such certificates to be in such denominations or amounts as the Investor may reasonably request and registered in such names as the Investor may request.

i. The Company shall at all times provide a Transfer Agent with respect to its Common Shares.

j. If reasonably requested by the Investor, the Company shall (i) promptly incorporate in a prospectus supplement or post-effective amendment such information as the Investor believes should be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities; (ii) make all required filings of such prospectus supplement or post-effective amendment as soon as reasonably practicable upon notification of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any registration statement.

k. The Company shall use its commercially reasonable efforts to cause the Registrable Securities covered by any registration statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

l. Within two (2) Business Days after any registration statement which includes the Registrable Securities is ordered effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investor) confirmation that such registration statement has been declared effective by the SEC in the form attached hereto as Exhibit A. Thereafter, if requested by the Investor at any time, the Company shall require its counsel to deliver to the Investor a written confirmation whether or not the effectiveness of such registration statement has lapsed at any time for any reason (including, without limitation, the issuance of a stop order) and whether or not the registration statement is current and available to the Investor for sale of all of the Registrable Securities.

m. The Company shall take all other reasonable actions necessary to expedite and facilitate disposition by the Investor of Registrable Securities pursuant to any registration statement.

4. OBLIGATIONS OF THE INVESTOR.

a. The Company shall notify the Investor in writing of the information the Company reasonably requires from the Investor in connection with any registration statement hereunder. The Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

b. The Investor agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any registration statement hereunder.

c. The Investor agrees that, upon receipt of any notice from the Company of the happening of any event or existence of facts of the kind described in Section 3(f) or the first sentence of Section 3(e), the Investor will immediately discontinue disposition of Registrable Securities pursuant to any registration statement(s) covering such Registrable Securities until the Investor's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(f) or the first sentence of Section 3(e). Notwithstanding anything to the contrary, the Company shall cause its transfer agent to promptly deliver Common Shares without any restrictive legend in accordance with the terms of the Debenture Purchase Agreement in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale prior to the Investor's receipt of a notice from the Company of the happening of any event of the kind described in Section 3(f) or the first sentence of Section 3(e) and for which the Investor has not yet settled.

5. EXPENSES OF REGISTRATION.

All reasonable expenses of the Company, other than sales or brokerage commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, and fees and disbursements of counsel for the Company, shall be paid by the Company. The Company shall reimburse Sullivan & Worcester LLP for its fees and disbursements in connection with registration, filing or qualification pursuant to Sections 2 and 3 of this Agreement, which amount shall, together with all other Transaction Expenses (as defined in the Debenture Purchase Agreement), be limited to the Fee Cap (as defined in the Debenture Purchase Agreement).

6. INDEMNIFICATION.

a. To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend the Investor, each Person, if any, who controls the Investor, the members, managers, directors, officers, partners, employees, agents, representatives of the Investor and each Person, if any, who controls the Investor within the meaning of the Securities Act or the Securities Exchange Act of 1934, as amended (the "Exchange Act") (each, an "Indemnified Person"), against any third party losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, reasonable attorneys' fees, amounts paid in settlement (with the prior written consent of the Company, such consent not to be unreasonably withheld) or expenses, joint or several, (collectively, "Claims") reasonably incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto ("Indemnified Damages"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in the Registration Statement, any New Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered ("Blue Sky Filing"), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to the Registration Statement or any New Registration Statement (the matters in the foregoing clauses (i) through (iii) being, collectively, "Violations"). The Company shall reimburse each Indemnified Person promptly as such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information about the Investor furnished in writing to the Company by such Indemnified Person expressly for use in connection with the preparation of the Registration Statement, any New Registration Statement or any such amendment thereof or supplement thereto, if such prospectus was made available by the Company pursuant to Section 3(c) or Section 3(e); (ii) with respect to any superseded prospectus, shall not inure to the benefit of any such person from whom the person asserting any such Claim purchased the Registrable Securities that are the subject thereof (or to the benefit of any person controlling such person) if the untrue statement or omission of material fact contained in the superseded prospectus was corrected in the revised prospectus, as then amended or supplemented, if such revised prospectus was timely made available by the Company pursuant to Section 3(c) or Section 3(e), and the Indemnified Person was promptly advised in writing not to use the incorrect prospectus prior to the use giving rise to a violation and such Indemnified Person, notwithstanding such advice, used it; (iii) shall not be available to the extent such Claim is based on a failure of the Investor to deliver or to cause to be delivered the prospectus made available by the Company, if such prospectus was timely made available by the Company pursuant to Section 3(c) or Section 3(e); and (iv) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Investor pursuant to Section 9.

b. In connection with the Registration Statement or any New Registration Statement, the Investor agrees to indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement or any New Registration Statement, each Person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act (collectively and together with an Indemnified Person, an "Indemnified Party"), against any Claim or Indemnified Damages to which any of them may become subject, under the Securities Act, the Exchange Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information about the Investor set forth on Exhibit B attached hereto and furnished to the Company by the Investor expressly for use in connection with such registration statement or from the failure of the Investor to deliver or so cause to be delivered the prospectus made available by the Company, if such prospectus was timely made available by the Company pursuant to Section 3(c) or Section 3(e); and, subject to Section 6(d), the Investor will reimburse any legal or other expenses reasonably incurred by them in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Investor, which consent shall not be unreasonably withheld; provided, further, however, that the Investor shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to the Investor as a result of the sale of

Registrable Securities pursuant to such registration statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Investor pursuant to Section 9.

c. Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 6 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party, as the case may be; provided, however, that an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding. The Indemnified Party or Indemnified Person shall cooperate fully with the indemnifying party in connection with any negotiation or defense of any such action or claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Party or Indemnified Person which relates to such action or claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its written consent, provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the consent of the Indemnified Party or Indemnified Person, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party or Indemnified Person of a release from all liability in respect to such claim or litigation. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 6, except to the extent that the indemnifying party is prejudiced in its ability to defend such action.

d. The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received, or Indemnified Damages are incurred.

e. The indemnity agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to applicable law.

7. CONTRIBUTION.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however, that: (i) no seller of Registrable Securities guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any seller of Registrable Securities who was not guilty of fraudulent misrepresentation; and (ii) contribution by any seller of Registrable Securities shall be limited in amount to the net amount of proceeds received by such seller from the sale of such Registrable Securities.

8. REPORTS AND DISCLOSURE UNDER THE SECURITIES ACTS.

With a view to making available to the Investor the benefits of Rule 144 promulgated under the Securities Act or any other similar rule or regulation of the SEC that may at any time permit the Investor to sell securities of the Company to the public without registration ("Rule 144"), the Company agrees, at the Company's sole expense, so long as the Investor owns Registrable Securities, to use reasonable best efforts to:

a. make and keep public information available, as those terms are understood and defined in Rule 144;

b. file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144;

c. furnish to the Investor so long as the Investor owns Registrable Securities, promptly upon request, (i) a written statement by the Company that it has complied with the reporting and or disclosure provisions of Rule 144, the Securities Act and the Exchange Act, (ii) a copy of the most recent annual report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to permit the Investor to sell such securities pursuant to Rule 144 without registration; and

d. take such additional action as is requested by the Investor to enable the Investor to sell the Registrable Securities pursuant to Rule 144, including, without limitation, delivering all such legal opinions, consents, certificates, resolutions and instructions to the Company's Transfer Agent as may be requested from time to time by the Investor and otherwise fully cooperate with Investor and Investor's broker to effect such sale of securities pursuant to Rule 144.

The Company agrees that damages may be an inadequate remedy for any breach of the terms and provisions of this Section 8 and that Investor shall, whether or not it is pursuing any remedies at law, be entitled to seek equitable relief in the form of a preliminary or permanent injunctions, without having to post any bond or other security, upon any breach or threatened breach of any such terms or provisions.

9. ASSIGNMENT OF REGISTRATION RIGHTS.

The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Investor; provided, however, that any transaction, whether by merger, reorganization, restructuring, consolidation, financing or otherwise, whereby the Company remains the surviving entity immediately after such transaction shall not be deemed to be an assignment. The Investor may not assign its rights under this Agreement without the written consent of the Company, other than to an affiliate of the Investor.

10. AMENDMENT OF REGISTRATION RIGHTS.

No provision of this Agreement may be amended or waived by the parties from and after the date that is one Business Day immediately preceding the initial filing of the Registration Statement with the SEC. Subject to the immediately preceding sentence, no provision of this Agreement may be (i) amended other than by a written instrument signed by both parties hereto or (ii) waived other than in a written instrument signed by the party against whom enforcement of such waiver is sought. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

11. MISCELLANEOUS.

a. A Person is deemed to be a holder of Registrable Securities whenever such Person owns or is deemed to own of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from the registered owner of such Registrable Securities.

b. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by email (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one (1) Business Day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses for such communications shall be:

If to the Company:

Remark Holdings, Inc.
800 S. Commerce St.
Las Vegas, NV 89106
Telephone: (702) 701-9514
Attention: Kai-Shing Tao
Email: stao@remarkholdings.com

With a copy (for informational purposes only) to:

Olshan Frome Wolosky LLP
1325 Avenue of the Americas
New York, NY 10019
Attention: Honghui S. Yu, Esq.
Email: hyu@olshanlaw.com

If to the Transfer Agent:

Computershare LLC
150 Royall Street
Canton, MA 02021
Attention: Consuelo Galicia
Email: consuelo.galicia@computershare.com

If to Buyer:

As set forth in the Debenture Purchase Agreement.

If to Legal Counsel:

Sullivan & Worcester LLP
1633 Broadway
New York, NY 10019
Telephone: (212) 660-3060
Attention: David E. Danovitch, Esq.
Email: ddanovitch@sullivanlaw.com

or at such other address and/or to the attention of such other person as the recipient party has specified by written notice given to each other party three (3) Business Days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's email account containing the time, date, recipient email address, as applicable, and an image of the first page of such transmission or (C) provided by a nationally recognized overnight delivery service, shall be rebuttable evidence of personal service, receipt by email or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

c. The corporate laws of the State of New York shall govern all issues concerning the relative rights of the parties. All other questions concerning the construction, validity, enforcement and interpretation of this Agreement, the Registration Rights Agreement and the other Transaction Documents shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in New York, New York for the adjudication of any dispute hereunder or under the other Transaction Documents or in connection therewith, or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

d. This Agreement and the Debenture Purchase Agreement constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement and the

Debenture Purchase Agreement supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

e. Subject to the requirements of Section 9, this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties hereto.

f. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

g. This Agreement may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by e-mail in a ".pdf" format data file of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

h. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

i. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.

j. This Agreement is intended 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.

