

PIPEFUNDTM

Standard Transaction Document

General Terms and Conditions – Registered Direct Offering

This PipeFund Services Organization Standard Transaction Document (PST Document) is intended to facilitate expediency and consistency in transactions involving an offering of a public company's equity and/or equity-linked securities directly to purchasers pursuant to an effective registration statement under the Securities Act (RD transaction). Parties to any RD transaction should consult with their legal counsel and any other advisers they deem appropriate prior to using this PST Document or engaging in any such transaction. PipeFund Services Organization, LLC (PSO) is not providing any legal advice or opinion in connection with this PST Document or its use in a particular RD transaction, disclaims any warranty, express or implied, concerning the use or license of this PST Document for any particular RD transaction, and shall not have any liability arising out of the use or inability to use this PST Document. This PST Document is the copyrighted property of RPITL, LLC and may not be reproduced, distributed or used (including any incorporation by reference) in any form without a valid license, and any unauthorized use is strictly prohibited. More information concerning the license or permitted use of this PST Document may be obtained at www.pipefund.com.

ARTICLE I INCORPORATION BY REFERENCE AND DEFINITIONS

1.1 Incorporation by Reference. This document shall be known as PipeFund Services Organization Standard Transaction Document (“**PST Document**”) GTC-RD 8-10 (General Terms and Conditions – Registered Direct Offering), which is available and accessible at www.pipefund.com. Any Transaction Document which incorporates by reference any PST Document shall be deemed to include all the terms, conditions and provisions of such PST Document as if stated directly in such Transaction Document; *provided, however*, that to the extent any of the terms, conditions or provisions of such Transaction Document (without such incorporation) contradict or conflict with any terms, conditions or provisions of such PST Document, such Transaction Document shall control.

1.2 Defined Terms. Each initially capitalized term used herein or in any other Transaction Document (including any PST Document incorporated by reference therein) and not otherwise defined herein or in such other Transaction Document shall have the meaning ascribed thereto in PST Document DEF 8-10, which is incorporated by reference herein and which is available and accessible at www.pipefund.com.

ARTICLE II CLOSING

2.1 Agreement to Purchase and Sell at Closing.

(a) *Purchase and Sale.* On the Closing Date, upon the terms and subject to the conditions set forth in the Securities Purchase Agreement, the Company agrees to issue and sell, and each Purchaser agrees to purchase, severally and not jointly, in consideration for payment by such

Purchaser of its Subscription Amount, such amount of Securities equal to:

- (i) *Common Stock.* If Shares are being purchased under the Securities Purchase Agreement, such number of Shares as is equal to such Subscription Amount divided by the Per Share Purchase Price;
- (ii) *Notes.* If Notes are being purchased under the Securities Purchase Agreement, such original principal amount of Notes as is equal to 100% (or such other percentage as may be set forth in the Securities Purchase Agreement) of such Subscription Amount;
- (iii) *Preferred Shares.* If Preferred Shares are being purchased under the Securities Purchase Agreement, such number of Preferred Shares as is equal to 100% (or such other percentage as may be set forth in the Securities Purchase Agreement) of such Subscription Amount divided by the liquidation value, preference amount or stated value set forth in the Certificate of Designation for such Preferred Shares;
- (iv) *Warrants.* If Warrants to purchase Common Stock are being purchased under the Securities Purchase Agreement, Warrants entitling such Purchaser to purchase such number of Warrant Shares as is determined by multiplying the Warrant Coverage Percentage by (a) the number of Shares issued to such Purchaser under the Securities Purchase Agreement and/or (b) the number of Conversion Shares issuable upon full conversion or exchange of the Notes and/or Preferred Shares issued to such Purchaser as of the Closing (without regard to any

Beneficial Ownership Limitation or Maximum Share Issuance and assuming all of such Notes and/or Preferred Shares are currently convertible or exchangeable even if not then so convertible or exchangeable) (the Securities Purchase Agreement may provide for multiple forms of Warrants each with its own Warrant Coverage Percentage); and

- (v) *Other Securities.* Such amount of additional or other Shares, Notes, Preferred Shares or Warrants as may be set forth in the Securities Purchase Agreement.
- (b) *Closing(s).* Each Closing shall occur on such date and at such time as mutually agreed by the Parties and the Placement Agent. The initial (or sole) Closing shall occur on or prior to the Securities Purchase Agreement Termination Date. After such initial Closing, the Company may sell additional Securities in one or more additional Closings until the earlier of (i) the Offering Termination Date, and (ii) the date on which the aggregate of all Subscription Amounts equals the Maximum Aggregate Investment Amount. Each Closing shall be subject to this Article II with respect to such Purchaser(s) consummating the purchase and sale of Securities at such Closing. Each Closing shall be deemed to occur at the offices of the Funds Escrow Agent or at such other location as the Parties to such Closing and the Placement Agent shall mutually agree. In the event any Purchaser becomes a Party to the Securities Purchase Agreement after the date of execution by the initial Purchaser(s) thereto, on the one hand, and the Company, on the other hand, whether before or after the initial Closing, such Purchaser and the Company shall be deemed to have executed the Securities Purchase Agreement with respect to such Purchaser as of the date of such initial execution, and all schedules and exhibits thereto shall automatically and appropriately be updated to reflect such subsequent Purchaser as a Party thereto.

2.2 Escrow. Unless the Securities Purchase Agreement provides that there shall not be an Escrow Agreement, the Parties agree as follows with respect to the delivery and exchange of the Subscription Amounts, Company Closing Documents and Purchaser Closing Documents as contemplated by the Securities Purchase Agreement for each Purchaser which has elected to settle the purchase and sale of the Securities via DWAC or through delivery of physical stock certificates:

- (a) *Escrow Agreement.* Each such Purchaser acknowledges receipt of a copy of the Escrow Agreement and agrees to be bound by Article IV of PST Document ESC incorporated therein by reference as if a party thereto, and each such Purchaser irrevocably waives and covenants not to bring any suit, claim, demand or cause of action of any kind which any party may have to assert against the Funds Escrow Agent therein (or any officer, director, employee, representative or independent contractor of the

Funds Escrow Agent) arising out of or relating to the performance by the Funds Escrow Agent of the Escrow Agreement now or in the future. The Funds Escrow Agent shall be a third party beneficiary of the Securities Purchase Agreement as it relates to this provision.

- (b) *Appointments.* The Company has appointed or shall appoint, and each such Purchaser approves such appointment of, the Escrow Agent as the “Escrow Agent” for the Closing of the purchase and sale of the Securities in accordance with the terms of the Escrow Agreement. Each such Purchaser hereby designates the Placement Agent, or, if there is more than one Placement Agent, any lead Placement Agent, as the Purchaser Closing Representative, and authorizes such Purchaser Closing Representative to act on its behalf as the Purchaser Closing Representative under the Escrow Agreement.
- (c) *Funds into Escrow.* Promptly following the execution and delivery of the Securities Purchase Agreement by any such Purchaser, such Purchaser shall (i) deliver its Subscription Amount to the Funds Escrow Agent, in immediately available funds by either wire transfer or certified (or cashier’s) check, in accordance with the instructions furnished in writing to such Purchaser by the Company, the Placement Agent or the Funds Escrow Agent specifying Escrow Account wire transfer details and/or address, as applicable, and (ii) deliver its Purchaser Closing Documents, if any, to the Placement Agent or, if there is no Placement Agent, the Company.
- (d) *Company Documents.* Promptly following the Closing, the Company shall deliver the Company Closing Documents to each Purchaser, including without limitation such Purchaser’s Securities and/or Share Certificates.

2.3 Closing Conditions.

- (a) *Conditions Precedent to Obligation of Purchaser(s) to Purchase.* The obligation of each Purchaser to purchase the Securities from the Company at the Closing shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions, provided that these conditions are for such Purchaser’s sole benefit and may be waived by such Purchaser (as to itself only) at any time in its sole discretion by providing the Company with prior written notice thereof:
- (i) *Representations and Warranties.* The representations and warranties of the Company set forth in the Securities Purchase Agreement and other Transaction Documents (including without limitation the representations and warranties of the Company set forth in Article III below) shall be true and correct in all respects as of the date of the Securities Purchase Agreement and as of and as though made on the Closing Date, except that (A) for those representations and warranties not

qualified as to materiality or a Material Adverse Effect, such representations and warranties shall be true and correct in all material respects, and (B) to the extent that any such representation or warranty speaks as of a specific earlier date, such representation or warranty shall be true and correct in all respects (or all material respects if such representation or warranty is not qualified as to materiality or a Material Adverse Effect) as of such earlier date.

- (ii) *Covenants.* The Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Company at or prior to the Closing.
- (iii) *Consents and Filings.* The Company shall have (A) obtained any and all governmental, regulatory and/or third party consents, permits, approvals, licenses, authorizations, registrations and waivers, and (B) made all filings under all applicable federal, state and foreign securities laws, in each case as necessary for the consummation of the purchase and sale of the Securities and the Transactions, to the extent such consents, permits, approvals, registrations, waivers and filings must be made on or prior to the Closing Date, all of which shall be in full force and effect.
- (iv) *No Injunction.* No statute, rule, regulation, judgment, writ, order, award, decree, ruling or injunction shall have been enacted, entered, promulgated, issued or endorsed by, and no Action shall have been instituted by, any court, arbitrator, tribunal or governmental agency, authority or official of competent jurisdiction that prohibits, enjoins, prevents, alters or materially delays the consummation of the Transactions or materially and adversely affects or potentially materially and adversely affects the business or operations of the Company.
- (v) *No Adverse Changes.* Since the respective dates as of which information is given in the Registered Direct Disclosure Package, no event or series of events shall have occurred that has had, or would reasonably be expected to have or result in, a Material Adverse Effect.
- (vi) *No Suspension of Trading or Adverse Markets.* Since the date of execution of the Securities Purchase Agreement (A) trading in and/or quotation of the Common Stock on the Principal Market shall not have been suspended by the Commission or the Principal Market (except for any suspension of trading of limited duration agreed to by the Company, which suspension shall be terminated

prior to the Closing), (B) trading generally shall not have been suspended or materially limited, nor shall minimum or maximum prices or a maximum range for prices have been established, in or on securities traded on any Eligible Market by the Commission, any such Eligible Market or by another regulatory body or governmental authority having jurisdiction, (C) no general moratorium on commercial banking activities in excess of one Trading Day shall have been declared by either federal or New York state authorities nor shall any material disruption in excess of one Trading Day have occurred in commercial banking or securities settlement or clearance services in the United States, and (D) there shall not have occurred (1) any material outbreak or escalation of hostilities or acts of terrorism involving the United States or any declaration by the United States of a national emergency or war, or (2) any other national or international calamity or crisis of such magnitude to cause, or would reasonably be expected to cause, a material adverse effect on financial markets in general, or any material adverse change in general economic, political or financial conditions or financial markets in the United States or elsewhere, if the effect of any such event specified in this clause (D), in the reasonable judgment of such Purchaser or the Placement Agent, makes it impracticable or inadvisable to proceed with the completion of the sale of and payment for the Securities on the Closing Date on the terms and in the manner contemplated by the Securities Purchase Agreement.

- (vii) *Minimum and/or Maximum Investment Amounts.* The aggregate Subscription Amount for all Purchasers at the Closing, together with the aggregate Subscription Amount for all Purchasers at any and all Closings occurring prior to such Closing, shall at least be equal to the Minimum Aggregate Investment Amount, if any, but shall not exceed the Maximum Aggregate Investment Amount, if any.
- (viii) *Closing Deliverables.* The Company shall have delivered or caused to be delivered to such Purchaser or, if applicable, to the Placement Agent, the following (collectively, "**Company Closing Documents**"):
 - (A) *Securities.*
 - (1) The Shares purchased by such Purchaser pursuant to the Securities Purchase Agreement, registered in the name of such Purchaser and in such denominations as may be indicated by such Purchaser in writing to the Company, in accordance with the terms

of the Securities Purchase Agreement;
and

- (2) One or more original certificates (“**Share Certificates**”), registered in the name of such Purchaser and in such denominations as may be indicated by such Purchaser in writing to the Company, evidencing the aggregate number of Preferred Shares purchased by such Purchaser pursuant to the Securities Purchase Agreement; and
- (3) One or more original Notes, registered in the name of such Purchaser and in such denominations as may be indicated by such Purchaser in writing to the Company, in the aggregate original principal amount of Notes purchased by such Purchaser pursuant to the Securities Purchase Agreement; and
- (4) One or more original Warrants, registered in the name of such Purchaser and in such denominations as may be indicated by such Purchaser in writing to the Company, purchased by such Purchaser pursuant to the Securities Purchase Agreement entitling such Purchaser to purchase in the aggregate such number of Warrant Shares as is determined in accordance with Section 2.1(a)(iv) above or as otherwise indicated in the Securities Purchase Agreement; and
- (5) One or more original Warrants, registered in the name of such Purchaser and in such denominations as may be indicated by such Purchaser in writing to the Company, purchased by such Purchaser pursuant to the Securities Purchase Agreement entitling such Purchaser to purchase in the aggregate such number of other securities of the Company as may be set forth in the Securities Purchase Agreement;

provided, however, that in lieu of delivering any original Note or Warrant or certificate for Preferred Shares on the Closing Date as contemplated in this Section 2.3(a)(viii)(A), a true copy of the face page and executed signature page of such Note, Warrant or certificate may be delivered by facsimile or e-mail, *provided* that such Note, Warrant or certificate shall be delivered as soon as practicable following, but no later than, five

(5) Business Days following the Closing Date (which delivery of original securities shall be a condition subsequent to the occurrence of the Closing);

- (B) *Legal Opinion.* One or more opinion letters dated as of the Closing Date, addressed and delivered to such Purchaser or, in the case of a Registered Direct Offering through a Placement Agent, such Placement Agent, by the Company’s independent legal counsel(s) reasonably acceptable to such Purchaser or Placement Agent (as the case may be), covering such matters that are customarily given by issuer counsel to investors or Placement Agents (as the case may be), which opinion letters shall be in form, substance and scope reasonably acceptable to such Purchaser or the Placement Agent (as the case may be) or substantially as set forth as an exhibit to the Securities Purchase Agreement (“**Legal Opinion**”);
- (C) *Officer’s Certificate.* A certificate dated as of the Closing Date, executed and delivered by the President, Chief Executive Officer or Chief Financial Officer of the Company to such Purchaser or, in the case of a Registered Direct Offering through a Placement Agent, such Placement Agent, certifying that the conditions specified in clause (i) and (ii) of this Section 2.3(a) have been satisfied;
- (D) *Secretary’s Certificate.* A certificate dated as of the Closing Date, executed and delivered by the Secretary of the Company and of each Subsidiary executing a Transaction Document to such Purchaser or, in the case of a Registered Direct Offering through a Placement Agent, such Placement Agent, certifying as to (1) the incumbency and specimen signature of each officer of the Company executing the Transaction Documents on behalf of the Company (and such Subsidiary), (2) the true, correct and complete nature of the Company’s and such Subsidiary’s current Certificate of Incorporation and By-laws, and (3) the true, correct and complete nature of resolutions duly adopted by the Company’s and such Subsidiary’s Board of Directors authorizing the execution and delivery of the Transaction Documents and consummation of the Transactions on behalf of the Company and such Subsidiary, including without limitation the issuance of the Securities;
- (E) *Good Standing.* Certificate(s) evidencing (1) the incorporation or organization and good

standing of the Company in the jurisdiction of its incorporation or organization, and (2) the good standing of the Company in each jurisdiction where it is qualified to do business, in each case dated as of a date within ten (10) Business Days prior to the initial (or sole) Closing Date, delivered to such Purchaser or, in the case of a Registered Direct Offering through a Placement Agent, such Placement Agent;

- (F) *Certificate of Designation.* If Preferred Shares are being purchased under the Securities Purchase Agreement, a copy of, together with evidence of due filing and effectiveness of, the Certificate of Designation for the Preferred Shares filed with the Secretary of State of the Company's jurisdiction of incorporation or organization (which shall continue to be filed and in full force and effect on the Closing Date);
- (G) *Collateral Documents.* If any of the Company's obligations under any of the Transaction Documents are to be secured, such Security Agreements and Security Documents, duly executed by the Company and/or any other Person party thereto, in form and substance reasonably acceptable to such Purchaser or substantially as set forth as an exhibit to the Securities Purchase Agreement; and
- (H) *Other Documents.* Such other agreements and/or documents as may be required to be executed and/or delivered on or prior to Closing pursuant to the Securities Purchase Agreement or as reasonably requested by such Purchaser, in each case duly executed and delivered by the applicable Person(s) who are party thereto.
- (ix) *Listing.* To the extent required for trading any Shares or Warrant Shares on the Principal Market, such Shares and Warrant Shares shall have been approved for trading upon official notice of issuance on the Principal Market.
- (b) *Conditions Precedent to Obligation of Company to Sell.* The obligation of the Company to sell and issue the Securities to a Purchaser at the Closing shall be subject to the satisfaction, at or prior to the 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 such Purchaser with prior written notice thereof:
 - (i) *Representations and Warranties.* The representations and warranties of such Purchaser set

forth in the Securities Purchase Agreement and other Transaction Documents (including without limitation the representations and warranties of such Purchaser set forth in Article III below) shall be true and correct in all respects as of the date of the Securities Purchase Agreement and as of and as though made on the Closing Date, except that (A) for those representations and warranties not qualified as to materiality or a Material Adverse Effect, such representations and warranties shall be true and correct in all material respects, and (B) to the extent that any such representation or warranty speaks as of a specific earlier date, such representation or warranty shall be true and correct in all respects (or all material respects if such representation or warranty is not qualified as to materiality or a Material Adverse Effect) as of such earlier date.

- (ii) *Covenants.* Such Purchaser shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by such Purchaser at or prior to the Closing.
- (iii) *No Injunction.* No statute, rule, regulation, judgment, writ, order, award, decree, ruling or injunction shall have been enacted, entered, promulgated, issued or endorsed by, and no Action shall have been instituted by, any court, arbitrator, tribunal or governmental agency, authority or official of competent jurisdiction that prohibits, enjoins, prevents, alters or materially delays the consummation of the Transactions.
- (iv) *Closing Deliverables.* Such Purchaser shall have delivered or caused to be delivered, effective upon the Closing, the following:
 - (A) *Subscription Amount.* Such Purchaser's Subscription Amount paid in United States dollars, in immediately available funds, via wire transfer or certified (or cashier's) check, to the Escrow Account or the Placement Agent (as the case may be);
 - (B) *Tax Identification.* If requested by the Company or the Placement Agent, a completed IRC W-9 Form (or, if such Purchaser is not a United States citizen or resident, a completed IRC W-8 Form) to the Company or the Placement Agent; and
 - (C) *Other Documents.* Such other agreements and/or documents, duly executed by such Purchaser, as may be required to be executed and delivered by such Purchaser on or prior to Closing pursuant to the Securities

Purchase Agreement (together with any requested W-9 or W-8 Form, the “**Purchaser Closing Documents**”), to the Company or the Placement Agent.

- (v) *FINRA Approval.* To the extent required, FINRA shall have confirmed that it has not raised any objection with respect to the fairness and reasonableness of any Placement Agreement terms and conditions.

2.4 Termination. In the event that the Closing shall not have occurred with respect to any Purchaser on or before 5:00 PM Eastern (New York) time on the Securities Purchase Agreement Termination Date, the Securities Purchase Agreement may be terminated by such Purchaser or the Company, with respect to such Purchaser’s obligations under the Securities Purchase Agreement only and without any effect whatsoever on the obligations between the Company and any other Purchaser (except to the extent any such termination may affect the Minimum Aggregate Investment Amount, if any), by written notice to the other Party, *provided* that such terminating Party has not breached the Securities Purchase Agreement. Any Purchaser, on behalf of itself only, shall have the right to terminate this Agreement by giving written notice to the Company at any time on or prior to the Closing Date, without liability on the part of such Purchaser to the Company, if prior to delivery and payment for the Securities any of the events described in clauses (v) or (vi) of Sections 2.3(a) above have occurred. If the Company has entered or enters into a Placement Agreement, then in the event that the Placement Agreement is terminated by the Placement Agent pursuant to the terms thereof such that there is no longer any Placement Agreement or Placement Agent with respect to the Offering, the Securities Purchase Agreement shall terminate without any further action on the part of the Parties. Notwithstanding anything contained herein, any termination pursuant to this Section 2.4 shall not affect (a) any Party’s right to seek and obtain damages for any breach by the other Party of the Securities Purchase Agreement (or alternatively seek specific performance), or (b) the Company’s obligation to pay any and all expenses it is required to pay under the Securities Purchase Agreement or other agreement(s) between the Parties and to indemnify the applicable Indemnified Purchaser Party thereto.

ARTICLE III **REPRESENTATIONS AND WARRANTIES**

3.1 Mutual Representations and Warranties. Each of the Company and each Purchaser, severally and not jointly, hereby represents and warrants as to itself only, as of the date of execution of the Securities Purchase Agreement and as of the Closing Date, that:

- (a) *Organization and Existence; Authority/Capacity.* Such Party, if an entity, is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization with full right, power and authority to enter into the Transaction Documents to

which it is a party and to consummate the Transactions and otherwise to carry out, perform and discharge its obligations under such Transaction Documents. Such Party, if a natural person, has the legal capacity to enter into the Transaction Documents to which such Party is a party.

- (b) *Execution and Validity.* The execution, delivery and performance by such Party of the Transaction Documents to which such Party is a party, and the consummation by such Party of the Transactions, have been duly authorized by all necessary corporate, partnership or similar action on the part of such Party and no further action is required by such Party in connection therewith. Each Transaction Document to which such Party is a party (i) has been, or upon delivery will have been, duly executed and delivered by such Party (unless such Party is a Purchaser and is not required to execute such Transaction Document, such as any Note, Certificate of Designation or Security Document), and (ii) assuming the valid execution and delivery of such Transaction Document by the other Party(ies) thereto (unless such other Party is a Purchaser and is not required to execute such Transaction Document, such as any Note, Certificate of Designation or Security Document), will constitute the valid and legally binding obligation of such Party, enforceable against such Party in accordance with its terms, except to the extent limited by (A) applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or transfer, and other similar laws of general application affecting enforcement of creditors’ rights generally, (B) laws relating to the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity), or (C) indemnification and contribution provisions which are void as against public policy.
- (c) *No Conflicts.* The execution, delivery and performance of the Transaction Documents by such Party, and the consummation by such Party of the Transactions, do not and will not (i) conflict with or violate any provision of such Party’s (or any of its subsidiaries’) Organizational Documents, (ii) conflict with, result in a breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of such Party or any of its subsidiaries pursuant to, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument to which such Party (or any of its Subsidiaries) is a party or by which any property or asset of such Party (or any of its Subsidiaries) is bound or affected, except to the extent such conflict, breach, default, Lien or right would not reasonably be expected to result in a Material Adverse Effect or a material adverse effect on such Party, or (iii) result in a violation of any constitution, statute, law, rule, regulation, order,

judgment, injunction, decree, ruling, charge or other restriction of any court or governmental authority to which such Party (or any of its Subsidiaries) is subject (including without limitation federal, state and foreign securities laws and regulations) or by which any material property or asset of such Party (or any of its Subsidiaries) is bound or affected, except to the extent such violation would not reasonably be expected to result in a Material Adverse Effect or a material adverse effect on such Party.

3.2 Purchaser Representations and Warranties. Each Purchaser, severally and not jointly, hereby represents and warrants as to itself only, as of the date of execution of the Securities Purchase Agreement and as of the Closing Date, that, except as otherwise disclosed by such Purchaser in writing to the Company:

- (a) *Delivery of Information Regarding Company and Transactions.* Such Purchaser (i) has received (or otherwise had made available to it by the filing by the Company of an electronic version thereof with the Commission) (A) the Preliminary Prospectus, (B) the Recent Reports and other information incorporated by reference therein, and (C) the other materials constituting the Registered Direct Disclosure Package (including without limitation the Final Prospectus and each Issuer Free Writing Prospectus, if any), prior to or in connection with such Purchaser's execution of the Securities Purchase Agreement, (ii) was able to read, review, and, if delivered via electronic mail or available via EDGAR, download and print such materials, and (iii) is relying only upon such materials and the representations and warranties of the Company contained in the Transaction Documents in connection with such Purchaser's decision to purchase the Securities as agreed in the Securities Purchase Agreement. Such Purchaser hereby consents to the receipt of the Registered Direct Disclosure Package and the Final Prospectus in portable document format, tagged image format or similar format via electronic e-mail or by such materials being made available to it by the Company filing an electronic version thereof with the Commission.
- (b) *Purchaser Information.* Such Purchaser (i) has answered all questions requested in writing by the Company or the Placement Agent for use in preparation of the Final Prospectus and the answers thereto are true and correct in all material respects, (ii) is knowledgeable, sophisticated and experienced in making, and is qualified to make, decisions with respect to investments in securities representing an investment decision like that involved in the purchase of the Securities, including without limitation being capable of evaluating the merits and risks of the purchase of the Securities, (iii) has sought such accounting, legal, tax and investment advice as it has considered necessary to make an informed decision with respect to its acquisition of the Securities and understands that the Company is not providing any accounting, legal, tax or investment advice, and (iv) does not have any agreement or understanding, directly or indirectly, with any person or entity to distribute any of the Securities.
- (c) *Not Affiliate or Broker-Dealer.* Except as otherwise disclosed in writing to the Company or any Placement Agent, such Purchaser (i) has had no position, office or other material relationship within the past three years with the Company or persons known to such Purchaser to be affiliates of the Company, (ii) is not a, and has no direct or indirect affiliation or association with any, FINRA member or an Associated Person (as such term is defined under the FINRA Membership and Registration Rules Section 1011), and (iii) has not, individually or together with other investors constituting a group (as defined in Regulation 13D-G and identified in a public filing made with the Commission), acquired, or obtained the right to acquire, 20% or more of the Common Stock (or securities convertible or exercisable for Common Stock) or the voting power of the Company on a post-transaction basis.
- (d) *Short Sales and Confidentiality Prior to Disclosure of Transactions.* Other than the Transactions, such Purchaser has not, nor has any Person acting on behalf of or pursuant to any understanding with such Purchaser, directly or indirectly executed any acquisition or disposition, including Short Sales (whether or not against the box), of any securities of the Company since such Purchaser first received a term sheet (written or oral) from the Company, any Placement Agent or any other Person setting forth the material terms of the Transactions or was first contacted by any Placement Agent or the Company with respect to the Transactions, including without limitation establishing any "put equivalent position" (as defined in Rule 16a-1(h) under the Exchange Act) with respect to the Common Stock or granting any right (including without limitation any put or call option) with respect to the Common Stock or with respect to any security that includes, relates to or derives any significant part of its value from, the Common Stock, whether or not to directly or indirectly hedge such Purchaser's position in the Securities, *provided* that if the material terms of the Transactions have been publicly disclosed such Purchaser may have purchased or sold securities of the Company a reasonable time after such disclosure. Notwithstanding the foregoing, if such Purchaser is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the representation set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the decision to purchase the Securities under the Securities Purchase Agreement. Other than to other Persons party to the Securities Purchase Agreement or to such Purchaser's representatives and advisors, such Purchaser has maintained the confidentiality of all disclosures made to it in connection with the Transactions (including the existence and terms of the Transactions) to

the extent such disclosures constituted material non-public information of the Company.