[*signature page follows*]

IN WITNESS WHEREOF, the parties have caused this Registration Rights Agreement to be duly executed as of day and year first above written.

THE COMPANY:

REMARK HOLDINGS, INC.

By: */s/ Kai-Sing Tao*
Name: Kai-Shing Tao
Title: Chief Executive Officer

BUYER:

IONIC VENTURES, LLC

By: */s/ Brendan O'Neil*
Name: Brendan O'Neil
Title: Authorized Signatory

EXHIBIT A

TO REGISTRATION RIGHTS AGREEMENT

FORM OF NOTICE OF EFFECTIVENESS OF REGISTRATION STATEMENT

[Date]

[TRANSFER AGENT]
_____
_____

Re: [_____]

Ladies and Gentlemen:

Reference is made to that certain Debenture Purchase Agreement, dated as of [ ], 2023 (the "Debenture Purchase Agreement"), entered into by and between Remark Holdings, Inc., a Delaware corporation (the "Company"), and Ionic Ventures, LLC (the "Buyer"), pursuant to which the Company may from time to time issue and sell to the Buyer convertible subordinated debentures (the "Debentures") convertible into the Company's shares of common stock, par value $0.001 per share (the "Common Shares"). In connection with the transactions contemplated by the Debenture Purchase Agreement, the Company has registered with the U.S. Securities & Exchange Commission (the "SEC") the following Common Shares:

(1) 150,000 Common Shares which may be issued to Buyer as Filing Default Shares pursuant to the terms of the Registration Rights Agreement (as defined below) (the "Filing Default Shares");

(2) 150,000 Common Shares which may be issued to Buyer pursuant to the terms of the Registration Rights Agreement as Effectiveness Default Shares (the "Effectiveness Default Shares"); and

(3) [_____] Common Shares which may be issued to Buyer upon conversion of the Debentures (the "Conversion Shares").

Pursuant to the Debenture Purchase Agreement, the Company also has entered into a Registration Rights Agreement, dated as of [ ], 2023, with the Buyer (the "Registration Rights Agreement"), pursuant to which the Company agreed, among other things, to register for resale any Filing Default Shares, any Effectiveness Default Shares and the Conversion Shares (collectively, the "Registrable Securities") under the Securities Act of 1933, as amended (the "Securities Act"). In connection with the Company's obligations under the Debenture Purchase Agreement and the Registration Rights Agreement, on [_____], 2023, the Company filed a Registration Statement (File No. 333-[_____]) (the "Registration Statement") with the SEC relating to the resale of the Registrable Securities.

In connection with the foregoing, we advise you that a member of the SEC's staff has advised us by telephone that the SEC has entered an order declaring the Registration Statement effective under the Securities Act at [_____] [A.M./P.M.] on [_____], 2023 and we have no knowledge, after reviewing the list of stop orders on the SEC's website, that any stop order suspending its effectiveness has been issued or that any proceedings for that purpose are pending before, or threatened by, the SEC and the Registrable Securities are available for resale under the Securities Act pursuant to the Registration Statement and may be issued without any restrictive legend.

Very truly yours,

[NAME]

By: _____

cc: Sullivan & Worcester LLP – David E. Danovitch, Esq.

EXHIBIT B

TO REGISTRATION RIGHTS AGREEMENT

Information About the Investor Furnished to The Company by The Investor
Expressly for Use in Connection with The Registration Statement

Information with Respect to Investor

As of the date of the Debenture Purchase Agreement, Ionic Ventures, LLC, beneficially owned [_____] shares of our common stock, par value $0.001 per share. _____, are deemed to be beneficial owners of all of the Common Shares owned by Ionic Ventures, LC. _____[has sole][have shared] voting and investment power over the shares being offered under the prospectus filed with the SEC in connection with the transactions contemplated under the Debenture Purchase Agreement. _____ is not a licensed broker dealer or an affiliate of a licensed broker dealer.

EXHIBIT 10.3

EXECUTION VERSION

NOTE PURCHASE AGREEMENT

(this "Agreement")

FOR VALUE RECEIVED, on October 31, 2023 (the "Maturity Date"), Remark Holdings, Inc., a Delaware corporation having its principal office at 800 S. Commerce Street, Las Vegas, NV 89106 ("Issuer"), and each subsidiary of Issuer listed on the signature pages hereto or that after the date hereof delivers such a signature page (each a "Guarantor", collectively, the "Guarantors" and, together with Issuer, the "Note Parties" and each a "Note Party") shall pay to the Note Agent for the ratable account of the Holders in accordance with each Holder's Applicable Percentage the principal amount outstanding together with accrued and unpaid interest on the unpaid principal balance of the Notes payable at a rate per annum equal to the Stated Interest Rate as defined in Section 1(c) below.

1. Interest; Amortization; Repayment.

(a) Subject to Section 10, Issuer shall pay interest on the unpaid principal amount of the Notes for the period commencing on and including the most recent Interest Payment Date or, if no interest has been paid, from and including the Closing Date, to but excluding the next Interest Payment Date until such Notes are paid in full at the Stated Interest Rate. Accrued interest on the Notes shall be payable in arrears on the last business day of each month commencing on May 31, 2023, upon any prepayment of the Notes and on the Maturity Date.

(b) Issuer shall make scheduled payments of principal on the Notes according to the following schedule:

- $1,221,000.00 on the Interest Payment Date for June 2023;
- $2,734,000.00 on the Interest Payment Date for July 2023;
- $3,282,000.00 on the Interest Payment Date for August 2023;
- $4,845,000.00 on the Interest Payment Date for September 2023; and
- Remaining balance on the Maturity Date.

(for the avoidance of doubt, each scheduled payment of principal shall be accompanied by all accrued and unpaid interest on such amount in accordance with Section 5).

(c) The Notes shall accrue interest at the rate per annum of twenty and a half percent (20.5%), computed on the basis of a 360-day year and the actual number of days elapsed (the "Stated Interest Rate").

2. Sale and Purchase of Notes; Exchange and Cancellation of Existing Loans. Subject to the terms and conditions of this Agreement, on the Closing Date, the Issuer will issue and sell to each Holder and each Holder will purchase from the Issuer the aggregate principal amount of Notes specified opposite such Holder's name in Schedule I-A (which aggregate principal amounts include the ratable allocation of an extension fee granted to the Holders in consideration for extending the maturity of the Existing Loans pursuant to the Notes, payable in kind, of $750,000.00) in exchange for the cancellation of the principal balance of Existing Loans (including any accrued and unpaid interest on such Existing Loans) by each Holder hereunder specified opposite such Holder's name in Schedule I-B (as evidenced by a payment letter in form and substance reasonably agreed by the Issuer and the Required Holders). The Holders' obligations hereunder are several and not joint obligations and no Holder shall have any liability to any Person for the performance or non-performance of any obligation by any other Holder hereunder.

3. General Provisions Relating to the Notes

(a) Issuance of Notes.

(i) The sale and purchase of the Notes shall occur on March 14, 2023 (the "Closing Date"). On the Closing Date, the Issuer will deliver to the Note Agent an Issuer Order, and the Note Agent will deliver a Confirmation of Registration to each Holder, against delivery by such Holder to the Issuer of a payment letter with

respect to such Holder's Existing Loan in the form and substance reasonably agreed by the Issuer and the Required Holders.

(ii) The form of the Confirmation of Registration shall be as set forth in Annex A hereto. Each Confirmation of Registration executed and delivered by the Note Agent upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Notes that are issued after the Closing Date for any other purpose under this Note Purchase Agreement shall be dated the date of their issuance. The Notes shall be denominated in Dollars but without any minimum denomination requirement. Transfers and assignments of Notes shall be made in accordance with this Section 3 and shall be subject to the receipt by the Collateral Agent and the Note Agent of such documents as each shall reasonably require; provided that nothing in this sentence shall imply or impose a duty on the part of the Collateral Agent or the Note Agent to require any such documents.

(iii) One Responsible Officer of the Issuer shall sign each Issuer Order substantially in the form of Annex B by manual or .pdf signature. If the Responsible Officer whose signature is on an Issuer Order no longer holds that office at the time the Note Agent delivers a Confirmation of Registration, the Note shall be valid nevertheless.

(iv) The signature of the Note Agent on a Confirmation of Registration shall be conclusive evidence that such Note has been duly and validly issued under this Agreement.

(v) The Note Agent will, upon receipt of an Issuer Order, issue a Confirmation of Registration of Notes for original issue that may be validly issued under this Agreement. On the Closing Date, the Note Agent shall, upon receipt of an Issuer Order, deliver a Confirmation of Registration for Notes in an aggregate principal amount of $16,307,175.50. The aggregate principal amount of the Notes may from time to time be increased or decreased by adjustments made on the records of the Note Agent as provided herein.

(vi) All Notes issued upon any registration of transfer, assignment or exchange of Notes shall be the valid obligations of the Issuer, evidencing the same debt (to the extent they evidence debt), and entitled to the same benefits under this Note Purchase Agreement as the Notes deregistered upon such registration of transfer, assignment or exchange.

(vii) The Issuer agrees to pay to the Note Agent for its own account the fees payable in the amounts and at the times agreed in writing between the Issuer and the Note Agent.

(viii) Each Person who becomes a beneficial owner of Notes will be deemed to have represented, acknowledged and agreed as follows:

"THE NOTES HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES AND MAY NOT BE SOLD OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITES ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS."

(b) Maintenance of Records. The Note Agent shall maintain the Register in accordance with Section 19(b). The entries made in the Register maintained by the Note Agent shall be prima facie evidence absent manifest error of the existence and amounts of the obligations recorded therein. Any failure of the Note Agent to maintain such records or make any entry therein or any error therein shall not in any manner affect the obligations of the Issuer under this Agreement and the other Note Documents. In the event of any conflict between the records

maintained by any Person and the Register maintained by the Note Agent in such matters, the Register of the Note Agent shall control in the absence of manifest error.

4. Application of Payments. All payments by Issuer under the Notes shall be applied first to any fees and expenses due and payable hereunder, then to the accrued interest due and payable hereunder or on the Notes and the remainder, if any, to the outstanding principal. Issuer and every endorser or guarantor of the Notes, regardless of the time, order or place of signing, hereby waives presentment, demand, protest and notices of every kind and assents to any permitted extension of the time of payment and to the addition or release of any other party primarily or secondarily liable hereunder. Each payment or interest or principal, or redemption or prepayment of the Notes, shall be applied ratably to the Holders in accordance with each Holder's Applicable Percentage. Redemptions shall be accompanied by accrued but unpaid interest. In the case of each partial redemption or partial prepayment of the Notes pursuant to Sections 12(a) or 12(c), the principal amount of the Notes to be redeemed shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for redemption.