3.3 Purchaser Acknowledgments. Each Purchaser, severally and not jointly, hereby acknowledges and understands, as to itself only, as of the date of execution of the Securities Purchase Agreement and as of the Closing Date, that:

- (a) *Acceptance of Offer.* No offer by such Purchaser to buy Securities will be accepted and no part of the Subscription Amount will be delivered to the Company until such Purchaser has received the Final Prospectus and the Company has accepted such offer by countersigning a copy of the Securities Purchase Agreement, and any such offer may be withdrawn or revoked, without obligation or commitment of any kind, at any time prior to the Company (or a Placement Agent on behalf of the Company) sending (orally, in writing or by electronic mail) notice of its acceptance of such offer. Any indication of interest will involve no obligation or commitment of any kind until such Purchaser has been delivered the Final Prospectus and the Securities Purchase Agreement is accepted and countersigned by or on behalf of the Company. Such Purchaser's receipt of the Company's counterpart to the Securities Purchase Agreement, together with the Final Prospectus (or the filing by the Company of an electronic version thereof with the Commission), shall constitute written confirmation of the Company's sale of the Securities to such Purchaser.
- (b) *No Governmental Review.* No United States federal or state agency or any other government or governmental agency or authority has (i) reviewed, passed on or made any recommendation or endorsement of the Offering, the Securities or the fairness or suitability of the investment in or purchase of the Securities or the terms of the Offering, (ii) passed upon or endorsed the merits of the Offering, or (iii) made any finding or determination as to the accuracy or adequacy of the Registered Direct Registration Statement, and any representation to the contrary is a criminal offense. In making an investment decision, Purchasers must rely on their own examination of the Company and the terms of the Offering, including the merits and risks involved.
- (c) *Not Underwritten.* Except as otherwise set forth in the Securities Purchase Agreement, the Offering is not being underwritten by any Placement Agent and there is no Minimum Aggregate Investment Amount.
- (d) *Offshore.* No action has been or will be taken in any jurisdiction outside the United States by the Company or the Placement Agent that would permit an offering of the Securities, or possession or distribution of offering materials in connection with the issue of the Securities, in any jurisdiction outside the United States where action for that purpose is required.

- (e) *Placement Agent Disclosure.* The Placement Agent is not authorized to make and has not made any representation, disclosure or use of any information in connection with the issue, placement, purchase and sale of the Securities, except as set forth or incorporated by reference in the Registered Direct Disclosure Package.
- (f) *Dilution.* Except as otherwise set forth in the Transaction Documents, the Company will have the authority to issue shares of Common Stock in excess of those being issued in connection with the Offering, and the Company may issue additional shares of Common Stock from time to time. The issuance of additional shares of Common Stock may cause dilution of the existing shares of Common Stock and a decrease in the market price of such existing shares.
- (g) *Retirement Plan.* If such Purchaser is a retirement plan or is investing on behalf of a retirement plan, such Purchaser acknowledges that an investment in the Securities poses additional risks, including the inability to use losses generated by an investment in the Securities to offset taxable income.

3.4 Company Representations and Warranties. Except to the extent otherwise set forth in the Registered Direct Disclosure Package, the Company hereby makes the following representations and warranties, as of the date of execution of the Securities Purchase Agreement and as of the Closing Date, to each Purchaser:

- (a) *Subsidiaries.* Each Subsidiary of the Company is listed in an exhibit to the Company's most recent Annual Report. The Company directly or indirectly owns all of the capital stock of each Subsidiary free and clear of any Liens, and all the issued and outstanding shares of capital stock of each Subsidiary are validly issued, fully paid, non-assessable and free of preemptive and similar rights. Each Subsidiary is an entity duly incorporated or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. 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.
- (b) *Qualification.* The Company has the corporate power and authority to own and use its properties and assets and to carry on its business as currently conducted. The Company and each of its Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other legal entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, would not have or reasonably be

- expected to result in, individually or in the aggregate, a Material Adverse Effect.
- (c) *Organizational Documents.* The Company has furnished to each Purchaser true and correct copies of the Company's Certificate of Incorporation and the Company's By-Laws.
- (d) *Filings, Consents and Approvals.* The Company is not required to obtain any approval, consent, waiver, authorization or order of, give any notice to, or make any filing, qualification or registration with, any court or other federal, state, local, foreign or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than such approvals, consents, waivers, authorizations, orders, notices, filings, qualifications or registrations which may be required under the rules, regulations or provisions of applicable securities laws, the Principal Market or any self-regulatory organization and which will be obtained, given or made (i) on or prior to Closing if so required, or (ii) on or prior to the applicable due date therefore if not so required prior to Closing. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities or any Underlying Shares upon the conversion, exercise or exchange of or otherwise pursuant to any Securities.
- (e) *Issuance and Reservation of Securities.* The Securities are duly authorized. Any Shares, Preferred Shares and Underlying Shares, when issued and paid for in accordance with the terms of Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens. The Company has reserved for issuance under the Securities Purchase Agreement and upon conversion, exercise, exchange or otherwise pursuant to the Securities at least such amount of shares of Common Stock as is equal to the Minimum Reserve from its duly authorized capital stock.
- (f) *Capitalization.* The number of shares of Common Stock (and of each class thereof, if more than one), and of each series and/or class of preferred stock, of the Company authorized, issued and outstanding is as set forth in the Company's Most Recent Fiscal Report or the Statutory Prospectus. All of the outstanding shares of capital stock of the Company have been issued in compliance with all federal, state and foreign securities laws, have been duly authorized and validly issued, and are fully paid and non-assessable, and none were issued in violation of any preemptive rights, rights of first refusal or similar rights to subscribe for or purchase or acquire any securities of the Company. The Statutory Prospectus sets forth (i) all outstanding options, warrants, calls, scrip, securities, rights and obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire from the Company, directly or indirectly, any shares of capital stock of the Company, and (ii) all contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to directly or indirectly issue additional shares of capital stock of the Company. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the Transactions, which right has not been (or will not have been) complied with or waived prior to the Closing, and the issuance and sale of the Securities to the Purchasers and/or the sale or issuance of any Underlying Shares directly or indirectly pursuant to the terms of the Transaction Documents (including the Securities) will not (A) obligate the Company to issue shares of Common Stock or other securities to any Person under any agreement, warrant or otherwise, (B) directly or indirectly effectively cause an adjustment to the then current conversion, exercise, exchange or reset price under any of the Company's outstanding securities or agreements, or (C) obligate the Company to redeem or purchase, increase the interest rate or dividend yield on, or otherwise adversely affect the terms of, any of the Company's outstanding securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the Company's knowledge, between or among any of the Company's stockholders. No Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company (other than rights which have been waived in connection with the Transactions).
- (g) *Public Filings.* The Company has filed all reports, statements and documents required to be filed by it under the Securities Act and the Exchange Act, including without limitation pursuant to Section 13(a) or 15(d) of the Exchange Act, for the two years immediately preceding the date of the Securities Purchase Agreement on a timely basis or has received a valid extension of such filing time and filed such extended filings prior to the expiration of any such extension. Each report, statement and document filed by the Company with the Commission under the Securities Act or the Exchange Act during the two years immediately preceding the date of the Securities Purchase Agreement complied in all material respects with the requirements of the Securities Act or Exchange Act, as the case may be, and none contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, as of the date filed. No event or circumstance has occurred on or prior to the date of the Securities Purchase Agreement or the Closing Date, as the case may be, which would require the Company to disclose such event or circumstance in order to make the statements in the Recent Reports, in light of the circumstances under

which they were made, not misleading but which has not been so disclosed.

(h) *Financial Statements.* The financial statements of the Company and its Subsidiaries, together with the related notes and schedules thereto, contained or incorporated by reference in the Statutory Prospectus comply as to form and substance in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with GAAP (or IFRS if the Company is a foreign issuer), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP (or IFRS if the Company is a foreign issuer). Such financial statements fairly present in all material respects the financial position of the Company and its consolidated subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended (subject to normal, immaterial, year-end audit adjustments for unaudited statements). There are no other financial statements (historical or pro forma) that are required to be included or incorporated by reference in the Statutory Prospectus, and all disclosures contained in the Statutory Prospectus regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission) comply with Regulation G of the Exchange Act and Item 10(e) of Regulation S-K under the Securities Act, to the extent applicable, and present fairly the information shown therein and the Company’s basis for using such measures.

(i) *Undisclosed Liabilities.* The Company and its Subsidiaries have no Liabilities which are not disclosed in the Statutory Prospectus, other than those Liabilities incurred in the ordinary course of the Company's or its Subsidiaries' respective businesses since the date of the financial statements contained in the Most Recent Fiscal Report which Liabilities, individually or in the aggregate, do not have, and could not reasonably be expected to result in, a Material Adverse Effect.

(j) *Material Changes.* Subsequent to the respective dates as of which information is given in the Registered Direct Disclosure Package, and except as may be otherwise stated or incorporated by reference in the Registered Direct Disclosure Package:

(i) there has been and there exists no event, occurrence, circumstance, condition or development (whether with or without notice or the passage of time or both) that, individually or in the aggregate, has had or could reasonably be expected to result in a Material Adverse Effect;

(ii) the Company and its Subsidiaries have not incurred any Liabilities (including assumptions of debt and

guarantees of the obligations of others) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practices, and (B) Liabilities not required to be reflected in the Company's financial statements pursuant to GAAP (or IFRS if the Company is a foreign issuer) or required to be disclosed in filings made with the Commission;

(iii) the Company has not altered its method of accounting;

(iv) the Company and its Subsidiaries have not (A) declared or made any dividend or distribution of cash or other property to its stockholders, (B) purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock, (C) sold, assigned, transferred or licensed any assets (whether tangible or intangible), or cancelled or waived any debt or claim, outside of the ordinary course of business in any material amount, individually or in the aggregate, or waived any right of significant value, (D) made capital expenditures in any material amount, individually or in the aggregate, (E) satisfied or discharged any Lien or paid any obligation of the Company, except in the ordinary course of business, (F) incurred any Lien on any asset (other than purchase money security interests or in connection with capital or equipment leases), or (G) made any loans, advances or capital contributions to, or investments in, any Person in any material amount;

(v) there have been no amendments to or changes in the Certificate of Incorporation or Bylaws of the Company or its Subsidiaries (other than on account of the filing of the Certificate of Designation in connection with any Preferred Shares to be issued under the Securities Purchase Agreement);

(vi) there has not been any damage, destruction or loss (whether or not covered by insurance) that, individually or in the aggregate, has had or could reasonably be expected to result in a Material Adverse Effect;

(vii) the Company and its Subsidiaries have not directly or indirectly issued any equity securities or securities convertible into or exercisable or exchangeable for equity securities of the Company (including without limitation any Convertible Securities or Options), other than to officers, directors or employees of the Company or its Subsidiaries in the ordinary course of business pursuant to existing stock option plans duly adopted by the Company;