5. Method and Place of Payment. All payments by Issuer under this Agreement and the other Note Documents shall be made without set-off or counterclaim and be free and clear and without any deduction or withholding for any taxes or fees of any nature whatever, unless the obligation to make such deduction or withholding is imposed by law. Except as otherwise expressly provided herein, all such payments shall be made to the Note Agent, for the account of the respective Holders to which such payment is owed, at the Note Agent's Office in immediately available funds not later than 12:00 p.m. (New York City time) two (2) Business Days prior to the date on which such payment is to be made as specified herein. All amounts received by the Note Agent after such time on any date shall be deemed to have been received on the next succeeding Business Day and any applicable interest or fees shall continue to accrue. The Note Agent will promptly distribute to each Holder its ratable share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Holder's applicable office (or otherwise distribute such payment in like funds as received to the Person or Persons entitled thereto as provided herein). If any payment to be made by the Issuer shall fall due on a day that is not a Business Day, payment shall be made on the next succeeding Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be; provided that, if such next succeeding Business Day would fall after the Maturity Date, payment by the Issuer shall be made on the immediately preceding Business Day. Except as otherwise expressly provided herein, all payments hereunder or under any other Note Document shall be made in Dollars.

6. Representations and Warranties.

(a) Note Party Representations. Each Note Party, jointly and severally, represents and warrants to and agrees with the Holders to the following in this Section 6(a): Issuer and each of its subsidiaries has good and marketable title to the assets purported to be owned by it, including, without limitation, the Collateral and the member's interests owned by Remark SPV Holdco LLC ("Holdco SPV") or any other Note Party in Bikini.com, LLC, a Nevada limited liability company (the "Bikini.com Interests"), other than Permitted Liens. Each Note Party has all requisite power and authority to execute and deliver this Agreement and the other Note Documents to which it is a party and to perform its obligations hereunder and thereunder, including without limitation, to pledge and grant the Holders a security interest in the applicable Collateral as contemplated hereby. Each of this Agreement and the other Note Documents to which it is a party has been duly and validly executed and is the legal, valid and binding obligation of each Note Party and is enforceable against such Note Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy or insolvency or similar laws affecting enforcement of creditors' rights generally and by general principle of equity. Issuer's disclosures filed with the Securities and Exchange Commission since January 1, 2021 on Form 10-K, Form 10-Q, or Form 8-K (the "Exchange Act Reports") complied in all material respects with the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder at the respective time so filed, on/at such times did not contain an untrue statement of a material fact or omit to state a material fact in order to make the statements not misleading. No representation, warranty or other statement of any Note Party in any certificate or written statement given or made to Holders, as of the date such representation, warranty, or other statement was made, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading in light of the circumstances under which they were made. Issuer is not left with unreasonably small capital after the transactions contemplated in this Agreement. Issuer is able to pay its debts (including trade debts) as they mature. Issuer has no domestic subsidiaries other than the Guarantors. Except as set forth in the Exchange Act Reports, the Collateral is not the subject of any present or threatened suit, action, arbitration, administrative or other proceeding, and no Note Party is aware of the institution of any such proceedings. Schedule VI sets forth the complete list of the commercial tort claims of the Note Parties. Except as set forth on Schedule II hereto, there are no actions or proceedings pending or threatened in writing by or against Issuer or any of its subsidiaries involving more than, individually or in the aggregate, One Hundred Thousand Dollars ($100,000). No consent, authorization, approval or other action by, and no notice to or filing (other than filings and registrations necessary to perfect the Liens on the Collateral granted by the Note Parties in favor of Holders) with, any person,

entity, governmental authority or regulatory body is required to be obtained by any Note Party either (i) for the pledge by any Note Party of the Collateral pursuant hereto, (ii) for the execution, delivery or performance of this Agreement or under any other Note Document by any Note Party or (iii) for the exercise by Holders of any remedies with respect to the Collateral. Neither the execution, delivery or performance of this Agreement or under any other Note Document, including the incurrence of indebtedness and pledge of Collateral hereunder will, (a) violate any applicable law, (b) violate the organizational documents of any Note Party, or (c) breach, violate or result in a default, or give rise to a termination, cancellation or acceleration right, under any material agreement, instrument or other contractual obligation of any Note Party. Issuer and each of its subsidiaries own or licenses or otherwise have the right to use all intellectual property rights that are necessary for the operation of its business, without infringement upon or conflict with the rights of any other Person with respect thereto. "Lien" means any interest in property securing an obligation, whether such interest is based on common law, statute or contract, and including any security interest or lien arising from a mortgage, encumbrance, pledge, claim, charge, easement, servitude, security agreement, conditional sale or trust receipt or lease, consignment or bailment for security purposes. The Issuer has (i) caused Remark Holdings SPV, Inc. ("Remark SPV") to amend and restate its governing documents and (ii) successfully formed an entity owning 100% of Holdco SPV, in each case in accordance with Section 16 hereunder. Don Puglisi is the Independent Director of Holdco SPV and Remark SPV. No fees, premiums or expenses (including reimbursement or payment of out-of-pocket expenses) are owing to Reynolds Gormly or the Independent Director by any Note Party. The Collateral Agent is in possession of all original member's interests owned by Holdco SPV or any other Note Party in Bikini.com, LLC, which original member's interests are accompanied by stock powers duly executed in blank. Neither the Issuer nor anyone acting on its behalf has offered the Notes or any similar securities for sale to, or solicited any offer to buy the Notes or any similar securities from, or otherwise approached or negotiated in respect thereof with, any Person other than the Holders, each of which has been offered the Notes at a private sale for investment. Neither the Issuer nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of Section 5 of the Securities Act or to the registration requirements of any securities or blue sky laws of any applicable jurisdiction.

(b) Holder Representations. Each Person constituting a Holder, severally and not jointly, represents and warrants to the Note Parties that it is an "accredited investor" within the meaning of Regulation D under the Securities Act. Each Person constituting a Holder, severally and not jointly, represents and warrants to the Note Parties that it is acquiring the Notes for its own account, for investment purposes only and not with a view to any distribution thereof that would violate the Securities Act. Each Person constituting a Holder, severally and not jointly, acknowledges that the Notes have not been registered under the Securities Act and may not be sold within the United States or to, or for the account or benefit of, U.S. persons except pursuant to an effective registration statement under the Securities Act, in accordance with Regulation S or pursuant to an exemption from the registration requirements of the Securities Act.

7. Note Agent

(a) Each of the Holders hereby appoints TMI Trust Company (and its successors) to act on its behalf as the Note Agent hereunder and under the other Note Documents and authorizes the Note Agent to take such actions on its behalf and to exercise such powers as are delegated to the Note Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Note Agent and the Holders, and the Issuer shall not have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Note Documents (or any other similar term) with reference to the Note Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Person serving as the Note Agent hereunder shall have the same rights and powers in its capacity as a Holder as any other Holder and may exercise the same as though it were not the Note Agent, and the term "Holder" or "Holders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Note Agent hereunder in its individual capacity. Such Person and its branches and Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, the Issuer or any Affiliate thereof as if such Person were not the Note Agent hereunder and without any duty to account therefor to the Holders.

8. Collateral Agent; Collateral and Security Interest.

(a) Pursuant to that certain Collateral Agency Agreement, dated as of December 3, 2021, each Note Party and the Holders have appointed TMI Trust Company (and its successors) as Collateral Agent. Effective on the Closing Date, each Note Party hereby pledges, grants and assigns to the Collateral Agent, on behalf

of the Holders, to secure the payment and performance in full of all of such Note Party's obligations under this Agreement and the Notes (whether for principal, interest or otherwise), a continuing security interest in all goods, inventory, equipment, instruments, promissory notes, documents, accounts, chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims set forth in Schedule VI, investment property, financial assets, supporting obligations, any other contract rights or rights to the payment of money, insurance claims and proceeds, and all general intangibles, including, without limitation, all payment intangibles, patents, patent applications, trademarks, trademark applications, trade names, copyrights, copyright applications, software (including any copyrights, trademarks and trade secrets of the software), customer lists, goodwill, and all licenses, leases, permits, agreements of any kind or nature, wherever located, whether now owned or hereafter acquired or arising and all accessions and improvements to, substitutions and replacements for and rents, profits and products and proceeds thereof (together, the "Collateral"). For the avoidance of doubt, the Collateral shall include: (i) the Bikini.com Interests held by the Issuer or its subsidiaries (the "Bikini.com Collateral") and (ii) 100% of (x) the outstanding voting capital stock and (y) the non-voting stock of any subsidiary, including any first-tier foreign subsidiary. Notwithstanding the foregoing, the Collateral shall not include (i) any property where the granting of a security interest in such property would be prohibited by agreement, applicable law or regulation or, with respect to any pledge of equity interests owned by any Note Party in any entity that is not wholly-owned by the Note Parties, the organizational documents of such entity (in each case, only to the extent that such contractual provisions are not rendered ineffective by applicable law or otherwise unenforceable), in each case, to the extent that a grant of a security interest therein would violate or invalidate such agreement or create a right of termination in favor of any other party thereto (other than any Note Party) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code notwithstanding such prohibition, (ii) [reserved], and (iii) those assets as to which the Holders and Issuer agree in writing shall be excluded where the costs and burdens of obtaining a security interest therein or perfection thereof outweigh the benefit to Holders of the security to be afforded thereby (collectively, the "Excluded Assets"); provided, however, "Excluded Assets" shall not include any proceeds, substitutions or replacements of Excluded Assets (unless such proceeds, substitutions or replacements would in and of themselves constitute Excluded Assets).

(b) Each Note Party hereby irrevocably authorizes Holders and Collateral Agent at any time (including prior to the Closing Date) and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements, amendments or modifications thereto or continuations thereof that (a) indicate the Collateral (i) as all assets of such Note Party or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment. Each Note Party hereby further irrevocably authorizes the Holders to file intellectual property security agreements with respect to the Collateral with the United States Patent and Trademark Office or United States Copyright Office (or any successor office), as applicable.

(c) At any time and from time to time, each Note Party will duly execute, deliver and file with appropriate agencies such further instruments and documents, provide such further information and take such further actions as the Holders may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers granted herein. Further to ensure the attachment, perfection and first priority of (subject to Permitted Liens), and the ability of Holders to enforce, the security interest in the Collateral, each Note Party agrees, in each case at such Note Party's own expense, that if any Note Party shall at any time hold or acquire any promissory notes or tangible chattel paper, deposit accounts, securities or investment property, electronic chattel paper, letter of credit rights, or commercial tort claims, or any Collateral shall come into possession of a bailee, such Note Party shall immediately notify Holders thereof and take any action reasonably requested by Holders to insure the attachment, perfection and first priority of, and the ability of Holders to enforce, the security interest granted to Holders in any and all of the Collateral.

(d) In addition to the rights and remedies hereunder, upon the occurrence of an Event of Default, each Holder shall have the right to enter and remain upon the premises of any Note Party without cost or charge to any Holder, and use the same, together with materials, supplies, books and records of such Note Party for the purpose of collecting and liquidating the Collateral, or for preparing for sale and conducting the sale of the Collateral, whether by foreclosure, auction or otherwise. In addition, Holders may remove Collateral, or any part thereof, from such premises and/or any records with respect thereto, in order to effectively collect or liquidate such Collateral.

(e) Failure by Holders to exercise any right, remedy or option under this Agreement, any other Note Documents or applicable law, or any delay by Holders in exercising the same, shall not operate as a waiver of any such right, remedy or option. The rights and remedies of Holders under this Agreement and the Notes shall be cumulative and not exclusive of any other right or remedy which any Holder has.

(f) In the event that the proceeds of any sale, collection or realization are insufficient to pay all amounts to which Holders are legally entitled, the Note Parties shall be liable for the deficiency, together with interest thereon, together with the costs of collection and the reasonable fees, charges and disbursements of counsel.

(g) Upon request of any Holder, each Note Party shall promptly obtain fully executed and delivered control agreements with respect to any deposit, securities and investment accounts of such Note Party in form and substance reasonably acceptable to the Required Holders.

(h) Subject to Section 22, upon the repayment in full in cash of the Notes, including pursuant to Section 12, each Holder will be forever released from all of its obligations and liabilities under or in respect of this Agreement including without limitation, pursuant to this Section 8, and the security interest granted hereunder will thereafter terminate and be of no further force or effect.

9. Default; Acceleration. At the option of the Required Holders, this Agreement and the indebtedness evidenced hereby and by the Notes shall become due and payable without further notice or demand, and notwithstanding any prior waiver of any breach or default or other indulgence, upon the occurrence any of the following (each, an "Event of Default"):

(a) the failure by any Note Party to pay (i) any principal amount (including any mandatory prepayments required in Section 12(c) or otherwise under the Note Documents) or any interest payment when due under the Notes and (ii) any other amount due under this Agreement, the Notes or any other Note Document within three (3) days of the due date thereof;

(b) any breach or failure to perform any of the other terms of this Agreement after the earlier of (i) knowledge thereof by the Issuer or (ii) notice thereof to Issuer;

(c) any representation, warranty or other statement made or deemed made by or on behalf of any Note Party pursuant to or in connection with this Agreement shall be incorrect in any material respect as of the date made or deemed made (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to materiality or "material adverse effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification);

(d) any act by, against, or relating to any Note Party, or its property or assets, which act constitutes the application for, consent to, or sufferance of the appointment of a receiver, trustee or other Person, pursuant to court action or otherwise, over all, or any part of any Note Party's property;

(e) any assignment for the benefit of the creditors of any Note Party, or the occurrence of any other involuntary liquidation of any Note Party; the failure by any Note Party to generally pay the debts of such Note Party as they mature; adjudication of bankruptcy or insolvency relative to such Note Party; filing by any Note Party under, or the entry of an order for relief or similar order with respect to any Note Party in any proceeding pursuant to, Title 11 of the United States Code entitled "bankruptcy" (the "Bankruptcy Code") or any other federal bankruptcy law;

(f) the default of any Note Party for failure to pay amounts due and payable under any indebtedness of such Note Party in an amount in excess of $100,000, whether individually or in the aggregate (subject to any applicable cure periods, forbearance or forgiveness), if the effect of such default is to accelerate the maturity of any such indebtedness or to permit the holder or holders of any such indebtedness, or any trustee or agent for such holders, to cause such indebtedness to become due and payable prior to its expressed maturity or, if such indebtedness is a guaranty, to call upon such guaranty in advance of nonpayment of the guaranteed indebtedness;

(g) a final judgment or judgments shall be entered against any Note Party in an aggregate amount in excess of $100,000, whether individually or in the aggregate (net of insurance proceeds, if any), and such judgment or judgments shall remain unstayed, unvacated, undischarged or unsatisfied for 30 calendar days;

(h) any Holder shall for any reason cease to hold a valid and enforceable, perfected, first priority Lien the Collateral, subject only to Permitted Liens;

(i) the termination of existence, dissolution, or liquidation of any Note Party or the ceasing to carry on actively any substantial part of such Note Party's current business; or

(j) the occurrence of any of the following: (i) a sale of all or substantially all of the Issuer's assets other than to a Note Party, (ii) a merger, consolidation or business combination transaction of Issuer with or into another corporation, limited liability company or other entity, in each case pursuant to which stockholders of the Issuer prior to such merger, consolidation or business combination transaction own less than fifty percent (50%) of the voting interests in the surviving or resulting entity, (iii) the consummation of a transaction, or series of related transactions, in which any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of 50% or more of Issuer's then outstanding voting securities, (iv) individuals who on December 3, 2021 constituted the Board of Directors of the Issuer (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Issuer was approved by a vote of at least a majority of the directors of the Issuer then still in office who were either directors on December 3, 2021, or whose election or nomination for election was previously approved) cease for any reason to constitute a majority of the Board of Directors of the Issuer or (v) Theodore Botts shall cease to be a board member overseeing the Note Parties, unless such removal has been agreed to in writing by the Required Holders, and such board seat remains vacant for a period of at least thirty (30) days, provided that the person appointed by the Board of Directors of the Issuer to replace Mr. Botts shall be subject to each Holder's approval, not to be unreasonably withheld or delayed.

Failure to exercise any of the foregoing rights at any time shall not constitute a waiver of the right to exercise the same at any other time. Notwithstanding the foregoing, if an Event of Default specified in Section 9(d), (e) or (f) shall occur, then the Notes, all accrued interest in respect thereof and all accrued and unpaid fees and other indebtedness or obligations owing to Holders hereunder and under the Notes shall immediately become due and payable, as aforesaid shall automatically become effective, in each case without the giving of any notice or other action by Holders, which notice or other action is expressly waived by the Note Parties.

10. Default Rate. Notwithstanding anything to the contrary in this Agreement, upon the occurrence and during the continuance of an Event of Default, the rate of interest otherwise applicable hereunder will be increased by two percent (2% or 200 basis points) (the "Default Rate") for so long as the Event of Default remains uncured.

11. Remedies Upon Default. Upon any Event of Default by any Note Party, Holders may, and, at the written request of the Required Holders, the Note Agent shall, pursue any and all remedies provided at law or in equity. If an Event of Default shall occur, the Note Agent shall, at the written requires of the Required Holders, upon reasonable written notice (such reasonable notice to be determined by the Note Agent or the Required Holders in their sole and absolute discretion, which shall not be less than five (5) business days), with respect to the Collateral (whether or not the same shall then be or shall thereafter come into the possession, custody or control of the Holders), to sell, lease, license, assign or otherwise dispose of all or any part of the Collateral, at such place or places as the Required Holders deem best, and for cash or for credit or for future delivery (without thereby assuming any credit risk), at public or private sale, without demand of performance or notice of intention to effect any such disposition or of the time or place thereof (except such notice as is required above or by applicable statute and cannot be waived), and a Holder or anyone else may be the purchaser, lessee, licensee, assignee or recipient of any or all of the Collateral so disposed of at any public sale (or, to the extent permitted by law, at any private sale) and thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise), of the Grantor, any such demand, notice and right or equity being hereby expressly waived and released. The Required Holders may, and, at the written request of the Required Holders, the Note Agent shall, to the fullest extent permitted by applicable law, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned. Holders' remedies set forth above are not exclusive of any other available remedy or remedies, but each remedy shall be cumulative and shall be in addition to any other remedy given in this Agreement or in any other Note Document, at law, in equity, or by statute, whether now existing or hereafter arising. The exercise of any remedy or remedies shall not be an election of remedies. The remedies and rights of Holders may be exercised concurrently, alone, in any combination, or in any order that the Required Holders deem appropriate. Any waiver or consent to waiver of any of the foregoing provisions shall not be construed as a bar to a waiver of any such right on any future occasion. Each Note Party hereby irrevocably constitutes and appoints each Holder and the Note Agent, and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact, with full irrevocable power and authority in the place and stead of such Note Party or in Holder's or Note Agent's own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives said attorneys the power and right, on behalf of such Note Party, without notice to or assent by such Note Party, to do the following upon the occurrence of an Event of Default: generally, to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral in such manner as is consistent with the Uniform Commercial Code and as fully and completely as though the Holder or Note Agent was the absolute owner thereof for all purposes, and to do at the expense of the Note

Parties, at any time, or from time to time, all acts and things which the Holders or Note Agent deems necessary or desirable to protect, preserve or realize upon the Collateral and Holders' security interest therein, in order to effect the intent of this Agreement or any other Note Document, all as fully and effectively as any Note Party might do.

12. Prepayment; Mandatory Prepayment.

(a) The Notes may be prepaid at any time and from time to time, in whole or in part.

(b) [Reserved.]

(c) Issuer shall prepay the principal amount of the Notes by an amount equal to: (i) one hundred percent (100%) of all Net Cash Proceeds from the sale of the equity or the assets of Bikini.com, LLC ("Bikini.com") or any other Collateral; and (ii) seventy percent (70%) of the Net Cash Proceeds of any sale of equity of the Issuer or issuance of debt relating to the Issuer and Note Parties, which amounts are to be paid directly to the Holders at the closing of any such sale or issuance to reduce the principal amount of the Notes and any other obligations to the Holders.

(d) Any principal amount prepaid (for the avoidance of doubt, including any mandatory prepayment under Section 12(c)) shall be accompanied by all accrued and unpaid interest on such amount.

For purposes of this Section 12, "Net Cash Proceeds" means (x) the gross amount of all cash proceeds actually paid to or actually received by Issuer or any subsidiary of Issuer in respect of such sale, dividend, transfer or other liquidity event, less (y) the sum of (1) the amount, if any, of all customary fees, legal fees, accounting fees, brokerage fees, commissions, costs and other expenses that are incurred in connection with such sale, dividend, transfer or other liquidity event and are payable by Issuer or any subsidiary of Issuer, and (2) appropriate amounts that must be set aside as a reserve as required by GAAP against any indemnities or liabilities (contingent or otherwise) directly attributable to such sale, dividend, transfer or other liquidity event.