(viii) the Company and its Subsidiaries have not materially changed any officer compensation except

in the ordinary course of business and consistent with past practices; and

- (ix) the Company and its Subsidiaries have not entered into, amended, relinquished, terminated or failed to renew any material contract, license, lease, transaction, commitment or other right or obligation, other than in the ordinary course of business.
- (k) *Litigation.* There is no Action pending or, to the knowledge of the Company, threatened or contemplated against or affecting the Company, any of its Subsidiaries or any of their respective properties which could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor, to the knowledge of the Company, any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or Liability under federal or state or foreign securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by, nor suspended the trading of any security of, the Company or any of its Subsidiaries under the Exchange Act or the Securities Act.
- (l) *Environment, Health, and Safety Matters.* Except where the failure to so comply or to obtain such Permit could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Company and its Subsidiaries (i) are in compliance with all Environmental, Health and Safety Laws, (ii) have received all Permits required of them under applicable Environmental, Health and Safety Laws for the occupation of their respective facilities and the operation of their respective businesses, and (iii) are in compliance with all terms and conditions of each such Permit. To the Company's knowledge neither the Company nor any Subsidiary is subject to any material Liability or potential material Liability relating to any of their respective operations or facilities arising under any Environmental, Health and Safety Laws. Neither the execution of the Securities Purchase Agreement nor the consummation of the Transactions will result in any material obligations pursuant to any so-called "transaction-triggered" or "responsible property transfer" Environmental, Health and Safety Laws.
- (m) *Employee/Labor Relations.* Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or employs any member of a union. No material labor dispute exists or, to the Company's knowledge, is imminent or threatened with respect to any of the employees of the Company which could reasonably

be expected to result in a Material Adverse Effect. The Company and its Subsidiaries are in compliance with all applicable federal, state, local and foreign laws and regulations with respect to 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. Except for matters which would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, to the Company's knowledge there is no (i) Action pending or threatened against the Company or its Subsidiaries arising out of or under collective bargaining agreements or any actual or alleged unfair labor practice, (ii) strike, labor dispute, slowdown or stoppage pending or threatened against the Company or its Subsidiaries, (iii) union representation dispute currently existing concerning the employees of the Company or its Subsidiaries, or (iv) union organizing activities currently taking place concerning the employees of the Company or its Subsidiaries. The Company is not aware that any current Executive Officer or any other key employee or significant group of employees of the Company or any Subsidiary plans to leave the Company or otherwise terminate employment with the Company, and neither the Company nor any of its Subsidiaries is subject to any Liability as a result of the hiring, promotion, pay or continued employment of such employee or with respect to any information obtained from any such employee. To the Company's knowledge, no current or former Executive Officer of the Company is in violation of any material term of any employment agreement, confidentiality agreement, non-competition agreement or any other similar agreement or any restrictive covenant, whether with the Company or a third party.

- (n) *ERISA.* The Company and its Subsidiaries are in compliance in all material respects with all presently applicable provisions of ERISA. No "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in ERISA) for which the Company would have any Liability; the Company and its Subsidiaries have not incurred and do not expect to incur Liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (ii) Sections 412 or 4971 of the IRC; and each "pension plan" for which the Company or any of its Subsidiaries would have any Liability that is intended to be qualified under Section 401(a) of the IRC is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.
- (o) *Violations or Defaults.* Neither the Company nor any of its Subsidiaries is in violation of the provisions of its Organizational Documents. Except as would not have or reasonably be expected to result in a Material Adverse Effect, neither the Company nor any of its Subsidiaries is

in violation of or default under (and no event has occurred which has not been waived that with notice or lapse of time or both, would result in a violation of or default by the Company or any Subsidiary under), nor has the Company or any of its Subsidiaries received notice of a claim that it is in violation of or default under:

- (i) any indenture, mortgage, deed of trust, loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or any other agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected (whether or not such default or violation has been waived);
 - (ii) any judgment, decree or order of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over it or any of its properties; or
 - (iii) any statute, ordinance, rule or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws applicable to its business.
- (p) *Regulatory Permits.* The Company and its Subsidiaries have made all filings, applications and submissions required by, and own or possess and are in compliance with, all Permits necessary to conduct their businesses as presently conducted or as proposed to be conducted in the Registered Direct Disclosure Package, except where the failure to so make such filing, application or submission or so own or possess such Permits or so comply would not have or reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect. All Permits possessed by the Company and its Subsidiaries have been duly issued or obtained, are valid and are in full force and effect. Neither the Company nor any Subsidiary has received any notice of any violation of any such Permits or of Actions relating to the limitation, revocation, withdrawal, suspension, cancellation or modification of any such Permits, and to the Company's knowledge (i) the Company and its Subsidiaries have not engaged in any activity that would cause the limitation, revocation, withdrawal, suspension, cancellation or modification of any such Permits and (ii) no facts currently exist which could reasonably be expected to cause such Permits to be limited, revoked, withdrawn, suspended, cancelled, modified or not renewed by the applicable governmental authorities in the ordinary course, except in each case for such limitation, revocation, withdrawal, suspension, cancellation, modification or non-renewal which would not have or reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect. The execution, delivery and performance of the Transaction Documents do not and will not adversely affect the status of any of the Permits.

- (q) *Tangible Assets.* The Company and its Subsidiaries own or lease all buildings, machinery, equipment and other tangible assets necessary for the conduct of their businesses as presently conducted and as presently proposed to be conducted as set forth in the Registered Direct Disclosure Package. Each such tangible asset is suitable in all material respects for the purposes for which it presently is used and presently is proposed to be used as set forth in the Registered Direct Disclosure Package. The Company and its Subsidiaries have good and valid title to all real and personal property owned by them that is material to the business of the Company and its Subsidiaries, taken as a whole, free and clear of all Liens other than Liens which do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and its Subsidiaries. Any such title to real property is marketable and indefeasible in fee simple. Any property or facilities held under lease by the Company and its Subsidiaries are held by them under valid, subsisting and enforceable leases, without any Liens thereon (except those that, individually or in the aggregate, are not material and do not materially interfere with the use made and proposed to be made of such property by the Company or its Subsidiaries), and the Company and its Subsidiaries are in compliance with all such leases in all material respects.
- (r) *Intellectual Property.* The Company and its Subsidiaries own, or possess adequate rights or licenses to use, all Intellectual Property necessary or material for use in connection with their respective businesses as described in the Registered Direct Disclosure Package, except where the failure to so own or possess the same could not individually or in the aggregate be reasonably expected to have a Material Adverse Effect. Except for such expirations and terminations that would not individually or in the aggregate be reasonably likely to result in a Material Adverse Effect, none of the Company's nor its Subsidiaries' Intellectual Property have expired or terminated or are expected to expire or terminate within five (5) years from the date hereof. Except as would not individually or in the aggregate be reasonably likely to result in a Material Adverse Effect, the Company and its Subsidiaries do not have any knowledge of any infringement, interference, violation or misappropriation by the Company or its Subsidiaries of or with any Intellectual Property of other Persons, and there is no Action being made or brought against, or to the Company's knowledge being threatened against, the Company or any of its Subsidiaries regarding infringement, interference, violation or misappropriation of the Intellectual Property of other Persons. To the Company's knowledge, no third party has interfered with, infringed upon, misappropriated or otherwise come into conflict with any Intellectual Property rights of the Company or any of its Subsidiaries. With respect to any material Intellectual Property owned by other Persons and used by the Company or its Subsidiaries, or owned or

- licensed by the Company or its Subsidiaries and licensed or sublicensed to third parties, such use is governed by a license, sublicense or similar agreement which is legal, valid, binding and enforceable and in full force and effect. Except for such breach, default or event which would not individually or in the aggregate be reasonably expected to cause a Material Adverse Effect (i) the Company and its Subsidiaries are not in breach or default under any such agreement, (ii) to the Company's knowledge no counterparty to the Company or any Subsidiary is in breach or default under any such agreement, and (iii) to the Company's knowledge no event has occurred which with notice or lapse of time or both would constitute a breach or default or permit termination, modification or acceleration of or under such agreement. Except as would not individually or in the aggregate be reasonably expected to result in a Material Adverse Effect, the Company and its Subsidiaries do not have any knowledge of any new products, inventions, technical information, trade secrets, procedures, or methods of manufacturing or processing that any competitors or other third parties have developed which could reasonably be expected to supersede or make obsolete any product or process of the Company and its Subsidiaries. The Company and its Subsidiaries have taken (A) reasonable security measures to protect the confidentiality of all of their trade secrets necessary or desirable to conduct their business as described in the Registered Direct Disclosure Package, and (B) reasonable commercial efforts in accordance with sound business practices and judgment to establish, maintain, safeguard and protect each of the Intellectual Property rights that it owns or uses where the failure to take such efforts would cause or be reasonably likely to cause a Material Adverse Effect.
- (s) *Insurance.* The Company and its Subsidiaries maintain or are covered by insurance provided by recognized, financially sound and reputable institutions against such losses, liabilities, claims and risks and in such amounts as management of the Company reasonably believes are prudent and customary in the businesses in which the Company and its Subsidiaries are engaged. With respect to each such insurance policy (i) such policy is legal, valid, binding, enforceable, and in full force and effect, (ii) neither the Company nor any of its Subsidiaries nor any other party to such policy is in breach or default (including with respect to the payment of premiums or the giving of notices) under such policy, and (iii) no event has occurred which, with notice or the lapse of time or both, would constitute such a breach or default, or permit termination, modification or acceleration, under such policy. Neither the Company nor any Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.
- (t) *Tax Matters.* The Company and each of its Subsidiaries (i) has timely made or filed (or timely filed applicable extensions therefore) all Tax Returns required to be made or filed by it in any jurisdiction in which it is subject to tax, (ii) has paid (or has had paid on its behalf) all Taxes and other governmental assessments and charges owed by it that are material in amount and due (whether or not shown on any Tax Return), except those being contested in good faith and for which the Company has made appropriate reserves in its financial statements, and the Company has no knowledge of a tax deficiency which has been asserted or threatened against the Company or any Subsidiary, and (iii) has set aside on its books provision reasonably adequate for the payment of all Taxes for periods subsequent to the periods to which such Tax Returns apply, except for such Taxes and Tax Returns the failure to pay and set aside, and file, respectively, would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect. There are no unpaid Taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and, to the Company's knowledge, there is no basis for any such claim. All Tax Returns were correct and complete in all material respects. No claim has ever been made by an authority in a jurisdiction in which neither the Company nor any of its Subsidiaries files any Tax Returns that the Company or any Subsidiary may be subject to taxation by such jurisdiction. There are no Liens on any of the assets of the Company or any of its Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax. The Company does not expect any authority to assess any additional Taxes for any period for which Tax Returns have been filed.
- (u) *Products and Services.* The products sold and/or leased and/or services rendered by the Company and its Subsidiaries have conformed in all material respects with all applicable contractual commitments and all express and implied warranties, and none of the Company or any of its Subsidiaries has any material Liability for replacement, repair or re-servicing thereof or other damages in connection therewith, subject only to any reserve for product warranty claims set forth in the Most Recent Fiscal Report as appropriately adjusted for operations and transactions through the Closing Date consistent with industry customs and past practices of the Company and its Subsidiaries. To the Company's knowledge, none of the Company or its Subsidiaries has any material Liability arising out of any injury to individuals or property as a result of the ownership, possession or use of any product sold and/or leased and/or service rendered by the Company and its Subsidiaries.
- (v) *Solvency.* Based on the financial condition of the Company as of the date of the Securities Purchase Agreement and the Closing Date, the Company (together with its Subsidiaries) is not, and after giving effect to the Transactions will not be, Insolvent. The Company (together with its Subsidiaries) does not intend to incur

debts beyond its ability to pay such debts as they become due (taking into account the timing and amounts of cash to be payable on or in respect of its debts). Neither the Company nor any of its Subsidiaries is subject to any bankruptcy, insolvency or similar proceeding. The Company has not filed a petition or commencement of a proceeding under any bankruptcy or insolvency law and, to the Company's knowledge, none of the Company's creditors have initiated involuntary bankruptcy or insolvency proceedings against the Company. The Company has no knowledge of any facts or circumstances which would lead it to reasonably believe that (i) it will file a petition or commence a proceeding under any bankruptcy or insolvency law or (ii) one or more creditors of the Company or its Subsidiaries will initiate involuntary bankruptcy or insolvency proceedings against the Company.

- (w) *Transactions with Affiliates and Employees.* No Related Party is presently, or has been within the past two years, a party to any transaction, contract, agreement, instrument, commitment, understanding or other arrangement or relationship with the Company or any Subsidiary (other than directly for services as an employee, officer and/or director) for any material amount, including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments or consideration to or from, any such Related Party or, to the Company's knowledge, any Person in which any such Related Party has a substantial interest or is an officer, director, trustee, member or partner. To the Company's knowledge no Related Party has any direct or indirect ownership interest in any Person (other than ownership of less than 1% of the outstanding common stock of a publicly traded corporation) in which the Company or any of its Subsidiaries has any direct or indirect ownership interest or with which the Company or any of its Subsidiaries competes or has a business relationship. No Related Party owns any asset, whether tangible or intangible, which is used in the business of the Company or any of its Subsidiaries. No relationship, direct or indirect, exists between or among the Company or any Subsidiary, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or any Subsidiary, on the other hand, which is required by the Securities Act to be disclosed in the Registered Direct Registration Statement and the Prospectus related thereto and is not so disclosed.
- (x) *Sarbanes-Oxley.* The Company, and to its knowledge all of the Company's directors or officers in their capacities as such, are in compliance in all material respects with all applicable effective provisions of Sarbanes-Oxley. The Company's management, with the participation of the Company's principal executive and principal financial officers (or persons performing similar functions), has evaluated the effectiveness of the Company's disclosure controls and procedures (as defined in Rule 13a-15(e) of

the Exchange Act) as of the end of the Company's most recent fiscal quarter, or in the case of a foreign private issuer (as defined in Rule 3b-4 of the Exchange Act), as of the end of the Company's most recent fiscal year, and any negative conclusions about such effectiveness have been presented in a Periodic Report. The Company's management, with the participation of the Company's principal executive and principal financial officers (or persons performing similar functions), has evaluated the effectiveness of the Company's internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) as of the end of the Company's most recent fiscal year, and any negative conclusions about such effectiveness have been presented in a Periodic Report. Since such year-end there have been no changes in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company is not aware of any fraud, whether or not material, that involves management or other employees who have a role in the Company's internal controls, and since the date of the most recent evaluation of such internal controls and procedures, there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses. Each of the principal executive officer and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company, as applicable) has made all certifications required by Sections 302 and 906 of Sarbanes-Oxley with respect to all reports, schedules, forms, statements and other documents required to be filed by the Company with the Commission (with the terms "principal executive officer" and "principal financial officer" having the meanings ascribed thereto in Sarbanes-Oxley).