13. Covenants.

(a) None of Issuer nor any subsidiary of Issuer shall (i) change its name or corporate form or jurisdiction of organization, merge with another entity (other than an affiliate of a Holder), consolidate, or sell or dispose of any material portion of its assets other than a Permitted Disposition, without the prior written consent of the Required Holders or (ii) sell, lease, license, convey, assign (by operation of law or otherwise), exchange or otherwise voluntarily or involuntarily transfer or dispose of any interest in any of its assets (including the Bikini.com Interests) (other than a Permitted Disposition) or any portion thereof or encumber, or hypothecate, or create, incur or permit to exist any pledge, mortgage, lien, security interest, charge, encumbrance or adverse claim upon or other interest in or with respect to any of its assets (including the Bikini.com Interests) (other than Permitted Liens) without the prior written consent of the Required Holders. Issuer and each of its subsidiaries will maintain books and records with respect to the Collateral, and upon the reasonable request of any Holder, promptly furnish to Holders such books and records relating to the Collateral. Issuer shall comply with all filing, reporting and other disclosure requirements under the Exchange Act, and the rules of the Securities and Exchange Commission in effect from time to time. None of Issuer nor any subsidiary of Issuer shall directly or indirectly enter into or permit to exist any transaction with any affiliate (other than a wholly-owned subsidiary) of Issuer other than Permitted Affiliate Transactions. Issuer will advise the Holders promptly and in reasonable detail upon any officer or director of Issuer or any of its subsidiaries obtaining knowledge (i) of any Lien or claim made or asserted against any assets of Issuer or any of its subsidiaries that is not a Permitted Lien, and (ii) of the occurrence of any other event that would have a material adverse effect on the Collateral or the Lien granted hereby, or on the ability of any Note Party or Holder to dispose of any of the Collateral, including the levy of any legal process against any of the Collateral. None of Issuer nor any subsidiary of Issuer shall prepay or refinance any Subordinated Indebtedness of Issuer or any subsidiary of Issuer (other than with the proceeds of equity interests or Permitted Refinancing Indebtedness) without the prior written consent of the Required Holders. None of Issuer nor any subsidiary of Issuer shall create, incur or permit to exist any indebtedness other than Permitted Indebtedness, without the prior written consent of the Required Holders. None of Issuer nor any subsidiary of Issuer shall pay any dividend or other distribution, or make any other payment on account of any redemption, repurchase, acquisition or other return of capital, direct or indirect (whether in cash, securities or other property), with respect to any equity interests in Issuer or such subsidiary other than Permitted Restricted Payments. None of Issuer nor any Note Party shall (i) enter into any transaction of merger or consolidation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution) other than with a Note Party or where all its assets are distributed to Note Parties, or acquire by purchase or otherwise (other than Permitted Investments) the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, (ii) make any equity or loan investment in any other person (other than Permitted Investments), (ii) create any subsidiary that does not become a Guarantor, in each case without the prior written consent of the Required Holders. Each of Issuer and its

subsidiaries shall remain the sole owners of all of their respective intellectual property, except for Permitted Dispositions (iv) amend, waive, modify, restate, supplement or replace, or suffer or permit any waiver, amendments, modifications, restatements, supplements or replacements to, or any organizational documents of either Holdco SPV or Remark SPV. Issuer and each Note Party will, consistent with commercially reasonable practice, defend at their sole expense, the right, title and security interest granted hereunder against the claims of any person, firm, corporation or other entity. Each Holder shall have the right, upon reasonable advance notice and at such times as may be reasonably requested, to enter into and upon any premises where any of the Collateral or records with respect thereto are located for the purpose of inspecting the same, performing an audit, making copies of records, observing the use of any part of the Collateral, protecting Holders' security interest in the Collateral (including discussing the Note Parties' affairs with the officers of Issuer and the other Note Parties and their independent auditors) or otherwise determining whether Issuer or any other Note Party is in compliance with the terms of this Agreement. Within 40 calendars days of the Closing Date, Issuer shall have delivered Holders a good standing certificate from the applicable governmental authority of the jurisdiction of incorporation, organization or formation of each Note Party dated as of a recent date prior to delivery. Within 40 calendar days of the Closing Date, each of the Holders shall have received all of its fees, premiums and expenses, including reimbursement or payment of all reasonable and documented out-of-pocket expenses (including any outstanding fees and expenses of Holders' counsel not paid on the Closing Date pursuant to Section 17(f)).

(b) The Note Parties shall immediately pursue the marketing of the sale of assets and equity of Bikini.com. Issuer's entry into any agreement regarding the sale of Bikini.com shall be subject to the consent of the Required Holders in the exercise of their reasonable credit judgment.

(c) The Note Parties shall immediately pursue efforts to issue and sell equity of the Issuer in an amount sufficient to generate available cash proceeds to the Issuer that will on such date be sufficient to repay the Notes and other obligations under this Agreement and the Notes in full. Issuer acknowledges that any such proceeds shall constitute collateral for the Notes and agrees to use all such proceeds to first repay the Notes as provided in Sections 1 and 4.

(d) The Note Parties shall immediately pursue the incurrence of subordinated debt in an amount sufficient to generate available cash proceeds to the Issuer that will on such date be sufficient to repay the Notes and other obligations under this Agreement and the Notes in full. Issuer acknowledges that any such proceeds shall constitute collateral for the Notes and agrees to use all such proceeds to repay the Notes as provided in Sections 1 and 4. Unless the proceeds of any such subordinated debt will repay the Notes and all other obligations under this Agreement in full, any such subordinated debt to be incurred by the Note Parties must be (i) unsecured, (ii) provide for interest payments to be payable in kind and not in cash, (iii) mature after April 30, 2024 and (iv) be subject to an intercreditor and subordination agreement in form and substance acceptable to the Required Holders providing that any such incurred debt remains subordinated to the obligations under the Notes and this Agreement. The Note Parties' entry into any agreement regarding the incurrence of debt, any intercreditor agreement, and/or any subordination agreement shall be subject to the consent of the Required Holders in the exercise of their sole discretion.

14. Guarantee.

(a) Each Guarantor unconditionally and irrevocably guarantees, jointly with the other Guarantors, and severally, as a primary obligor and not merely as a surety, irrespective of the validity and enforceability of this Agreement, the Notes or the obligations of Issuer hereunder: (x) the due and punctual payment of all obligations of Issuer under this Agreement and the Notes, whether now or hereafter due, owing or incurred in any manner, whether actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, together in each case with all renewals, modifications, consolidations or extensions hereof and (y) the due and punctual performance of all covenants, agreements, obligations and liabilities of Issuer under or pursuant to this Agreement and the Notes (all such monetary and other obligations being herein collectively referred to as the "Guaranteed Obligations"). Anything contained in this Agreement to the contrary notwithstanding, the obligations of each Guarantor hereunder shall be limited to a maximum aggregate amount equal to the greatest amount that would not render such Guarantor's obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any provisions of applicable state law (collectively, the "Fraudulent Transfer Laws"), in each case after giving effect to all other liabilities of such Guarantor, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws and after giving effect as assets of such Guarantor to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation, contribution, reimbursement, indemnity or similar rights of such Guarantor pursuant to (i) applicable Law or (ii) any agreement providing for an equitable allocation among such Guarantor and other affiliates of Issuer of obligations arising under guaranties by such parties. If any Guarantor's liability hereunder is limited pursuant to this paragraph to an amount that is less than the total amount of the Guaranteed

Obligations, then it is understood and agreed that the portion of the Guaranteed Obligations for which such Guarantor is liable hereunder shall be the last portion of the Guaranteed Obligations to be repaid.

(b) Each Guarantor guarantees that the Guaranteed Obligations will be paid in accordance with the terms of this Agreement and the Notes, regardless of any law or regulation now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of Holders with respect hereto. The obligations of each Guarantor under this Agreement and the Notes are independent of the Guaranteed Obligations of each other Guarantor or the obligations of Issuer, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce this Agreement, irrespective of whether any action is brought against Issuer or any other Guarantor or whether Issuer or any other Guarantor is joined in any such action or actions. This Agreement is an absolute and unconditional guaranty of payment when due, and not of collection, by each Guarantor, jointly and severally with each other Guarantor of the Guaranteed Obligations.

(c) The obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including the existence of any claim, set-off or other right which any Guarantor may have at any time against any other person, whether in connection herewith or any unrelated transactions. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other party under this Agreement or the Notes but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving Issuer or such party.

(d) Without limiting the generality of the foregoing, the obligations of each Guarantor hereunder shall not be released, discharged or otherwise affected or impaired by, and each Guarantor hereby waives:

(i) any change in the manner, place, time or terms of payment of any Guaranteed Obligation or any other amendment, supplement or modification to this Agreement;

(ii) any release, non-perfection or invalidity of any direct or indirect security for any Guaranteed Obligation, any sale, exchange, surrender, realization upon, offset against or other action in respect of any direct or indirect security for any Guaranteed Obligation;

(iii) any change in the existence, structure or ownership of any party or any insolvency, examinership, bankruptcy, reorganization, arrangement, readjustment, composition, liquidation or other similar proceeding affecting any party or its assets or any resulting disallowance, release or discharge of all or any portion of any Guaranteed Obligation;

(iv) the existence of any claim, set-off or other right which any Guarantor may have at any time against any other Person, whether in connection herewith or any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(v) any invalidity or unenforceability relating to or against any other party for any reason of the Notes or any other agreement or instrument evidencing or securing any Guaranteed Obligation or any provision of applicable Law purporting to prohibit the payment by any party of any Guaranteed Obligation;

(vi) any failure by any Holder or the Note Agent: (A) to file or enforce a claim against Issuer or its estate (in a bankruptcy, examinership or other proceeding); (B) to give notice of the existence, creation or incurrence by Issuer of any new or additional indebtedness or obligation under or with respect to the Guaranteed Obligations; (C) to commence any action against Issuer; (D) to disclose to any Guarantor any facts which any Holder or the Note Agent may now or hereafter know with regard to Issuer; or (E) to proceed with due diligence in the collection, protection or realization upon any collateral securing the Guaranteed Obligations;

(vii) any direction as to application of payment by any other Person

(viii) any act or failure to act by any Holder, the Note Agent or Issuer which may deprive any Guarantor of any right to subrogation, contribution or reimbursement against any other Note Party or any right to recover full indemnity for any payments made by such Guarantor in respect of the Guaranteed Obligations; or

(ix) any other act or omission to act or delay of any kind by any other entity, person or circumstance whatsoever which might, but for the provisions of this clause, constitute a legal or equitable discharge of any Guarantor's obligations hereunder (except that a Guarantor may assert the defense of payment in full of the Guaranteed Obligations).