- (y) *Internal Accounting Controls.* The Company and each of its Subsidiaries maintain systems of internal accounting controls, internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) and disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP (or IFRS if the Company is a foreign issuer) and to maintain asset accountability, (iii) receipts and expenditures are being made only in accordance with authorizations of the Company's management and Board of Directors, (iv) access to assets is permitted only in accordance with management's general or specific authorization, (v) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences, and (vi) material

- information relating to the Company and its Subsidiaries is made known to the principal executive and principal financial officer(s) (or persons performing similar functions) by others within the Company and its Subsidiaries, particularly during any period in which the Company's Annual Report or any Quarterly Report is being prepared.
- (z) *Corporate Records.* The minute books of the Company and each Subsidiary contain all existing records of all meetings and actions of the Board of Directors (and its committees) and the stockholders of the Company and such Subsidiary, respectively, and all such records are complete and accurately reflect, in all material respects, all transactions referred to in such records. There are no material transactions, agreements or other actions that have been consummated by the Company that are not properly approved and/or recorded in such records to the extent required by applicable corporate law or the rules or regulations of the Commission.
- (aa) *Brokers and Finders.* The Purchaser(s) shall have no Liability or responsibility for the payment of any commission, broker's fee, finder's fee or similar fee to any broker, financial advisor, consultant, finder, placement agent, investment banker, bank or other Person in connection with or resulting from the Securities Purchase Agreement or the Transactions by reason of any agreement of or action taken by the Company.
- (bb) *No Stockholder Approval.* Assuming the accuracy of the Purchaser's(s') representations and warranties set forth in the Transaction Documents, no approval of the stockholders of the Company under the rules and regulations of any Trading Market (including the Principal Market) is required for the Company to issue and deliver the Securities to the Purchaser(s).
- (cc) *Integration.* None of the Company, any Affiliate of the Company, or, to the Company's knowledge, any Person acting on behalf of the Company or any such Affiliate, has directly or indirectly offered or sold any security or solicited any offers to buy any security under circumstances that would cause the Offering of the Securities to be integrated with any prior or current offerings of securities by the Company for purposes of the Securities Act (including any interpretations thereof by the Commission) or any applicable stockholder approval requirements under the rules or regulations of the Principal Market.
- (dd) *Investment Company.* The Company is not, and upon consummation of the Transactions and after giving effect to the application of the proceeds thereof as contemplated the Company will not be, an "investment company," a company controlled by an "investment company," or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company," or a "business development company," as such terms are defined in the Investment Company Act. The Company is not a United States real property holding corporation within the meaning of the Foreign Investment in Real Property Tax Act of 1980.
- (ee) *Registration under Exchange Act.* The Common Stock is registered pursuant to Section 12(b) or Section 12(g) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. Trading in the Common Stock has not been suspended by the Commission during the past 12 months (except for any suspension of trading of all stocks on an exchange or market in general).
- (ff) *Principal Market Listing.* The Principal Market on which the Common Stock is currently listed, quoted or traded is an Eligible Market. The Company is, and has no reason to believe that it will not in the foreseeable future continue to be, in compliance in all material respects with all the rules, regulations and requirements (including listing and maintenance requirements) of such current Principal Market. The Company has not received any notice (written or oral) from the current Principal Market during the past 12 months to the effect that the Company is not in compliance with the listing or maintenance requirements of such current Principal Market, and the Company has no knowledge of any facts or circumstances that could reasonably lead to suspension or termination of trading of the Common Stock on such current Principal Market. The issuance and sale of the Securities and any Underlying Shares in accordance with the terms of the Transaction Documents does not and will not contravene the rules or regulations of the Principal Market. The Company has filed all applicable notices and documents with the Principal Market required to ensure the listing of all the Shares and Underlying Shares as of the Closing Date.
- (gg) *Accountants and Lawyers.* There are no material disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the accountants and lawyers formerly or presently retained, engaged or employed by the Company, and the Company is current with respect to any fees or disbursements owed to its accountants and lawyers. The accounting firm whose report on the consolidated financial statements of the Company is contained or incorporated by reference in the Statutory Prospectus is (i) an independent public accounting firm within the meaning of the Securities Act, (ii) a registered public accounting firm (as defined in Section 2(a)(12) of Sarbanes-Oxley), and (iii) to the Company's knowledge, not in violation of the auditor independence requirements of Sarbanes-Oxley.

- (hh) *Application of Takeover Protections.* The Company and its Board of Directors have taken all necessary action, if any, in order to render inapplicable any anti-takeover, control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's Organizational Documents or the laws of its jurisdiction of incorporation or organization that is or could become applicable as a result of the Transactions and/or the Parties exercising their rights and fulfilling their obligations under the Transaction Documents, including without limitation the issuance of the Securities and any Underlying Shares under the Transaction Documents and the Purchaser's(s') ownership of the Securities and any Underlying Shares. The Company has not adopted a stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change of control of the Company.
- (ii) *Disclosure of Company Information and Events.* All written information furnished by or on behalf of the Company to the Purchasers regarding the Company, its business and the Transactions, including without the limitation all written information contained in the Registered Direct Disclosure Package, is true and correct in all material respects 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 light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the Closing Date taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made and when made, not misleading. Except for the Transactions, to the Company's knowledge no material event, circumstance, Liability or development has occurred or exists, or is contemplated to occur, with respect to the Company or any of its Subsidiaries or their businesses, properties, operations or financial condition which under applicable law, rule or regulation is required to be publicly disclosed or announced at the time this representation is made, or which would be required to be disclosed by the Company on a registration statement filed on Form S-1 or Form F-1 under the Securities Act as of such time, but which has not been so publicly disclosed or announced at least three (3) Trading Days prior to such time. The Company does not have pending before the Commission any request for confidential treatment of information. Any statistical, industry-related and market-related data included or incorporated by reference in the Registered Direct Disclosure Package are based on or derived from sources that the Company reasonably and in good faith believes to be reliable and accurate, and such data agree with the sources from which they are derived in all material respects. No forward-looking statements
- (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the Registered Direct Disclosure Package has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.
- (jj) *Certain Payments and Business Practices.* Neither the Company nor any Subsidiary, nor to the Company's knowledge any Person acting on its behalf, has in the course of its actions for or on behalf of the Company or any of its Subsidiaries directly or indirectly (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense related to any foreign or domestic political activity, (ii) made and/or failed to fully disclose any unlawful payment (including without limitation any bribe, rebate, payoff, influence payment or kickback) to any foreign or domestic government official, political party, employee or campaigns from corporate funds, or (iii) violated or is in violation of, in any material respect, any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or any treaties of the United States similar to such Act. Neither the Company nor any Subsidiary has directly or indirectly (A) received any rebates, payments, commissions, promotional allowances or any other economic benefits, regardless of their nature or type, from any customer, supplier, trading company, shipping company, governmental employee or other Person with whom the Company or any Subsidiary has done business, or (B) given or agreed to give any gift or similar benefit to any customer, supplier, trading company, shipping company, governmental employee or other Person who is or may be in a position to help or hinder the business (or assist in connection with any actual or proposed transaction) of the Company or any Subsidiary, in each case which (1) may subject the Company or any Subsidiary to any material damage or penalty in any civil, criminal or governmental litigation or proceeding, or (2) if not continued in the future, may adversely affect the assets, business, operations or prospects of the Company or any Subsidiary in any material respect or subject the Company or any Subsidiary to any Action or material penalty.
- (kk) *Money Laundering.* Neither the Company nor any Subsidiary, nor to the Company's knowledge any director, officer, agent, employee or affiliate of the Company or any Subsidiary or any other Person acting on its behalf (i) is a Person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such Person in any manner violative of Section 2 of such executive order, or (iii) is a Person on the list of Specially Designated Nationals and Blocked

Persons or subject to the limitations or prohibitions under any other OFAC regulation or executive order or subject to any U.S. sanctions administered by OFAC. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance in all material respects with applicable financial recordkeeping and reporting requirements of the U.S. Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “**Money Laundering Laws**”), and no Action involving the Company or any Subsidiary with respect to Money Laundering Laws is pending, or to the knowledge of the Company, threatened against the Company or any Subsidiary.

(ll) *Manipulation of Price.* The Company has not, and to the Company’s knowledge no Person acting on its behalf has, directly or indirectly taken any action designed to or that might be reasonably expected to cause or result in, or which has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company in violation of Regulation M under the Exchange Act.

(mm) *Off Balance Sheet Arrangements.* There is no material transaction, arrangement or other relationship between the Company and an unconsolidated entity (or other entity whose assets and liabilities are not reflected on the Company’s balance sheet) that is required to be disclosed by the Company in its Periodic Reports and is not so disclosed.

3.5 Company Acknowledgments. The Company hereby acknowledges and understands, as of the date of execution of the Securities Purchase Agreement and as of the Closing Date, that:

(a) *Purchase of Securities.* Each Purchaser is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the Transactions. No Purchaser is (i) an officer, director or Affiliate of the Company, or (ii) to the Company’s knowledge, a beneficial owner of more than 10% of the Common Stock (as determined in accordance with Rule 13d-3 of the Exchange Act). No Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents or the Transactions and any advice given by any Purchaser or any of its respective representatives or agents in connection with the Transaction Documents or the Transactions is merely incidental to such Purchaser’s purchase of the Securities. The Company’s decision to enter into the Transaction Documents has been based solely on the Company’s and its representatives’ independent evaluation of the Transactions.

(b) *Trading Activity.* Except as may otherwise be specifically set forth in the Securities Purchase Agreement or any other Transaction Document, and subject to applicable securities laws and regulations (i) no Purchaser has agreed to hold the Securities or any Underlying Securities for any minimum or specified period of time, and each Purchaser may purchase or sell, long or short, any securities issued by the Company or any “derivative” securities based on securities issued by the Company, (ii) past or future open market or other transactions by any Purchaser, including without limitation Short Sales or “derivative” transactions, may negatively impact the market price of the Company’s publicly-traded securities, (iii) any Purchaser, and counterparties in “derivative” transactions to which any such Purchaser is a party, may directly or indirectly presently have a “short” position in the Common Stock, and no Purchaser shall be deemed to have any affiliation with or control over any arm’s-length counterparty in any “derivative” transaction, (iv) each Purchaser may engage in hedging activities at various times during the period that the Securities or any Underlying Shares are outstanding, including without limitation during any periods that the value or amount of any Underlying Shares deliverable directly or indirectly upon conversion, exercise or exchange of or otherwise pursuant to any Securities is being determined, and any such hedging activities could reduce the market price of the Company’s publicly-traded securities at and after the time that such hedging activities are being conducted, and (v) any such hedging activities do not constitute a breach of any of the Transaction Documents by such Purchaser.

(c) *Dilutive Effect.* If any Notes, Preferred Shares or Warrants are issued pursuant to the Securities Purchase Agreement, the number of Underlying Shares issuable upon conversion, exercise and/or exchange of or otherwise pursuant to such Securities may increase, or the applicable Conversion Price, Exercise Price or Exchange Price may decrease, in each case in certain circumstances in accordance with the terms of the Transaction Documents, which increase or decrease may be substantial depending upon the terms of the Transactions and the Transaction Documents and such circumstances and market conditions.

3.6 Placement Agreement. If the Company has entered or enters into any Placement Agreement, then the Company acknowledges and agrees that each Purchaser may rely on the representations and warranties made by the Company to the Placement Agent therein to the same extent as if such representations and warranties had been incorporated in full in the Securities Purchase Agreement and made directly to each Purchaser therein, and each Purchaser shall be a third party beneficiary of such Placement Agreement. The Placement Agent shall be a third party beneficiary with respect to the representations, warranties, acknowledgements and agreements contained in this Article III.