(e) Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to any Holder in respect of any obligations guaranteed hereby until payment in full of all Guaranteed Obligations. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Section 9 for the purposes of this Section 14, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Section 9, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of Holders under this Section 14.

15. [Reserved.]

16. Bankruptcy Remote. Neither Holdco SPV or Remark SPV shall at any time fail to be organized as a bankruptcy-remote entity having bylaws or an operating agreement, as applicable, in form and substance reasonably acceptable to the Required Holders (with the organization documents in effect on December 3, 2021 being deemed to be reasonably acceptable), which bylaws or operating agreement, as applicable, shall contain usual and customary provisions for (i) appointment of an independent director whose affirmative vote shall be required to commence an insolvency proceeding (the "Independent Director") and (ii) separateness representations and covenants. Holdco SPV shall not at any time fail to own 100% of the equity of Remark SPV and Bikini.com. Holdco SPV and Remark SPV, as applicable, shall have the following limitations on business activity: (i) Remark SPV's sole business shall be being a Guarantor hereunder; (ii) Remark SPV shall grant no Liens except under this Agreement and the Notes and shall have no creditors except the Holders and professional service providers (including, without limitation, attorneys, tax advisors and auditors); (iii) Holdco SPV's sole business shall be owning 100% of the capital stock of Remark SPV and 100% of the member's interests of Bikini.com and being a Guarantor hereunder and shall have no creditors except the Holders; and (iv) other than Permitted Liens and the creditors with respect thereto, Remark SPV and Holdco SPV shall grant no Liens except under this Agreement and the Notes and shall have no creditors except the Holders. Remark SPV shall be a wholly-owned direct subsidiary of Holdco SPV, Bikini.com shall be a wholly-owned direct subsidiary of Holdco SPV and Holdco SPV shall be a wholly-owned direct subsidiary of the Issuer. In addition, the Note Parties shall cause each of Holdco SPV and Remark SPV to comply with all of their respective obligations, including obligations to maintain its special purpose vehicle separateness and bankruptcy remote structure, and the Note Parties shall not amend any such provisions without the prior written consent of the Required Holders.

17. Conditions Precedent. The obligations of the Holders to purchase the Notes as described herein are several and not joint and are subject (i) to the accuracy of the representations and warranties of the Note Parties herein (on the date hereof and as though made on the Closing Date), (ii) to the accuracy of the statements of officers of the Notes Parties made pursuant to the provisions hereof, (iii) to the performance by the Note Parties of their obligations hereunder and (iv) to the following additional conditions precedent:

(a) The Note Agent and the Holders shall have received from each party hereto a counterpart of each Note Document (other than this Agreement), each signed on behalf of such party (or written evidence satisfactory to the Holders (which may include facsimile or other electronic transmission of a signed counterpart of such document) that such party has signed a counterpart of such Note Document).

(b) The Holders shall have received the Confirmation of Registration substantially in the form of Annex A duly executed by the Note Agent.

(c) The Note Agent and the Holders shall have received such customary certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Note

Party as the Holders may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with the Note Documents.

(d) The Holders shall have received a written opinion (addressed to the Holders (including Mudrick Capital Management, LP) and dated as of the Closing Date) of counsel (which may be internal counsel) for the Note Parties. The opinion shall include customary third-party closing opinions with respect to, among other customary items, due authorization and execution of this Agreement and the Notes, enforceability of this Agreement and the Notes under applicable law, no-conflicts and attachment and perfection of liens.

(e) The Holders shall have received as to each Note Party (i)(x) a copy of each organizational document of such Note Party certified, to the extent applicable, as of a recent date by the applicable governmental authority or (y) with respect to any Note Party other than the Issuer, written certification by the Issuer's or such Note Party's secretary, assistant secretary or other responsible officer that such Note Party's organizational documents previously delivered to the Holders have not been replaced, restated, amended or otherwise updated and remain in effect as of the Closing Date, (ii) (x) signature and incumbency certificates of the applicable officers or directors of such Note Party executing this Agreement and any other related documents to which it is a party or (y) written certification by such Note Party's secretary, assistant secretary or other responsible officer that such Note Party's signature and incumbency certificates most recently delivered to the Holders prior to the Closing Date remain true and correct as of the Closing Date, and (iii) copies of resolutions of the board of directors and/or similar governing bodies of each Note Party approving and authorizing the execution, delivery and performance of this Agreement and the Notes and any other related document to which it is a party, certified as of the Closing Date by a secretary, an assistant secretary or a responsible officer of such Note Party as being in full force and effect without modification or amendment.

(f) Each of the Holders, the Note Agent and the Collateral Agent shall have received a copy of the Issuer-signed flow of funds memo related to the debenture purchase agreement listed on Schedule III hereto demonstrating that all its respective fees, premiums and expenses required to be paid on the Closing Date (except to the extent Holders agree in writing to the deferred payment of a portion of its fees, premiums and expenses (other than fees and expenses of counsel) to a date not later than 40 calendar days following the Closing Date) will be paid on the Closing Date from the proceeds of the debenture described in Schedule III, including reimbursement or payment of all reasonable and documented out-of-pocket expenses required to be reimbursed or paid on or prior to the Closing Date (including fees and expenses of counsel of not less than $25,000 on the Closing Date, with the balance to be paid within 40 calendar days of the Closing Date).

(g) [Reserved]

(h) Each Note Party shall ratify on the Closing Date its authorization pursuant to Section 8(b) for the Holders and the Collateral Agent to have filed in any relevant jurisdiction any initial financing statements or amendments thereto relating to the Collateral.

(i) The Note Parties shall have executed and delivered perfection certificates dated as of the Closing Date (the "Perfection Certificates"), in form and substance reasonably satisfactory to the Holders. On or prior to the Closing Date, the Holders shall have received all certificates, agreements or instruments reasonably necessary to perfect the Collateral Trustee's security interest in the Collateral for the benefit of the Holders, including, but not limited to, (i) Uniform Commercial Code financing statements in appropriate form for filing (to the extent not pre-filed prior to the Closing Date) and (ii) filings with the United States Patent and Trademark Office and United States Copyright Office in appropriate form for filing. The Holders shall also have received certified copies of Uniform Commercial Code, tax and judgment lien searches or equivalent reports or searches, and a copy of searches at the United States Patent and Trademark Office each of a recent date listing all effective financing statements, lien notices or comparable documents that name any Note Party as debtor and that are required by the Perfection Certificates or that the Holders deem necessary or appropriate, none of which encumber the Collateral (other than Permitted Liens).

(j) [Reserved]

(k) On or prior to the Closing Date, the Note Parties and their respective subsidiaries shall have furnished to the Holders, the Note Agent and the Collateral Agent such further certificates and documents as they may reasonably request

The Issuer shall cause all conditions precedent set forth in this Section 17 to be satisfied as promptly as reasonably practicable. The Required Holders may in their sole discretion waive compliance with any conditions to the obligations of the Required Holders hereunder. The Note Parties will furnish the Holders with such conformed copies of such opinions, certificates, letters and documents as the Holders reasonably request.

18. Payment of Costs of Collection; Expenses; Indemnification. On the Closing Date, the Note Parties promise to pay all of Holders' costs and expenses, including reasonable attorneys' fees, incurred in connection with such action. In addition, the Note Parties will pay all reasonable costs and expenses (including reasonable attorneys' fees) incurred by the Holders in connection with the negotiation, preparation, execution and administration of this Agreement and the Notes (the "Closing Expenses"), and in connection with any amendments, waivers or consents under or in respect of this Agreement (whether or not such amendment, waiver or consent becomes effective). The Note Parties agree, on a joint and several basis, to indemnify, defend and hold Holders and its directors, officers, employees, agents, attorneys, or any other person affiliated with or representing Holders (each, an "Indemnified Person") harmless against: (i) all obligations, demands, claims, and liabilities (collectively, "Claims") claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (ii) all losses or expenses (including Closing Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between any Holder and any Note Party, except for Claims and/or losses and/or expenses directly caused by such Indemnified Person's gross negligence or willful misconduct. This Section 18 shall survive until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run.

19. Assignments.

(a) The Holders shall be permitted to assign its rights and obligations under this Agreement at any time, in whole or in part (including all or a portion of the Notes held by it). Upon an assignment by a Holder, the Issuer shall issue a new note purchase agreement or notes, as applicable, reflecting such assignment. The parties to each assignment shall notify the Note Agent in writing of such assignment and the assignee, if it is not a Holder, shall deliver to the Note Agent an assignment agreement in a form provided by the Note Agent.

(b) The Issuer shall cause the Notes to be registered and shall cause to be kept a register (the "Register") at the Note Agent's Office in which, subject to such reasonable regulations as it may prescribe, the Issuer shall provide for the registration of Notes and the registration of transfers and assignment of Notes. The Note Agent is hereby initially appointed registrar (the "Registrar") for the purpose of registering Notes and transfers or assignments of such Notes with respect to the Register maintained in the United States as herein provided. Upon any resignation or removal of the Registrar, the Issuer shall promptly appoint a successor. The entries in the Register shall be conclusive absent manifest error, and the Issuer, the Note Agent and the Holders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Holders hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Issuer and any Holder, at any reasonable time and from time to time upon reasonable prior notice.

Upon written request at any time the Registrar shall provide to the Issuer, the Collateral Agent or any Holder a current list of Holders (and their holdings) as reflected in the Register. In addition and upon written request at any time, the Registrar shall provide to the Issuer, the Collateral Agent or any Holder any information the Registrar actually possesses regarding the nature and identity of any beneficial owner of any Note (and its holdings).

No service charge shall be made to a Holder for any registration of transfer, assignment or exchange of Notes, but the Note Agent may require payment of a sum sufficient to cover any Tax or other governmental charge payable in connection therewith. The Note Agent shall be permitted to request such evidence reasonably satisfactory to it documenting the identity and/or signatures of the transferor and transferee.

(c) Notwithstanding anything to the contrary in this Agreement or any other Note Document, any such assignment shall become effective (and shall only become effective) for purposes of this Agreement when it has been recorded in the Register as provided in Section 19(b) and it shall not be necessary for the assignee to have received a certificated note registered in its name (or otherwise) for any such assignment to become effective.

20. Waivers. Each Note Party, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of the Notes and assents to any extensions or postponements of the time of payment.