ARTICLE IV
COVENANTS

4.1 Best Efforts. Each Party shall use its reasonable best efforts to timely satisfy each of the conditions to be satisfied by it as set forth in the Securities Purchase Agreement, including Article II hereof, such that each Closing shall occur as promptly as practicable following execution of the Securities Purchase Agreement.

4.2 Fees, Taxes and Expenses.

- (a) *Transaction Expenses.* Except to the extent otherwise set forth in the Securities Purchase Agreement or other Transaction Documents, each Party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such Party incident to the negotiation, preparation, execution, delivery and performance of the Transaction Documents.
- (b) *Placement Fee.* The Company shall promptly pay any and all Placement Fees to the Placement Agent and shall hold each Purchaser harmless against any liability, loss or expense (including reasonable attorneys' fees and out-of-pocket expenses) arising in connection with any claim by any Placement Agent for any Placement Fee.
- (c) *Execution/Escrow Fees.* The Company shall promptly pay any and all fees payable to PipeFund Services Organization and/or any Escrow Agent in connection with the execution of the Transaction Documents and the Closing of the Transactions (including any license fee for the use of any PipeFund documents).
- (d) *Transfer Agent Fees; Transfer Taxes.* The Company shall promptly pay when due all transfer agent fees, stamp taxes, stock transfer taxes, and other taxes and duties (other than income or similar taxes) levied in connection with the sale and/or delivery of any Securities or Underlying Shares to any Purchaser or other holder of Securities (other than taxes in respect of any transfer of such Securities or Underlying Shares by such Purchaser or holder).
- (e) *Offset Authorization.* The Company hereby authorizes the Funds Escrow Agent (i) to deduct from the amount of proceeds received from the Purchasers as the aggregate Subscription Amount from the sale of the Securities and otherwise payable to the Company the Placement Fees, any escrow or execution fees, and any other fees, expenses and amounts which the Company is responsible for paying under the Transaction Documents as of the Closing Date, and (ii) to pay such fees, expenses and amounts directly to the party(ies) to which they are payable on behalf of the Company out of such proceeds. To the extent any Purchaser (or its investment manager or advisor) is entitled to receive any fee, expense reimbursement or other amount from the Company at

Closing, such Purchaser may offset and deduct such amount from the amount otherwise payable by such Purchaser for the Subscription Amount under the Securities Purchase Agreement. The Funds Escrow Agent shall be a third party beneficiary of this Section 4.2(e).

4.3 Short Sales and Confidentiality. Each Purchaser, severally and not jointly with any other Purchaser, agrees that prior to the time that the Transactions are first publicly disclosed (a) neither it nor any of its Affiliates acting on its behalf or pursuant to any understanding with it will directly or indirectly execute any acquisition or disposition, including Short Sales (whether or not against the box), of any securities of the Company, establish any "put equivalent position" (as defined in Rule 16a-1(h) under the Exchange Act) with respect to the Common Stock, or grant any right (including without limitation any put or call option) with respect to the Common Stock or with respect to any security that includes, relates to or derives any significant part of its value from, the Common Stock, whether or not to directly or indirectly hedge such Purchaser's position in the Securities, and (b) such Purchaser will maintain the confidentiality of all material non-public information disclosed to it in connection with the Transactions (including the existence and terms of the Transactions). Notwithstanding the foregoing, if any such Purchaser is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the covenant set forth in clause (a) above shall only apply with respect to the portion of assets managed by the portfolio manager who makes decisions with respect to the Securities.

4.4 Securities Laws Compliance. Until the Covenant Expiration Date, the Company (a) shall timely file (or timely obtain extensions in respect thereof and file within the applicable grace period) all reports and definitive proxy or information statements required to be filed by the Company under the Exchange Act, (b) shall not terminate its status as an issuer required to file reports under the Exchange Act (even if the Exchange Act or the rules and regulations promulgated thereunder would otherwise permit such termination), and (c) shall comply with all effective applicable provisions of Sarbanes-Oxley. If any Periodic Report is not filed with the Commission through EDGAR and immediately available to the public through EDGAR, the Company shall deliver a copy of such Periodic Report to each Purchaser within one (1) day after the filing thereof with the Commission. If any press release issued by the Company or any of its Subsidiaries is not available through Bloomberg contemporaneously with such issuance, the Company shall deliver a copy of such release to each Purchaser by facsimile or email on the same day. The Company shall deliver to holders of Notes, Preferred Shares and/or Warrants a copy of any other notices and other information made available or given to the stockholders of the Company generally, contemporaneously with the making available or giving thereof to such stockholders, to the extent

not available on EDGAR. The Company shall not directly or indirectly take any action designed, or that might reasonably be expected to cause or result in, or that will constitute, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities or Underlying Shares.

4.5 **Publicity; Material Non-Public Information.**

- (a) *Public Communications.* The Company shall (i) before the opening of trading on the Principal Market on the first Trading Day following the date of execution of the Securities Purchase Agreement, issue a press release disclosing all material aspects of the Transactions, and (ii) make such other filings and notices in the manner and time required by the Commission with respect to the Transactions. Upon the issuance of the press release described in the immediately preceding sentence, no Purchaser will be in receipt of any material, non-public information provided to it by the Company or its Subsidiaries or any of their officers or directors. The Company shall not identify any Purchaser by name in any press release or public filing, or otherwise publicly disclose any Purchaser's name, without such Purchaser's prior written consent, except to the extent required by law or the rules and regulations of any self-regulatory organization which the Company or its securities are subject.
- (b) *Non-Public Information.* Except with respect to the material terms and conditions of the Transactions prior to Closing, the Company shall not, and shall cause each of its Subsidiaries and each of their respective officers, directors, employees and agents not to, provide any Purchaser with any material, non-public information regarding the Company or any of its Subsidiaries without the prior written consent of such Purchaser. In the event of any breach of the foregoing covenant, in addition to any other remedy provided in the Transaction Documents, any Purchaser receiving such material non-public information shall have the right to make a public disclosure (in the form of a press release, public advertisement or otherwise) of such material non-public information, without the prior approval by the Company or any other Person, if the Company fails to make a public disclosure of such information within three (3) Business Days following a written request by such Purchaser to do so, *provided* that such Purchaser shall give the Company a reasonable opportunity to review and comment on the language and means of such public disclosure and shall in no event make any such public disclosure if the Company certifies to such Purchaser in writing that such information does not constitute material, non-public information. Such Purchaser shall not have any liability to the Company or any other Person for any such disclosure, except to the extent that its actions constitute gross negligence or willful misconduct. The Company understands and confirms that each Purchaser will rely on

the covenants contained in this Section in effecting transactions in securities of the Company.

4.6 **Use of Proceeds.** Except to the extent otherwise set forth in the Securities Purchase Agreement or the Registered Direct Disclosure Package, the Company shall use the net proceeds from the sale of the Securities in the manner set forth in the Statutory Prospectus under the heading "Use of Proceeds" and shall not directly or indirectly use such proceeds, or lend, contribute or otherwise make available such proceeds to any affiliate, joint venture partner or other person or entity which, to the Company's knowledge, will use such proceeds (a) to repay or prepay any indebtedness of the Company, except for trade payables incurred in the ordinary course of business and principal and interest required to be paid on outstanding Indebtedness under the terms of such Indebtedness as currently in effect on the date of execution of the Securities Purchase Agreement, (b) to purchase or redeem any Common Stock or other outstanding securities of the Company, (c) to settle any outstanding litigation, (d) to purchase or carry any margin security or reduce or retire any indebtedness which was originally incurred to purchase or carry any margin security or for any other purpose which might cause any of the Securities to be considered a "purpose credit" within the meanings of Regulation T, U or X of the Board of Governors of the Federal Reserve System, or (e) for any purposes of any illegal activity (including without limitation financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC). The Company shall not use the net proceeds from the sale of the Securities, or otherwise conduct its business and the business of its Subsidiaries, in a manner that will cause it to become subject to the Investment Company Act.

4.7 **Conversion and Exercise Procedures.** The form of Exercise Notice included in any Warrants and the form of Conversion Notice included in any Notes and/or Certificate of Designation set forth the totality of the procedures required of a Purchaser in order to exercise any such Warrants or convert any such Notes and/or Preferred Shares. No additional legal opinion or other information or instructions shall be required of a Purchaser to exercise such Warrants or convert such Notes and/or Preferred Shares. The Company shall honor all exercises of any Warrants and all conversions of any Notes and/or Preferred Shares and shall deliver Underlying Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents. The Company acknowledges that (a) a breach by it of its obligations under the Transaction Documents to issue the Securities and Underlying Shares to any Purchaser in accordance with the terms of the Transaction Documents will cause irreparable harm to such the Purchaser by vitiating the intent and purpose of the Transactions, and (b) the remedy at law for a breach of such obligations will be inadequate, and the Company agrees that in the event of a breach or threatened breach by the Company of such obligations such Purchaser 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 of such Securities or Underlying Shares, without the

necessity of showing economic loss and without any bond or other security being required.

4.8 Transfer Agent. So long as any Purchaser holds any Securities or Underlying Shares, the Company shall engage and maintain, at its expense, a Transfer Agent and, if necessary under the jurisdiction of incorporation of the Company, a registrar for the Shares and Underlying Shares.

4.9 Offshore Purchasers. Each Purchaser who is not a U.S. Person or is offered the Securities outside the United States shall comply with all applicable laws and regulations in each foreign jurisdiction in which it purchases, offers, sells or delivers Securities or has in its possession or distributes any offering material, in all cases at its own expense.

ARTICLE V

RESERVATION OF UNDERLYING SHARES

5.1 Reservation of Securities. The Company shall at all times reserve and keep available, out of its duly authorized but unissued and otherwise unreserved shares of Common Stock, at least the Minimum Reserve solely for issuances of Common Stock pursuant to the Transaction Documents, free from preemptive rights or any other contingent purchase rights of Persons other than the Purchasers and holders of Securities. If at any time the number of authorized and unissued (and unreserved other than pursuant hereto) shares of Common Stock is less than the Minimum Reserve at such time, then the Company shall take such corporate action as may be necessary to increase the number of authorized but unissued shares of Common Stock to at least the Minimum Reserve at such time, as soon as reasonably practicable but in any event not later than the 90th day after such date, including without limitation engaging in best efforts to hold a Stockholder Meeting and obtain the requisite Stockholder Approval to amend the Company's Certificate of Incorporation to effect such increase. In addition to any other rights or remedies available to a Purchaser, if the Company fails to so increase such authorized but unissued shares of Common Stock and reserve the Minimum Reserve on or prior to such 90th day ("**Reserve Default Date**"), then the Company shall pay to such Purchaser Liquidated Damages in cash equal to the product of (a) the Liquidated Damages Percentage multiplied by (b) the difference between the Minimum Reserve and the number of shares of Common Stock authorized and reserved pursuant to this Section multiplied by (c) the Market Price on such Reserve Default Date, for each 30-day period after the Reserve Default Date until such increase and reservation is effected. Notwithstanding the foregoing, to the extent any Underlying Shares cannot be timely issued in accordance with the terms of the Transaction Documents following any conversion, exercise or exchange of Securities due to an insufficient number of authorized shares of Common Stock, then the Company shall pay to such Purchaser Liquidated Damages in cash in an amount equal to the product of (i) 115% of the Market Price as of the date of such conversion, exercise or exchange or the date of payment, whichever is higher, multiplied by (ii) the number of Underlying Shares so not issued by the Company, in lieu of

such conversion, exercise or exchange for such Underlying Shares which cannot be issued.

ARTICLE VI

REGISTRATION, LEGENDS AND LISTING

6.1 Registration Statement. The Company represents and warrants to each Purchaser that as of the date of execution of the Securities Purchase Agreement and as of the Closing Date:

- (a) *Compliance with Securities Act.* The Registered Direct Registration Statement, as amended or supplemented (including without limitation by any prospectus supplement), was prepared and filed in conformity with, and complies in all material respects with, the requirements of the Securities Act. The Registered Direct Disclosure Package does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.
- (b) *Compliance with Exchange Act.* Each of the documents incorporated or deemed to be incorporated by reference in the Registered Direct Registration Statement, as amended or supplemented (including without limitation by any prospectus supplement), at the time such document was filed with the Commission or at the time such document became effective, as applicable, complied in all material respects with the requirements of the Exchange Act, was filed on a timely basis (or was filed within the applicable grace period following an extension in respect thereof) with the Commission, and did not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.
- (c) *Appropriate Form of Registration Statement.* The Company and the Transactions meet the requirements and comply with the conditions for the use under the Securities Act of the form on which the Registered Direct Registration Statement was filed.
- (d) *Effectiveness.* The Registered Direct Registration Statement was declared effective by the Commission on the date indicated in the Securities Purchase Agreement and is currently effective, and no stop order suspending or preventing the effectiveness of the Registered Direct Registration Statement or suspending or preventing the use of the prospectus contained therein has been issued by the Commission and no proceeding for that purpose has been instituted or, to the knowledge of the Company, is threatened by the Commission.
- (e) *Not Ineligible Issuer.* The Company was not at the time of the initial filing of the Registered Direct Registration Statement, has not been since the date of such filing, and

will not be on the Closing Date, an “ineligible issuer” (as defined in Rule 405 of the Securities Act).