21. Usury. In the event any interest is paid on the Notes which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of the Notes.

22. Reinstatement. Notwithstanding anything herein to the contrary, this Agreement and the Notes shall remain in full force and effect and continue to be effective should any petition be filed by or against any Note Party for liquidation or reorganization, should any Note Party become insolvent or make an assignment for any benefit of creditors or should a receiver or trustee be appointed for all or any significant part of such Note Party's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and

performance of the obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the obligations, whether as a "voidable preference," "fraudulent conveyance" or otherwise, all as though such payment, or any part thereof, is rescinded, reduced, restored or returned.

23. Notices. All notices, requests, consents and other communications under this Agreement shall be in writing and shall be deemed delivered (a) three business days after being sent by registered or certified mail, return receipt requested, postage prepaid or (b) one business day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, in each case to the intended recipient as set forth below:

If to any Note Party, care of Issuer at its address set forth above; or

If to Holders (other than the Note Agent), such address has been furnished in writing by Holders to Issuer, with a copy to Eric Reimer, Milbank LLP, 55 Hudson Yards, New York NY 10001-2163.

24. General Provisions. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of laws. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH NOTE PARTY AND HOLDER WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR ALL PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL. This Agreement constitutes the entire agreement and understanding between the Note Parties and Holders relating to the subject matter hereof and supersedes all prior or contemporaneous discussions, understandings and agreements, whether oral or written between them relating to the subject matter hereof. No other Person (other than any Indemnified Person) shall be deemed to be a third-party beneficiary of this Agreement or shall have any rights hereunder. This Agreement may not be amended, modified, waived, discharged or terminated orally, but only by written agreement of each Holder (other than the Note Agent) and each Note Party. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision. This Agreement and the Notes shall be binding upon each Note Party and such Note Party's successors and assigns. No Note Party may assign this Agreement or the Notes, or delegate its duties hereunder or thereunder, without the prior written consent of the Required Holders, in their sole and absolute discretion. Each Holder may freely assign, pledge or otherwise transfer this Agreement or the Notes, in whole or in part. If any of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same instrument. The words "execution," "execute", "signed," "signature," and words of like import in or related to this Agreement shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Required Holders, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; ***provided*** that nothing herein shall require the Holders to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it.

25. Definitions. As used herein, the following terms shall have the respective meaning indicated below:

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"Applicable Percentage" means, with respect to any Holder, (a) on or prior to the Closing Date, the percentage of the total Commitments of all Holders represented by such Holder's Commitments at such time as set forth in Schedule I-A, and (b) thereafter, the percentage of the total Outstanding Amount of Notes of all Holders represented by the aggregate Outstanding Amount of Notes of such Holder at such time.

"Business Day" means any day that is not a Saturday, Sunday or other day that is a legal holiday under the laws of the State of New York or is a day on which banking institutions in such state are authorized or required by law to close.

"Commitments" means the commitment of a Holder to purchase a Note pursuant to Section 2, expressed as an amount representing the principal amount of the Notes to be purchased by such Holder as set forth in Schedule I-A.

"Confirmation of Registration" mean, with respect to a Note, a confirmation of registration, substantially in the form attached hereto as Annex A, provided to the owner thereof promptly after the registration of such Note in the Register by the Registrar.

"Dollars" and the sign "$" mean the lawful money of the United States.

"Existing Loans" means the loans pursuant to that certain Senior Secured Loan Agreement dated as of December 3, 2021 by and between Remark Holdings, Inc. as "Borrower" and each of its subsidiaries guaranteeing such loans as "Guarantors," and Mudrick Capital Management, LP. and/or one or more managed funds or accounts, collectively and each without differentiation, as "Lender," as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, held by Holders in the principal balances specified opposite each Holder's name in Schedule I-B

"Financial Officer" of any person shall mean the Chief Financial Officer or an equivalent financial officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller or a director of such person, or a duly authorized signatory of such person who is a Financial Officer of a subsidiary of such person.

"GAAP" means generally accepted accounting principles, as applicable at the relevant time.

"Holder" shall mean (i) prior to the Closing Date, each Person listed in Schedule I-A and, unless the context otherwise requires, Mudrick Capital Management, LP, and (ii) on and after the Closing Date, each Person in whose name a Note is registered as set forth in the Register and, unless the context otherwise requires, Mudrick Capital Management, LP.

"Interest Payment Date" means the last Business Day of each calendar month beginning May 31, 2023 to and including the Maturity Date.

"Issuer Order" shall mean a written order or request (which may be (i) provided via email or other electronic communication except to the extent the Note Agent requests otherwise and (ii) a standing order or request) dated and signed (or sent, if applicable) in the name of the Issuer or by a Responsible Officer of the Issuer or by the Collateral Agent by a Responsible Officer thereof, on behalf of the Issuer. For the avoidance of doubt, an order or request provided in an email or other electronic communication sent by a Responsible Officer of the Issuer or by a Responsible Officer of the Collateral Agent on behalf of the Issuer shall constitute an Issuer Order, in each case except to the extent that the Note Agent or Collateral Agent, as applicable, requests otherwise. Unless the Note Agent shall specify otherwise, the Issuer Order shall initially be substantially in the form of Annex B.

"Note Document" means, collectively, this Agreement, the Issuer Order, the Confirmation of Registration and any other documents to be entered into in connection herewith as identified by the Holders prior to the Closing Date.

"Note Agent's Office" means TMI Trust Company, 5901 Peachtree Dunwoody Road, Suite C495, Atlanta, GA 30328, Attention: Jane Strobel.

"Notes" mean the Notes issued hereunder in uncertificated, fully registered form, registered in the name of the beneficial owner thereof.

"Outstanding Amount" means, with respect to Notes on any date, the aggregate outstanding principal amount thereof after giving effect to any redemption of Notes occurring on such date.

"Permitted Affiliate Transactions" means (i) transactions consummated in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to Issuer or its subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof, (ii) transactions among Note Parties, (iii) Permitted Restricted Payments and Permitted Investments, (iv) sales of common equity interests of the

Issuer and the granting of registration and other customary rights in connection therewith, and (v) reasonable and customary director and officer compensation (including bonuses and stock option programs), benefits and indemnification arrangements, in each case approved by the Board of Directors (or a committee thereof) of such Note Party or such subsidiary.

"Permitted Disposition" means:

(a) sale of inventory in the ordinary course of business;

(b) licensing, on a non-exclusive basis, intellectual property rights in the ordinary course of business, excluding any licensing of Bikini.com;

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

(d) (i) the lapse of intellectual property (other than Bikini.com) to the extent not economically desirable in the conduct of business or (ii) the abandonment of intellectual property rights in the ordinary course of business.

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

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

(g) transfers of assets (other than Bikini.com) (i) from a Note Party to another Note Party, and (ii) from any subsidiary of Issuer that is not a Note Party to the Issuer or any Note Party Parent;

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

(i) disposition of property or assets (other than the Bikini.com Interests) not otherwise permitted in clauses (a) through (h) above for cash in an aggregate amount not less than the fair market value of such property or assets.

"Permitted Indebtedness" means:

(a) on or prior to the Closing Date, the Existing Loans, and thereafter, the Notes issued to Holders on the Closing Date;

(b) any indebtedness listed on Schedule III and any Permitted Refinancing Indebtedness in respect of such Indebtedness;

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

(d) Permitted Intercompany Investments;

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

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

(g) the incurrence by any Note Party of indebtedness incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with such Note Party's operations and not for speculative purposes;

(h) indebtedness incurred in respect of credit cards, credit card processing services, debit card , stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services, in e, incurred in the ordinary course of business;

(i) contingent liabilities in respect of any indemnification obligation, adjustment of purchase price, non-compete, or similar obligation of any Note Party incurred in connection with the consummation of an acquisitions;

(j) other Subordinated Indebtedness in an aggregate principal amount not exceeding $500,000 at any time outstanding;

(k) indebtedness outstanding under a letter of credit facility; provided that (i) such indebtedness consists entirely of reimbursement obligations in respect of letters of credit, surety bonds and/or other similar instruments issued thereunder (and related fees and expenses); (ii) the aggregate principal amount of such indebtedness (which shall be equal to the face amount of the letters of credit, surety bonds and/or other similar instruments issued thereunder) does not exceed $11,000,000; and (iii) such indebtedness is unsecured, other than with respect to Liens on cash collateral to the extent permitted by clause (p) of the definition of "Permitted Liens"; and

(l) inventory financing incurred by the Issuer in the ordinary course of the Issuer's business and consistent with the Issuer's past practices; *provided* that the aggregate amount outstanding at any time with respect to such financing shall not exceed $1,000,000.

"Permitted Intercompany Investments" means investments made by (a) a Note Party to or in another Note Party, (b) a subsidiary or Issuer that is not a Note Party to or in another subsidiary of Issuer that is not a Note Party, (c) subsidiary of Issuer that is not a Note Party to or in a Note Party and (d) a Note Party to or in a subsidiary of Issuer that is not a Note Party so long as (i) the aggregate amount of all such investments outstanding at any time made by the Note Parties to or in subsidiaries of Issuer that are not Note Parties does not exceed $350,000.

"Permitted Investments" means:

(a) investments in cash and cash equivalents;

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

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

(d) investments received in settlement of amounts due to any Note Party or any of its subsidiaries effected in the ordinary course of business or owing to any Note Party or any of its subsidiaries as a result of insolvency proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of a Note Party or its subsidiaries;

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

(f) Permitted Intercompany Investments.

"Permitted Liens" means:

(a) Liens securing the obligations under (i) on or prior to the Closing Date, the Existing Loans, and (ii) thereafter, the Notes issued to Holders on the Closing Date, and related documents;

(b) Liens for taxes, assessments and governmental charges;

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

(d) Liens described on Schedule V, provided that any such Lien shall only secure the indebtedness that it secures on the date hereof and any Permitted Refinancing Indebtedness in respect thereof;

(e) Liens on equipment acquired by any Note Party or any of its subsidiaries in the ordinary course of its business to secure Permitted Purchase Money Indebtedness so long as such Lien only (i) attaches to such property, (ii) secures the Indebtedness that was incurred to acquire such property or any Permitted Refinancing Indebtedness in respect thereof and (iii) the aggregate principal amount of all obligations secured thereby shall not exceed $250,000 at any time outstanding;

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

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

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

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

(j) non-exclusive licenses of intellectual property rights in the ordinary course of business;

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

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

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

(n) Liens solely on any cash earnest money deposits made by any Note Party in connection with any letter of intent or purchase agreement with respect to an acquisition; and

(p) Liens on cash collateral securing Indebtedness outstanding a letter of credit facility; provided, that the aggregate amount of such cash collateral does not exceed, 1 any time, 105% of the face amount of the letters of credit, surety bonds and/or other similar instruments outstanding under such letter of credit facility at such time; and

(q) Liens securing inventory financing incurred by the Issuer in the ordinary course of the Issuer's business and consistent with the Issuer's past practices; provided that such Liens shall be limited solely to the Inventory financed by such specific financing and the direct cash proceeds thereof and shall not be granted or attached to any other assets of the Issuer and such financing shall be recourse solely to such Inventory and proceeds and shall otherwise be non-recourse to the Issuer and its assets; and provided further that the aggregate amount outstanding at any time with respect to such financing shall not exceed $1,000,000.