6.2 Legends. The Securities shall be issued free of any and all legends, and if the Company and its Transfer Agent participate in DTC’s DWAC system and a Purchaser has provided the Company with the name of its (or its designee’s) broker that participates in DTC’s DWAC system, then the Company shall use its best efforts to cause its Transfer Agent to electronically transmit any Shares purchased by such Purchaser under the Securities Purchase Agreement to the brokerage account of such Purchaser (or its designee) by crediting such account through such DWAC system on or promptly following the Closing Date. Shares will be credited to each Purchaser using customary book-entry procedures. If all or any portion of a Warrant is exercised by a Purchaser at a time when there is an effective Registration Statement to cover the issuance or resale of the Warrant Shares, or if such Warrant is exercised via Cashless Exercise at a time when the Warrant Shares then issued may be resold by such Purchaser without registration under the Securities Act pursuant to Section 3(a)(9) thereof or Rule 144 (provided such Purchaser is not an Affiliate of the Company), then the Warrant Shares issued pursuant to any such exercise shall be issued free of any and all legends. So long as any Underlying Shares issued upon conversion, exercise or exchange of any Securities are or were acquired from the Company for a consideration consisting solely of such Securities and may be resold by such Purchaser without registration under the Securities Act pursuant to Section 3(a)(9) thereof or Rule 144 (provided such Purchaser is not an Affiliate of the Company), such Underlying Shares shall be issued free of any and all legends.

6.3 Warrant Shares. If at any time following the date of execution of the Securities Purchase Agreement the Registered Direct Registration Statement (or any subsequent Registration Statement registering the sale or resale of the Warrant Shares under the Securities Act) is not effective or is not otherwise available for the sale or resale of the Warrant Shares, then the Company shall immediately notify the holders of the Warrants in writing that such Registration Statement is not then effective and thereafter shall promptly notify such holders when such Registration Statement is effective again and available for the sale or resale of the Warrant Shares. The Company shall use best efforts to keep a Registration Statement (including the Registered Direct Registration Statement) registering the issuance or resale of the Warrant Shares effective during the term of the Warrants.

6.4 Rule 144 Information. As long as any Purchaser owns Securities and/or Underlying Shares, if the Company is not required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act and such Underlying Shares are not exempt from the registration requirements of the Securities Act under Section 3(a)(9) thereof, the Company shall (a) prepare and furnish to each Purchaser and make and keep publicly available in accordance with Rule 144(c) such information as is required for each Purchaser to sell the Underlying Shares under Rule 144, including without limitation the Company’s most recent

annual and quarterly reports, together with a discussion and analysis of such financial statements and any other information in form and substance substantially similar to those that would otherwise be required to be included in reports required by Section 13(a) or 15(d) of the Exchange Act, in the time period that such filings would have been required to have been made under the Exchange Act, (b) furnish to each Purchaser, promptly upon request, a written statement by the Company that it has complied with all reporting requirements under the Exchange Act and satisfied the condition contained in Rule 144(c), and (c) take such further action as any holder of Securities or Underlying Shares may reasonably request to the extent required from time to time to enable such Person to sell the Underlying Shares without registration under the Securities Act within the limitation of the exemption provided by Rule 144.

6.5 Rule 144 Holding Period. The Company agrees that, for purposes of determining the holding period under Rule 144 for any Underlying Shares issued upon conversion, exercise or exchange of any Securities, the holding period of such Underlying Shares shall be tacked to the holding period of the Securities so converted, exchanged or exercised, so long as such Underlying Shares are or were acquired from the Company for a consideration consisting solely of such Securities.

6.6 Listing. Until the Covenant Expiration Date, the Company shall use its best efforts to continue the listing and trading of its Common Stock on an Eligible Market and shall comply in all respects with the Company’s reporting, filing and other obligations under the bylaws, rules and regulations of such Eligible Market, as applicable, to ensure the continued eligibility for trading of the Shares and Underlying Shares thereon. Neither the Company nor any of its Subsidiaries shall take any action which would be reasonably expected to result in the suspension or termination of trading of the Common Stock on the Principal Market (other than to transfer to another Eligible Market). The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section. If the Common Stock is not listed or quoted on any Eligible Market for a period of five (5) Trading Days (which need not be consecutive Trading Days) or is suspended from trading on the Principal Market for a period of three (3) consecutive Trading Days without being listed, quoted or traded on another Eligible Market during such period (a “**Listing Default**”, and each such fifth or third Trading Day constituting a “**Listing Default Date**”), then the Company shall pay to each Purchaser Liquidated Damages in cash equal to the product of (a) the sum of the Subscription Amount paid for the Securities then outstanding (such Subscription Amount to be allocated among Securities purchased on a reasonable basis by such Purchaser) plus the value of any and all Underlying Shares issued and still held by such Purchaser based on the Market Price on the Listing Default Date or the date of the Liquidated Damages payment, whichever is higher, multiplied by (b) the Liquidated Damages Percentage, for each 30-day period after the Listing Default Date that the Common Stock is not listed, quoted or traded on an Eligible Market.

ARTICLE VII
MISCELLANEOUS

7.1 Further Assurances. Each Party shall, without further consideration, do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other Party may reasonably request in order to carry out and give practical effect to the intent and accomplish the purposes of the Securities Purchase Agreement and other Transaction Documents and the consummation of the Transactions.

7.2 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain and constitute the entire understanding and agreement of the Parties with respect to the subject matter thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the Parties acknowledge have been merged into such documents, exhibits and schedules, and, except as specifically set forth therein, neither the Company nor any Purchaser makes any representation, warranty, covenant or undertaking with respect to such matters.

7.3 Amendments; Waivers. No provision of the Securities Purchase Agreement or any other Transaction Document, including without limitation the provisions of this Section 7.3, may be amended, modified, supplemented or waived (in whole or in part) except in a written instrument signed (a) in the case of an amendment, modification or supplement, by the Company and each such Purchaser to be bound by any such amendment, modification or supplement, and (b) in the case of a waiver (which may be either generally or in a particular instance and either retroactively or prospectively), by the Party against whom enforcement of any such waiver is sought. No waiver of any breach or default with respect to any provision, condition or requirement of the Securities Purchase Agreement or any other Transaction Document shall be deemed to constitute a continuing waiver in the future or a waiver of any subsequent default or a waiver of any breach or default with respect to any other provision, condition or requirement thereof, nor shall any delay or omission of any Party in exercising any right thereunder in any manner impair or prejudice the exercise of any such right.

7.4 Execution. Each Transaction Document, including the Securities Purchase Agreement, which requires execution by the Company and each Purchaser who is party thereto, may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective, with respect to the Company and a particular Purchaser, when counterparts have been signed by the Company and such Purchaser and delivered to the other Party, it being understood that both such Parties need not sign the same counterpart. Except as otherwise set forth herein or any Transaction Document, any signature page of a Transaction Document may be executed by a Party and delivered to a counterpart:

- (a) via facsimile transmission,
- (b) via e-mail delivery of a portable document format, tagged image format or other digital image format file (such as a “.pdf” or “.tif” file), or
- (c) by electronically signing such Transaction Document online through PipeFund Services Organization’s execution system available on its Website, whereby such Party indicates its agreement to become a party to and bound by such Transaction Document by clicking on the applicable icon.

Any such execution and delivery of a Transaction Document shall constitute due execution and delivery by such Party and shall (upon receipt of the counterparty’s executed signature page or electronic signature) create a valid and binding obligation of such Party with the same force and effect as if such facsimile or digital image file signature page or electronic signature were an original executed signature page thereto, except that with respect to any Note, Warrant or other security or evidence thereof the Company must deliver an original executed version of such Note, Warrant or other security or evidence thereof. Transaction Documents executed by a Party via electronic signature may indicate such execution by inserting “/s/” and the name of the individual signing on behalf of such Party, or similar such indication, in place of a handwritten signature on the applicable signature line.

7.5 Survival. The representations and warranties contained in the Transaction Documents shall survive the Closing and the delivery, conversion, exercise or exchange of the Securities, as applicable.

7.6 Payment Set Aside. If the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or any Purchaser enforces or exercises its rights 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 or insolvency law, any state, federal or foreign law, or any 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.

7.7 Usury. To the fullest extent permitted by law, the Company agrees not to insist upon or plead or in any manner whatsoever claim, and shall resist any and all efforts to be compelled to take the benefit or advantage of, usury laws wherever enacted, in force at the time of execution of the Securities Purchase Agreement or thereafter, in connection with any Action that may be brought by any Purchaser in order to enforce any right or remedy under any Transaction

Document. Notwithstanding any provision to the contrary contained in any Transaction Document, it is expressly agreed and provided that the total liability of the Company under the Transaction Documents for payments in the nature of interest shall not exceed the maximum lawful interest rate authorized under applicable law, and, without limiting the foregoing, in no event shall any rate of interest or default interest, or both of them, when aggregated with any other sums in the nature of interest that the Company may be obligated to pay under the Transaction Documents, exceed such maximum lawful interest rate. If the effective interest rate otherwise applicable under the Transaction Documents exceeds such maximum lawful interest rate, then such applicable interest rate shall be reduced so as not to exceed such maximum lawful interest rate. If such maximum lawful interest rate is increased or decreased (whether by statute, official governmental action or otherwise) subsequent to the date of execution of the Securities Purchase Agreement, then after the effective date of such increase or decrease such new maximum lawful interest rate shall be applied under the Transaction Documents, unless such application is precluded by applicable law. If under any circumstances whatsoever interest in excess of such maximum lawful interest rate is paid by the Company to any Purchaser or holder of Securities with respect to indebtedness evidenced by the Transaction Documents, such excess shall be applied by such Purchaser or holder to the unpaid principal balance of any such indebtedness or be refunded to the Company, the manner of handling such excess to be at such Purchaser's election.

7.8 Independent Nature of Purchasers' Actions, Obligations and Rights.

- (a) *Independent Rights and Obligations.* The Parties acknowledge and agree that the actions and obligations of each Purchaser under the Transaction Documents are several and not joint with the actions and obligations of any other Purchaser and that no Purchaser shall be responsible in any way for the representations, warranties, agreements, acts or omissions, or the performance or non-performance of the obligations, of any other Purchaser under any Transaction Document. Except to the extent otherwise specifically set forth to the contrary in the Transaction Documents, any and all rights granted to the Purchasers under the Transaction Documents, at law or in equity shall be enforceable by each such Purchaser or holder independently, and it shall not be necessary (but may be permissible) for any other Purchaser or holder to be joined as an additional party in any Action for such purpose.
- (b) *No Group.* The Parties acknowledge and agree that, except to the extent otherwise specifically set forth to the contrary in a Schedule 13G or 13D filed with the Commission, or otherwise disclosed to the Company in writing, by two or more Purchasers (i) no Purchasers are agents, affiliates or partners of each other, (ii) no Purchasers are, under any circumstances, agreeing to act jointly, in concert or as a group with respect to the Securities or any Underlying Shares, (iii) nothing

contained in any Transaction Document, and no action taken by any Purchasers pursuant thereto, constitutes or shall be deemed to constitute any Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that any Purchasers are in any way acting or agreeing to act jointly, in concert or as a group with respect to the Securities or any Underlying Shares, the Transactions, or any of their actions or obligations under the Transaction Documents (including without limitation the decision to acquire, dispose of or vote any Securities or Underlying Shares), and (iv) the Company shall not assert any claim inconsistent with the foregoing.

- (c) *Purchasers Independent.* The Company acknowledges and agrees, and each Purchaser represents and agrees, that, except to the extent otherwise specifically set forth to the contrary in a Schedule 13G or 13D filed with the Commission by two or more Purchasers (i) such Purchaser has independently participated in the negotiation of the Transactions with the advice of its own counsel and advisors, (ii) no other Purchaser has acted or will be acting as such Purchaser's agent in connection with its acquisition, disposition or voting of the Securities or any Underlying Shares or monitoring its investment therein, (iii) such Purchaser's decision to purchase the Securities pursuant to the Transaction Documents has been made by such Purchaser independently of any other Purchaser and independently of any information, materials, statements or opinions regarding the Company which may have been made or given by any other Purchaser, and (iv) no Purchaser shall have any liability to any other Purchaser relating to or arising from any such information, materials, statements or opinions. The Company represents and acknowledges that (A) for reasons of convenience of the Company only and not because it was required or requested to do so by any Purchaser (1) each Purchaser and its counsel may have communicated and may continue to communicate with the Company through a lead counsel who represents one or more of the Purchasers independently, and (2) the Company has elected to provide all Purchasers with the same terms and Transaction Documents, and (B) such procedures with respect to the Transaction Documents shall in no way create a presumption that the Purchasers are in any way acting jointly, in concert or as a group with respect to the Transaction Documents or the Transactions.

7.9 **Adjustments in Share Numbers and Prices.** In the event of any stock split, subdivision, dividend or distribution payable in shares of Common Stock (or other securities or rights convertible into, or otherwise entitling the holder thereof to receive directly or indirectly, shares of Common Stock), combination or other similar recapitalization or event occurring after the date of the Securities Purchase Agreement, each reference in the Securities Purchase Agreement to a number of shares of Common Stock or a price per share of Common Stock shall be amended to appropriately and equitably account for such event to the extent such event is not provided for in the

Securities Purchase Agreement or other Transaction Documents.

7.10 No Third-Party Beneficiaries. The Transaction Documents are intended for the benefit of the Parties thereto and their respective successors and permitted assigns and are not for the benefit of, nor may any provision thereof be enforced by, any other Person, except as otherwise set forth in the Transaction Documents.

7.11 Obligations Absolute. Except as otherwise specifically provided in the Transaction Documents, the Company's obligations under the Transaction Documents are, in each case, absolute and unconditional and not subject to any right of set off, counterclaim, delay or reduction, including without limitation the Company's obligation to issue Underlying Shares upon conversion, exercise and/or exchange of any Securities in accordance with the terms of the Transaction Documents, regardless of the effect of any dilution or any claim the Company may have against any Purchaser or holder of Underlying Shares and regardless of the dilutive effect that any such issuance may have on the ownership of the other stockholders of the Company.

7.12 Notices. Any and all notices, consents, waivers or other communications or deliveries required or permitted to be given to a Party under the terms of any of the Transaction Documents (except as otherwise provided therein) shall be (a) in writing, (b) delivered by regular mail, overnight courier (charges prepaid), facsimile, electronic mail or personal hand delivery to the physical address, facsimile number or email address (and to the attention of the contact person or title) set forth for such Party in the Securities Purchase Agreement, including the signature pages thereto (with copies to such other Persons as may be indicated therein, which copies shall not constitute notice), and (c) deemed to have been delivered and effective (i) upon receipt, if delivered personally by hand, (ii) the date of transmission, if delivered via facsimile or email prior to 6:00 p.m. Eastern (New York) time on a Business Day, (iii) the next Business Day after the date of transmission, if delivered via facsimile or email on a day that is not a Business Day or later than 6:00 p.m. Eastern (New York) time on any Business Day, (iv) the Business Day following deposit with an internationally recognized overnight courier service with charges prepaid, or (v) the fifth (5th) Business Day following deposit with the United States Postal Service. Written confirmation of complete delivery or transmission of such notice, consent, waiver or other communication or delivery (A) given by the recipient thereof, (B) mechanically or electronically generated by the sender's facsimile machine or computer containing the time, date, recipient facsimile number or email address, as the case may be, and an image of at least the first page of such transmission, which confirmation is kept on file by the sending party, or (C) provided by an internationally recognized overnight courier service, shall be rebuttable evidence of receipt of such notice, consent, waiver or other communication or delivery in accordance with clause (c) above. Each Purchaser shall provide to the Company, and the Company shall provide to each Purchaser, written notice of any change in

the physical address, telephone number, facsimile number, email address or contact person of such Party (or such Party's representative(s) where copies should be sent) at least five (5) days prior to the effectiveness of such change.

7.13 Successors and Assigns. The Securities Purchase Agreement and each other Transaction Document shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns and heirs. The Company may not assign the Securities Purchase Agreement or any other Transaction Document or any rights or obligations thereunder without the prior written consent of each Purchaser to be bound by such assignment, including by merger or consolidation, except pursuant to a Change of Control in which the Company is in compliance with the applicable provisions governing such Change of Control set forth in the Transaction Documents, if any. Any Purchaser (including its assigns) may assign any or all of its rights and obligations under the Securities Purchase Agreement and other Transaction Documents to any Person to whom such Purchaser assigns or transfers any Securities, *provided* that (a) such assignment or transfer is in compliance with applicable securities laws and the terms of the Transaction Documents, (b) such assignee or transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the transferor, and (c) within a reasonable time after such assignment or transfer, the Company is furnished with written notice of (i) the name and address of such assignee or transferee and (ii) the Securities being assigned or transferred. Notwithstanding anything to the contrary contained in any Transaction Document, the Purchasers shall be entitled to pledge or assign the Securities (and Underlying Shares) to any Person in connection with a bona fide margin account or other loan or financing arrangement secured by such Securities (and/or Underlying Shares).

7.14 Governing Law; Jurisdiction; Waiver of Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York, except to the extent the corporate law of the state of the Company's incorporation or organization is required to govern particular aspects of the Securities or any Certificate of Designation. Each Party agrees that any and all legal proceedings concerning the interpretations, enforcement and defense of the Transaction Documents and/or Transactions (whether brought against a Party or its respective affiliates, directors, officers, shareholders, employees or agents) may be commenced in the state and federal courts sitting in New York County in the State of New York and/or such other jurisdiction(s) as may be set forth in the Securities Purchase Agreement. Each Party irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in New York County in the State of New York and/or such other jurisdiction(s) as may be set

forth in the Securities Purchase Agreement for the adjudication of any dispute under Transaction Documents or in connection with the Transactions (including with respect to the enforcement of any of the Transaction Documents), and each Party irrevocably waives, and agrees not to assert in any Action, to the fullest extent permitted by law, any claim that it is not personally subject to the jurisdiction of any such court, that such Action is brought in an inconvenient forum or that the venue of such Action is improper. Each Party irrevocably waives personal service of process and consents to process being served in any such Action by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such Party at the address in effect for notices to it under the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained in the Transaction Documents shall be deemed to limit in any way any right to serve process in any other manner permitted by law. Each Party agrees that a final non-appealable judgment in any such Action shall be conclusive and may be enforced in other jurisdictions by suit on such judgment or in any other lawful manner. EACH PARTY KNOWINGLY AND VOLUNTARILY IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED ON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE TRANSACTION DOCUMENTS OR THE TRANSACTIONS.

7.15 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in, and without limiting any similar provisions of, any of the Transaction Documents, if any Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any applicable notice, demand or election in whole or in part without prejudice to its future actions and rights.

7.16 Replacement of Securities. If any certificate, instrument or agreement evidencing any Securities or Underlying Shares is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate, instrument or agreement, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. Any certificate(s), instrument(s) or agreement(s) evidencing any Securities or Underlying Shares may be exchanged by a Purchaser at any time and from time to time for certificate(s), instrument(s) or agreement(s), as the case may be, with different denominations representing an equal aggregate amount of outstanding Securities or Underlying Shares, respectively, as reasonably requested by such Purchaser, upon surrendering such original certificate(s), instrument(s) or agreement(s). No service charge shall be made for any substitution or exchange pursuant to this provision, provided that the Party requesting any new certificate, instrument or

agreement under such circumstances shall also pay any reasonable third-party costs (and provide a customary indemnity to the extent reasonably requested) associated with the issuance of such replacement Securities or Underlying Shares.

7.17 Remedies.

- (a) *General.* Each Purchaser and the Company shall be entitled to (i) exercise any and all rights and remedies set forth in the Transaction Documents or any other agreement between the Parties, (ii) recover damages by reason of any breach of any provision thereof, and (iii) exercise any and all other rights and remedies granted by law or to which such Party is entitled in equity. Without limiting the foregoing, except as otherwise provided in the Transaction Documents, any remedy expressly conferred upon a Party or holder of Securities or Underlying Shares in the Transaction Documents shall not constitute an exclusive remedy and shall be in addition to and not in lieu or limitation of any other rights or remedies such Purchaser or holder may have at law, in equity or under the terms of the Transaction Documents (including without limitation Liquidated Damages and specific performance), and the exercise of any one remedy shall not preclude the exercise of any other remedy. Each Party may withdraw, revoke or suspend its pursuit of any remedy at any time without prejudice prior to its complete recovery as a result of such remedy.
- (b) *Specific Performance; Injunction.* Without limiting the foregoing, each Purchaser and the Company shall be entitled to (i) specific performance to enforce the terms and conditions of the Transaction Documents and (ii) preliminary and final injunction(s) to prevent or cure any breach (or further breach) of the Transaction Documents, in each case without being required to post a bond or other security or prove actual damages. The Parties agree that monetary damages or any other remedy at law may not be adequate compensation for any loss incurred by reason of any breach of any obligations or provisions contained in the Transaction Documents and that irreparable damage may occur as a result of any such breach, and, to the fullest extent permitted by law, the Parties waive, and agree not to assert, in any action for specific performance or injunctive relief, any defense that a remedy at law would be adequate.
- (c) *Liquidate Damages Payments.* Liquidated Damages due under the Transaction Documents shall be paid within three (3) Trading Days following (i) the applicable Default Date, with respect to the initial 30-day period immediately following such Default Date, and (ii) the end of each subsequent 30-day period (or the date such default is cured, if earlier). The initial payment under clause (i) shall be paid in full for such initial 30-day period without any *pro ration* of such Liquidated Damages if the applicable default is cured prior to the end of such initial 30-day period; thereafter, any subsequent Liquidated

Damages shall be paid on a *pro rata* basis for the portion of such 30-day period during which such default was continuing. If the Company fails to pay any Liquidated Damages in full within seven days after the date payable, the Company shall pay interest thereon at the Default Rate, accruing daily from the date such Liquidated Damages were due until such amounts, including all such interest thereon, are paid in full. Notwithstanding anything in the Transaction Documents to the contrary, in the event that the Liquidated Damages payable under the Transaction Documents (including the registration rights provisions in connection therewith) are deemed by the Commission to be derivative financial instruments under the Financial Accounting Standards Board's Emerging Issues Task Force Issue No. 00-19, then the aggregate amount of such Liquidated Damages payable under the Transaction Documents to any Purchaser shall not exceed 24% of the aggregate Subscription Amount paid by such Purchaser. With respect to each default under the Transaction Documents for which payment of Liquidated Damages is provided under the Transaction Documents, the Company and each Purchaser acknowledge and agree that (A) the amount of actual damages in such circumstances is or will be difficult to ascertain, (B) the Liquidated Damages constitute only partial liquidated damages and are only in partial compensation to such Purchaser or holder of Securities or Underlying Shares, (C) the Liquidated Damages specified in the Transaction Documents constitute reasonable partial compensation for damages based on a reasonable estimate of harm likely to be suffered by such Purchaser as a result of such default, and (D) the Liquidated Damages do not and will not constitute a penalty. The Company's obligations to pay any partial liquidated damages or other amounts owing under the Transaction Documents shall constitute a continuing obligation of the Company and shall not terminate until all unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled, converted, transferred or for any other reason is no longer outstanding.

7.18 Severability. If any term, provision, covenant or restriction contained in any Transaction Document is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable under applicable law, then (a) the remainder of the terms, provisions, covenants and restrictions set forth therein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, (b) the Parties thereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction, and (c) the validity, legality and enforceability of all the terms, provisions, covenants and restrictions contained in the Transaction Documents in any other jurisdiction shall not be affected. The Parties represent that they would have executed the Transaction Documents with such remaining terms, provisions, covenants and restrictions

without including any such term, provision, covenant or restriction which was held invalid, illegal, void or unenforceable.

7.19 Construction.

- (a) *Headings.* The headings, titles and subtitles contained in the Transaction Documents are for convenience of reference only, do not constitute a part of the Transaction Documents, and shall not limit or affect, or be considered in construing or interpreting, any of the provisions of the Transaction Documents.
- (b) *Drafting.* Each Party represents that it (and/or its counsel) has reviewed and revised, or had an opportunity to revise, the Transaction Documents, and therefore each Party agrees that (i) the language used in the Transaction Documents shall be deemed to be the language chosen by the Parties to express their mutual intent, and (ii) no rule of strict construction, nor any other rule to the effect that any ambiguities are to be resolved against the drafting party, shall be applied against any Party in the interpretation of the Transaction Documents or any amendments thereto.
- (c) *Interpretative Matters.* Unless the Transaction Documents expressly provide otherwise or the context otherwise requires:
 - (i) all references to "Sections", "Schedules" or "Exhibits" in the Transaction Documents are to the sections, schedules or exhibits contained in or attached to the Transaction Document in which such term is used;
 - (ii) the terms "federal", "state" and "local" shall refer, respectively, to the jurisdiction of the United States of America federally, the applicable state(s) located within the United States of America, and the applicable local city(ies), county(ies) or other municipality(ies) within any such state or within the United States of America, and the term "foreign" shall refer to jurisdiction(s) located outside the United States of America;
 - (iii) the term "knowledge" shall have the meaning set forth in PST Document DEF;
 - (iv) each accounting term used in any Transaction Document but not otherwise defined in such Transaction Document (including incorporation by reference) shall have the meaning assigned to it in accordance with GAAP (or IFRS if the Company is a foreign issuer);
 - (v) "\$", "dollars" or "USD" refers to United States currency in dollars, and "¢" or "cents" refers to United States currency in cents;

- (vi) words in the singular or plural include the singular and plural, and pronouns stated in either the masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders;
- (vii) the use of the word “including” in the Transaction Documents shall be by way of example rather than limitation; and
- (viii) the fact that a modifier, such as “any” or “all”, or an article, such as “the” or “an”, appears in one statement in any of the Transaction Documents but is absent from another statement shall not affect the interpretation of either statement.

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