Notwithstanding anything herein to the contrary, the Issuer and the Note Parties shall not permit to exist any Liens on (i) the equity of Remark SPV held by Holdco SPV or (ii) the Bikini.com Interests other than the Liens securing the Guaranteed Obligations and any such other Liens shall not constitute Permitted Liens.

"Permitted Purchase Money Indebtedness" means, as of any date of determination, indebtedness incurred to finance the acquisition of any fixed assets secured by a Lien permitted under clause (e) of the definition of "Permitted Liens"; *provided* that (a) such indebtedness is incurred within 20 days after such acquisition, (b) such indebtedness when incurred shall not exceed the purchase price of the asset financed and (c) the aggregate principal amount of all such indebtedness shall not exceed $250,000 at any time outstanding.

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

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

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

(c) such extension, refinancing or modification is pursuant to terms that are materially not less favorable to the Note Parties than the terms of the indebtedness (including, without limitation, terms relating to the collateral (if any) and subordination (if any)) being extended, refinanced or modified; and

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

"Permitted Restricted Payments" means payments made by:

(a) any subsidiary of any Note Party to such Note Party; and

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

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

"Register" and "Registrar" have the meanings specified in Section 19(b).

"Required Holders" means, (i) at any time on or prior to the Closing Date, Mudrick Capital Management, LP and (ii) at any time after the Closing Date, the holders of at least 50% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Issuer or any of its Affiliates); provided, however, that for so long as each Person (other than the Issuer or any of its Affiliates) in whose name a Note is registered as set forth in the Register is Mudrick Capital Management, LP or a managed fund or account of Mudrick Capital Management, LP, the "Required Holders" shall be deemed to be Mudrick Capital Management, LP.

"Responsible Officer" means of any Person shall mean any director, executive officer or Financial Officer of such Person and any other officer or similar official thereof responsible for the administration of the obligations of such Person in respect of this Agreement, or any other duly authorized employee or signatory of such Person.

"Securities Act" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"Subordinated Indebtedness" means unsecured indebtedness of any Note Party the terms of which (including, without limitation, payment terms, interest rates, covenants, remedies, defaults and other material terms) are reasonably satisfactory to the Required Holders; *provided* that such unsecured indebtedness shall (a) be expressly subordinated in right of payment to all indebtedness of such Note Party under the Loan, (b) require that the interest payable thereunder be paid in kind and (c) be subject to a subordination agreement, in form and substance reasonably satisfactory to the Required Holders.

"Tax" means any tax, levy, impost, duty, charge or assessment of any nature (including interest, penalties and additions thereto) imposed by any governmental taxing authority.

[*Signature Page to Follow*]

IN WITNESS WHEREOF, each Note Party has caused this Agreement to be duly executed as of the date set forth above.

REMARK HOLDINGS, INC., as Borrower
By: */s/ Kai-Shing Tao*
Name: Kai-Shing Tao
Title: Chief Executive Officer

BIKINI.COM, LLC, as a Guarantor
By: Remark SPV Holdco LLC, its Sole Member

By: */s/ Kai-Shing Tao*
Name: Kai-Shing Tao
Title: President

REMARK HOLDINGS SPV, INC., as a Guarantor
By: */s/ Kai-Shing Tao*
Name: Kai-Shing Tao
Title: President

REMARK AI, LLC, as a Guarantor
By: Remark Holdings, Inc., its Manager

By: */s/ Kai-Shing Tao*
Name: Kai-Shing Tao
Title: Chief Executive Officer

RAAD PRODUCTIONS, LLC,, as a Guarantor
By: Remark Holdings, Inc., its Sole Member

By: */s/ Kai-Shing Tao*
Name: Kai-Shing Tao
Title: Chief Executive Officer

RAAD PROMOTIONS, LLC, as a Guarantor
By: RAAD Productions, LLC, its Sole Member

By: */s/ Kai-Shing Tao*
Name: Kai-Shing Tao
Title: Authorized Person

REMARK SPV HOLDCO LLC, as a Guarantor

By: */s/ Kai-Shing Tao*

Name: Kai-Shing Tao

Title: President

TMI TRUST COMPANY, as Note Agent

By: */s/ Dennis D. Gillespie*

Name: Dennis D. Gillespie

Title: President

The foregoing Note Purchase Agreement
is hereby confirmed and accepted
as of the date first above written.

MUDRICK CAPITAL MANAGEMENT, LP

On behalf of its affiliated funds and managed accounts
that are contemplated to purchase the Notes hereunder, and not
in its individual capacity

By:	*/s/ Glenn Springer*
Name:	Glenn Springer
Title:	Chief Financial Officer

SCHEDULE I-A

Principal Amount of Holder Commitments to Purchase Notes

Holder	**Commitment**	**Applicable Percentage**
MUDRICK DISTRESSED OPPORTUNITY DRAWDOWN FUND II, L.P.	$5,655,664.12	34.68%
MUDRICK STRESSED CREDIT MASTER FUND, L.P.	$3,471,124.00	21.29%
MUDRICK DISTRESSED OPPORTUNITY SIF MASTER FUND, L.P.	$1,126,168.08	6.91%
MUDRICK DISTRESSED OPPORTUNITY 2020 DISLOCATION FUND, L.P.	$1,469,906.89	9.01%
MERCER QIF FUND PLC	$1,650,177.39	10.12%
BOSTON PATRIOT NEWBURY ST LLC	$2,350,139.19	14.41%
MUDRICK DISTRESSED OPPORTUNITY DRAWDOWN FUND II SC, L.P	$583,995.84	3.58%
TOTAL**:**	$16,307,175.50	100.00%

SCHEDULE I-B

Principal Amount of Existing Loans to be Cancelled

MUDRICK DISTRESSED OPPORTUNITY DRAWDOWN FUND II, L.P.	$5,000,604.07
MUDRICK STRESSED CREDIT MASTER FUND, L.P.	$3,069,085.51
MUDRICK DISTRESSED OPPORTUNITY SIF MASTER FUND, L.P.	$995,731.11
MUDRICK DISTRESSED OPPORTUNITY 2020 DISLOCATION FUND, L.P.	$1,299,656.78
MERCER QIF FUND PLC	$1,459,047.70
BOSTON PATRIOT NEWBURY ST LLC	$2,077,937.32
MUDRICK DISTRESSED OPPORTUNITY DRAWDOWN FUND II SC, L.P	$516,355.25
TOTAL**:**	$14,418,417.73

Annex A

FORM OF CONFIRMATION OF REGISTRATION

CONFIRMATION OF REGISTRATION

Date: _____

[Holder]
[ADDRESS]
Attention: [●]
Email: [●]

Re: Confirmation of Registration

Reference is hereby made to the Note Purchase Agreement dated as of [●], 2023 between Remark Holdings, Inc., as Issuer, each subsidiary of Issuer listed on the signature pages thereto or that after the date thereof delivers such a signature page, as Guarantors, and TMI Trust Company, as Note Agent (as the same may be supplemented or amended from time to time in accordance with its terms, the "Note Purchase Agreement"). Capitalized terms used but not defined herein shall have the meanings given them in the Note Purchase Agreement. This Confirmation of Registration is provided for informational purposes only; ownership of such uncertificated Notes shall be determined conclusively by the Register. To the extent of any conflict between this Confirmation of Registration and the Register, the Register shall control. This is not a security certificate.

We hereby confirm that the Note Agent has registered the principal amount of uncertificated Notes specified below, in the name specified below, in the Register.

Class: _____

Principal Amount: U.S.$[__]

Registered Name: [__]

Account Name: [__]

TMI Trust Company,
as Note Agent

By: _____

Name:

Title:

Annex B

FORM OF ISSUER ORDER

ISSUER ORDER

Date: _____

TMI Trust Company
5901 Peachtree Dunwoody Road, Suite C495
Atlanta, GA 30328
Attention: Jane Strobel

Reference is made to the Note Purchase Agreement, dated as of [●], 2023, between Remark Holdings, Inc., as Issuer, each subsidiary of Issuer listed on the signature pages thereto or that after the date thereof delivers such a signature page, as Guarantors, and TMI Trust Company, as Note Agent (as the same may be supplemented or amended from time to time in accordance with its terms, the "Note Purchase Agreement"). Capitalized terms used but not defined herein have the respective meanings given to such terms in the Note Purchase Agreement.

[The Issuer hereby delivers this Issuer Order to the Note Agent pursuant to the Note Purchase Agreement, and directs the Note Agent to credit on the Register the account(s) specified below with the principal amount(s) of Notes specified. The Issuer certifies that the issuance of the Notes is being made in accordance with the Note Purchase Agreement and such purchase/acquisition of Notes complies with all applicable requirements of the Note Purchase Agreement.

[Class: _____

Principal Amount: U.S.$[__]

Registered Name: [__]

Account Name: [__]

[Class: _____

Principal Amount: U.S.$[__]

Registered Name: [__]

Account Name: [__]][1]

[The Issuer hereby delivers this Issuer Order to the Note Agent pursuant to the Note Purchase Agreement, and directs the Note Agent to debit on the Register the account(s) specified below with the principal amount(s) of Notes specified. The Issuer certifies that the sale, transfer or assignment of the Notes is being made in accordance with the Note Purchase Agreement and such the sale, transfer or assignment of Notes complies with all applicable requirements of the Note Purchase Agreement.

[1] Bracketed language for issuance/purchase of Notes; otherwise, delete

[Class: _____

Principal Amount: U.S.$[__]

Registered Name: [__]

Account Name: [__]

[Class: _____

Principal Amount: U.S.$[__]

Registered Name: [__]

Account Name: [__]][2]

[remainder of page intentionally blank]

[2] Bracketed language for sale/transfer of Notes; otherwise, delete

IN WITNESS WHEREOF, the undersigned has hereunto executed this order as of date first written above.

REMARK HOLDINGS, INC.

By:_____
Name:
Title: