

PIPEFUNDTM

Standard Transaction Document

Definitions

This PipeFund Services Organization Standard Transaction Document (PST Document) is intended to facilitate expediency and consistency in transactions involving a private investment in a public company's equity and/or equity-linked securities (PIPE) or 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). Parties to any PIPE or 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 (PSO) is not providing any legal advice or opinion in connection with this PST Document or its use in a particular PIPE or RD transaction, disclaims any warranty, express or implied, concerning the use or license of this PST Document for any particular PIPE or 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 pipefund.com.

The following terms shall have the following meanings unless otherwise agreed by the Parties:

"#%-in-Interest" means such Purchasers holding (or, prior to Closing, agreeing to purchase) in the aggregate at least such percentage, as indicated in lieu of "#", of the number of Shares or Preferred Shares or principal amount of Notes then outstanding (or, prior to Closing, agreed to be purchased), or if no Shares, Preferred Shares or Notes remain outstanding at any time after Closing, then of such number of Warrant Shares issuable under the outstanding Warrants.

"20% Rule" means collectively the rules and/or regulations of the Principal Market which require stockholder approval prior to the sale, issuance or potential issuance by the Company in a private offering of Common Stock (including securities convertible into or exercisable or exchangeable for Common Stock) equal to twenty percent (20%) or more of the Common Stock or voting power of the Company outstanding before the Closing Date at an effective price less than the greater of book or market value of the Common Stock, including without limitation Section 5635(d) of the NASDAQ Stock Market Rules and Section 713 of the NYSE Amex Company Guide and any successor rules or regulations to such rules.

"Accredited Investor" shall have the meaning set forth in Rule 501(a) of the Securities Act.

"Action" or **"Proceeding"** means any action, claim, suit, litigation, arbitration, charge, complaint, demand, notice of violation, hearing, investigation, inquiry, proceeding (including without limitation any partial proceeding, such as a deposition) or appeal of, in, before or by any court, arbitrator, quasi-judicial, governmental or administrative agency, public board or regulatory authority or body, in each case whether federal, state, county, local or foreign and whether at law, in equity or

otherwise, or any self-regulatory organization or body or securities trading market or exchange.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly Controls, is Controlled by, or is under common Control with, such Person. With respect to a Purchaser or holder of Registrable Securities, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Purchaser or holder will be deemed to be an Affiliate of such Purchaser or holder.

"Alternate Consideration" shall have the meaning set forth in Section 3.1(c) of PST Document WAR.

"Annual Report" means each Company annual report or transition report on Form 10-K, Form 20-F or Form 40-F filed or to be filed by the Company with the Commission pursuant to the Exchange Act, or if the Company is not required to file periodic reports under the Exchange Act, such equivalent report(s) as may be required to be filed with the applicable governmental or self-regulatory authorities of the jurisdiction to which the Company is subject.

"Anti-Dilution Adjustment Period" means the period beginning on the date of execution of the Securities Purchase Agreement pursuant to which the Notes, Preferred Shares or Warrants containing the applicable Weighted-Average Anti-Dilution Adjustment, Full Ratchet Anti-Dilution Adjustment or Below-Market Anti-Dilution Adjustment were issued and ending on the date such Notes, Preferred Shares or Warrants are no longer outstanding, or such other period as may be set forth in the Securities Purchase Agreement or such Notes, Certificate of Designation for Preferred Shares or Warrants, as applicable, as the Anti-Dilution Adjustment Period.

“**Appraised Share Value**” means the fair market value of a share of Common Stock as determined by an independent appraiser, selected in good faith by the Company and a Majority-in-Interest of the Purchasers or holders of the applicable Securities, using standard commercial valuation methods appropriate for valuing the shares of Common Stock, which determination shall be final and binding upon the Company and all Purchasers and/or holders of the applicable Securities subject to manifest error and any dispute resolution mechanism set forth in the applicable Notes, Certificate of Designation or Warrants or other Transaction Documents, *provided* that the Appraised Share Value may alternatively be agreed upon by the Company and a Majority-in-Interest of the Purchasers or holders of the applicable Securities.

“**Bankruptcy Event**” means any of the following events: (a) the Company or any Subsidiary commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency, liquidation or similar law of any jurisdiction relating to the Company or any Subsidiary thereof; (b) there is commenced against the Company or any Subsidiary any such case or proceeding that is not dismissed within 60 days after commencement; (c) the Company or any Subsidiary is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered; (d) the Company or any Subsidiary suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 days; (e) the Company or any Subsidiary makes a general assignment for the benefit of creditors; (f) the Company or any Subsidiary fails to pay, is unable to pay, or states that it is unable to pay, its debts generally as they become due; (g) the Company or any Subsidiary calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts; or (h) the Company or any Subsidiary, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

“**Base Prospectus**” means the prospectus included in a Registered Direct Registration Statement at the Effective Time.

“**Below-Market Anti-Dilution Adjustment**” means that if and whenever during the Anti-Dilution Adjustment Period a Subsequent Issuance (other than an Exempt Issuance) occurs for, at or to a Subsequent Issuance Price which is less than the Market Price as of the date of such Subsequent Issuance, then the Conversion Price, Exercise Price or Exchange Price, as the case may be, then in effect for the applicable Notes, Preferred Shares or Warrants subject to adjustment as a result of such Subsequent Issuance shall be automatically and immediately reduced to equal an amount equal to such Conversion Price, Exercise Price or Exchange Price, as the case may be, multiplied by a fraction, the numerator of which shall be the sum of (a) the number of shares of Common Stock actually outstanding immediately prior to such Subsequent Issuance, plus (b) the number of shares of Common Stock which the aggregate consideration received or receivable (or deemed

received or receivable) by the Company in connection with such Subsequent Issuance (based on the Subsequent Issuance Price) would purchase at such Market Price, and the denominator of which shall be the sum of (1) the number of shares of Common Stock of the Company actually outstanding immediately after such Subsequent Issuance plus (2) the Maximum Shares Deemed Outstanding as a result of such Subsequent Issuance. No adjustment shall be made pursuant to a Below-Market Anti-Dilution Adjustment provision to the extent that such adjustment would result in an increase of the applicable Conversion Price, Exercise Price or Exchange Price then in effect or a decrease in the number of applicable Underlying Shares. Simultaneously with any reduction of the Exercise Price under any Warrant pursuant to a Below-Market Anti-Dilution Adjustment, the number of Warrant Shares that may be purchased upon exercise of such Warrant shall be inversely proportionately increased so that after such adjustment the aggregate Exercise Price payable under such Warrant for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

“**Beneficial Ownership Limitation**” shall have the meaning set forth in Section 2.3(a) of PST Document WAR and/or as may be set forth in any other Transaction Document, as applicable.

“**Black-Scholes Option Pricing Model**” means the Black-Scholes Option Pricing Model reflecting (a) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of the Warrant, and (b) an expected volatility equal to the greater of 60% and the 100-day historical price volatility obtained from the HVT function on Bloomberg, in each case determined as of the date of such redemption request, the date of (or date of public announcement of) the event triggering such redemption right or obligation, or the date of redemption, whichever yields the highest value.

“**Bloomberg**” means the Bloomberg Financial Markets information databases and services operated by Bloomberg, L.P., or any successor service or entity.

“**Board of Directors**” means the Board of Directors of the Company.

“**Bulletin Board**” means the Over-the-Counter Bulletin Board.

“**Business Day**” means any day except Saturday, Sunday and any day which shall be a U.S. federal legal holiday or a day on which banking institutions in the State of New York generally are authorized or required by law or other governmental action to close.

“**Buy-In**” shall have the meaning set forth in Section 5.2(d) of PST Document GTC or Section 2.2(b) of PST Document WAR, as applicable.

“Buy-In Price” shall have the meaning set forth in Section 5.2(d) of PST Document GTC or Section 2.2(b) of PST Document WAR, as applicable.

“By-Laws” means the by-laws of a corporation or similar document adopted by a Person, as currently in effect.

“Cashless Exercise” shall have the meaning set forth in Section 2.1(b) of PST Document WAR.

“Certificate of Designation” shall refer to each certificate of designation or other amendment to the Company’s Certificate of Incorporation filed or to be filed in connection with the Transaction designating the rights, preferences and privileges of any Preferred Shares issued or to be issued pursuant to the Securities Purchase Agreement or upon conversion, exercise or exchange of any Warrants or other Securities, in each case which Certificate of Designation shall be in the form set forth as an exhibit to the Securities Purchase Agreement.

“Certificate of Incorporation” shall refer to a Person’s certificate or articles of incorporation or organization, declarations of trust, memorandum and articles of association or partnership (or any similar charter or formation instrument or document), as amended to date and including all certificates of designation thereto filed to date, affecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated Person.

“Change of Control” means any Fundamental Transaction other than (a) any reorganization, recapitalization or reclassification of Common Stock in which holders of the Company’s voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, the voting power of the surviving entity or entities necessary to elect a majority of the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities, or (b) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company.

“Closing” means the consummation of the purchase and sale of the Securities by the Purchaser(s) pursuant to the Securities Purchase Agreement. If the consummation of the purchase and sale of the Securities pursuant to the Securities Purchase Agreement by the Purchaser(s) occurs on multiple dates, then each such purchase and sale on a particular date shall constitute a Closing and any reference to “the Closing” or “a Closing” shall refer to each Closing in which the applicable Purchaser participates unless the context indicates otherwise or as otherwise specified in the Securities Purchase Agreement.

“Closing Bid Price” and **“Closing Sale Price”** means on any particular Trading Day (a) the last closing bid price and last closing sale price, respectively, per share of Common Stock on the Principal Market on such Trading Day during the Regular

Trading Session as reported by Bloomberg, or (b) if no shares of Common Stock are traded on the Principal Market during such Regular Trading Session, then the last closing bid price and last closing sale price, respectively, per share of Common Stock on the Principal Market during the Regular Trading Session, as reported by Bloomberg, on the nearest preceding Trading Day on which the Common Stock was traded (but not more than ten Trading Days prior), or (c) if the Common Stock is not then listed or quoted on any Trading Market and prices for the Common Stock are then quoted on the Pink Sheets, then the most recent bid price and the most recent sale price, respectively, per share of the Common Stock as quoted on the Pink Sheets, or (d) if none of the foregoing applies, then the Appraised Share Value. All such determinations shall be appropriately and equitably adjusted for any stock dividend, stock split, stock combination or other similar transaction occurring during any pricing period for which the Closing Bid Prices or Closing Sale Prices, as the case may be, are included in the calculation.

“Closing Date” means the date of each Closing, which shall be deemed to be the date on which (a) all of the Transaction Documents to be delivered as of such particular Closing have been executed and delivered by the applicable Parties thereto, *provided* that any Notes and/or Warrants, and any certificates representing Common Stock and/or Preferred Shares, may be delivered after the Closing Date so long as such securities and certificates are delivered within five (5) Business Days thereafter (which shall be a condition subsequent to the occurrence of the Closing Date), (b) all conditions precedent to the obligations of (i) the Company to deliver the Securities, and (ii) the Purchasers participating in such Closing to pay the Subscription Amount, have been satisfied or waived as of such Closing, and (c) the Subscription Amount payable by each Purchaser with respect to such Closing is delivered, or required to be delivered by the Escrow Agent or Placement Agent, to the Company. If there are multiple Closings, then any reference to the “Closing Date” shall refer to the date of the applicable Closing, provided that if such term is used to commence a time period or as a reference for a deadline, then such term shall refer to the initial Closing Date, in each case unless the context otherwise indicates or as otherwise specified in the Securities Purchase Agreement or other applicable Transaction Document.

“Closing Price” shall have the same meaning as Closing Sale Price, defined above beside “Closing Bid Price”.

“Closing Sale Price” [*see* “Closing Bid Price”].

“Comfort Letter” means a letter from the Company’s independent certified public accountants addressed to each Purchaser and holder of Registrable Securities and each underwriter, if any, which (a) states that such accountants are independent public accountants within the meaning of the Securities Act, (b) covers such financial and accounting matters as are customarily covered by letters of the independent certified public accountants delivered to underwriter(s) in connection with secondary public offerings, (c) is in such form

and substance as is customarily given by such accountants as “comfort letters” and as is reasonably acceptable to such Purchaser, holder and/or underwriter(s), and (d) contains an undertaking by such accountants to update such letter during each fiscal year in which the Company’s books or records are being reviewed so that each such letter shall remain current, correct and complete throughout such fiscal year.

“**Commission**” (or “**SEC**”) means the United States Securities and Exchange Commission or any other federal agency then administering the Securities Act and/or Exchange Act, or, if the Company is not subject to the Securities Act or Exchange Act, then the applicable governmental or self-regulatory agency(ies) or authority(ies) of the jurisdiction(s) to which the Company is subject with respect to the offering, sale and/or exchange of its Common Stock (including without limitation the applicable Canadian securities administrator(s)).

“**Common Stock**” means the class of equity security of the Company designated as common stock of the Company (or securities equivalent to common stock such as American Depository Receipts, American Depository Shares, International Depository Receipts, limited partner interests of a publicly traded limited partnership, and similar securities) currently registered or required to be registered, or expected on or prior to (or promptly following) Closing to be registered or required to be registered, under the Exchange Act pursuant to Section 12(b) or 12(g) thereof or, if not so registered or required or expected to be registered in the United States, the analogous security which is publicly traded in or on one or more foreign markets or exchanges, including (a) any capital stock into which such Common Stock may thereafter be changed, converted, reclassified or reorganized, and (b) shares of Common Stock of any successor or acquiring corporation received by or distributed to the holders of Common Stock of the Company in a Fundamental Transaction.

“**Company**” shall refer to the Company (as defined in the Securities Purchase Agreement).

“**Company Closing Documents**” shall have the meaning set forth in Section 2.3(a)(viii) of PST Document GTC.

“**Contingent Obligation**” means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of such other Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

“**Continuing Director**” means, as of any date of determination, any member of the Board of Directors who (a) was a member of the Board of Directors on the date of execution of the Securities Purchase Agreement, or (b) was nominated for election or elected to the Board of Directors with the approval

of a majority of the Continuing Directors who were members of the Board of Directors at the time of such new director’s nomination or election.

“**Control**” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Conversion Price**” means the price set forth in any Convertible Security as the price used to determine the number of shares of Common Stock (or number of other securities underlying such Convertible Security) to be issued to the holder of such Convertible Security upon conversion thereof of a dollar value represented by such Convertible Security (e.g., liquidation preference of preferred stock or principal amount of debt), where such dollar value (as may be increased or decreased pursuant to the terms of such Convertible Security) is divided by such price to determine such number of shares (or other securities) to be issued upon such conversion.

“**Conversion Shares**” means the shares of Common Stock issued or issuable (a) upon conversion, redemption or exercise of, (b) as payment for principal, interest or dividends on, (c) as liquidated damages with respect to, and/or (d) in exchange for or otherwise pursuant to, the Notes or Preferred Shares.

“**Convertible Securities**” means any evidences of indebtedness, shares or other securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock, including without limitation any Notes or Preferred Shares.

“**Covenant Expiration Date**” means, with respect to each Purchaser, the later of (a) the date on which such Purchaser no longer holds any Preferred Shares or Notes, if any, and (b) the earlier of (i) the date on which such Purchaser no longer holds any Warrants or Underlying Shares, and (ii) the date which is two (2) years following the Closing Date.

“**Current Allocation Percentage**” means, with respect to each Purchaser as of the date of any determination, a fraction, the numerator of which is the number of Shares, number of Preferred Shares, number of Warrants or principal amount of Notes, as the case may be, then held by such Purchaser as of such date, and the denominator of which is the aggregate number of Shares, number of Preferred Shares, number of Warrants or principal amount of Notes, as the case may be, outstanding on such date.

“**Current Report**” means each Company current report on Form 8-K or Form 6-K filed or to be filed by the Company with the Commission pursuant to the Exchange Act, or if the Company is not required to file periodic reports under the Exchange Act, such equivalent report(s) as may be required to be filed with the applicable governmental or self-regulatory authorities of the jurisdiction to which the Company is subject.

“**Daily VWAP**” means the VWAP on a particular Trading Day.

“**Default Date**” shall mean any Registration Default Date, Listing Default Date, Delivery Default Date, Reserve Default Date, Stockholder Meeting Default Date and/or any other date specified in the Transaction Documents as a Default Date for which Liquidated Damages are payable.

“**Default Rate**” means an interest rate of 18% per annum or such other interest rate as may be set forth as the Default Rate in the Transaction Documents, *provided* that if such Default Rate would exceed the maximum interest rate permitted by applicable law, then the Default Rate shall equal such lesser maximum rate.

“**Delivery Default Date**” shall have the meaning set forth in Section 5.2(d) of PST Document GTC.

“**Dilutive Issuance**” means any Subsequent Issuance for, at or to an effective Subsequent Issuance Price which is less than the Conversion Price, Exercise Price or Exchange Price, as the case may be, then in effect for the applicable Notes, Preferred Shares or Warrants subject to adjustment as a result of such Dilutive Issuance. In the event that more than one type of security is issued in any transaction involving the issuance or deemed issuance of Common Stock, then the determination of whether there has been a Dilutive Issuance, and the calculation of any adjustment thereupon, shall be determined by treating the issuance of each type of security as a separate transaction.

“**Disclosure Schedule**” means collectively the schedules delivered by the Company to each Purchaser as of the date of execution of the Securities Purchase Agreement, *provided* that such Disclosure Schedule may be amended on or prior to the Closing so long as any such amendments, individually or in the aggregate, do not constitute and would not be reasonably likely to constitute a Material Adverse Change since such date of execution. The Disclosure Schedule shall conform with and be construed in accordance with Section 7.19(d) of PST Document GTC, except to the extent otherwise set forth in the Securities Purchase Agreement.

“**Documents Escrow Agent**” means PipeFund Services Organization or such other Person(s) identified in and executing the Documents Escrow Agreement as “Escrow Agent” thereunder.

“**Documents Escrow Agreement**” means that certain Documents Escrow Agreement, if any, entered into by and among the Company, the Documents Escrow Agent, the Purchaser(s) and such other Person initially retaining Documents Escrow Agent to serve in such capacity for the Closing.

“**DTC**” means collectively The Depository Trust Company and The Depository Trust & Clearing Corporation and their subsidiaries.

“**DWAC**” means DTC’s Deposit/Withdrawal at Custodian system by which shares of Common Stock issued by the Company to a Purchaser may be electronically deposited into such Purchaser’s securities brokerage account.

“**EDGAR**” means the Electronic Data Gathering, Analysis, and Retrieval system operated by the Commission, or any successor system adopted by the Commission for the same or similar purpose, including without limitation the Interactive Data Electronic Applications (IDEA) system.

“**Effective Date**” means the date on which a Registration Statement is first declared effective by the Commission.

“**Effective Time**” means the time at which a Registration Statement is first declared effective by the Commission on the Effective Date.

“**Effectiveness Deadline**” means, with respect to the initial Registration Statement required to be filed under the Transaction Documents, the date which is (a) ninety (90) days following the initial Closing Date in the event there is no review or limited review of the Registration Statement by the Commission following the filing thereof, or (b) one-hundred twenty (120) days following the initial Closing Date in the event there is a full review of the Registration Statement by the Commission following the filing thereof, and with respect to any subsequent Registration Statement required to be filed under the Transaction Documents, the date which is (i) sixty (60) days following the Filing Deadline therefor in the event there is no review or limited review of the Registration Statement by the Commission following the filing thereof, or (ii) ninety (90) days following such Filing Deadline in the event there is a full review of the Registration Statement by the Commission following the filing thereof; *provided, however*, that the Effectiveness Deadline in any case shall be (1) no later than the fifth (5th) Trading Day following the date on which the Company is notified by the Commission (orally or in writing) that such Registration Statement will not be reviewed or is no longer subject to further review by the Commission, or (2) such other date(s) as may be provided in the Securities Purchase Agreement as the Effectiveness Deadline(s).

“**Effectiveness Suspension**” shall have the meaning set forth in Section 6.1(d)(ii) of PST Document GTC.

“**Eligible Markets**” means the New York Stock Exchange, NYSE Amex (formerly known as the American Stock Exchange), Nasdaq Global Select Market, Nasdaq Global Market and Nasdaq Capital Market and such other exchanges or markets as may be designated as Eligible Markets in the Securities Purchase Agreement.

“**Environmental, Health and Safety Laws**” means all federal, state, local and foreign laws, statutes, regulations, ordinances, authorizations, codes and other provisions having the force or effect of law, all judicial and administrative decrees, determinations, demands or demand letters, injunctions,

judgments, directives, notices or notice letters, orders or plans, and all common law applicable to the Company relating to pollution or protection of human health or the environment (including without limitation ambient air, surface water, groundwater, land surface or subsurface strata), including without limitation all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, emission, discharge, release, threatened release, control or cleanup of any Hazardous Materials, each as amended and as now or hereafter in effect.

“**Equity Conditions**” shall have the meaning set forth in the definition of “Registration Compliance” below.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, including the rules, regulations and published interpretations thereunder.

“**Escrow Account**” shall have the meaning set forth in Section 2.1 of PST Document ESC.

“**Escrow Agent**” means, with respect to the Escrow Agreement, the Funds Escrow Agent, and with respect to the Documents Escrow Agreement, the Documents Escrow Agent.

“**Escrow Agreement**” means that certain Escrow Agreement, if any, entered into by and among the Company, the Escrow Agent and the Placement Agent (if any), which may be specified in the Securities Purchase Agreement by date of execution thereof by the Escrow Agent.

“**Escrow Fees**” shall have the meaning set forth in Article VII of PST Document ESC and set forth in Article VII of PST Document D-ESC, collectively.

“**Escrow Funds**” shall have the meaning set forth in Section 2.1 of PST Document ESC.

“**Exchange Act**” means the United States Securities Exchange Act of 1934, as amended, or any similar federal statute, and the rules and regulations promulgated by the Commission thereunder, all as the same shall be in effect from time to time.

“**Exchange Price**” means the price set forth in any Convertible Security as the price used to determine the number of shares of Common Stock (or number of other securities underlying such Convertible Security) to be issued to the holder of such Convertible Security upon exchange thereof of a dollar value represented by such Convertible Security (e.g., liquidation preference of preferred stock or principal amount of debt), where such dollar value (as may be increased or decreased pursuant to the terms of such Convertible Security) is divided by such price to determine such number of shares (or other securities) to be issued upon such exchange.

“**Executive Officer**” means the president, any vice president or other individual in charge of a principal business unit, division

or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the Company. An executive officer of a Subsidiary may be deemed an Executive Officer if such individual performs such policy-making functions for the Company or if such Subsidiary is materially significant to the Company.

“**Exempt Issuance**” means any sale, issuance or grant of Common Stock, Convertible Securities or Options:

- (a) to any officer, director or employee of or consultant to the Company or any of its Subsidiaries for the primary purpose of soliciting or retaining their employment or service pursuant to a *bona fide* option or equity incentive compensation plan, agreement or arrangement duly adopted and approved by the Company’s Board of Directors and, to the extent required under applicable securities or corporate laws or regulations of any securities exchange or market, the Company’s stockholders (including the issuance of any shares of Common Stock upon the exercise in accordance with its terms of any Options so issued);
- (b) upon conversion or exchange of any Convertible Securities, or exercise of any Options, in each case outstanding on the date of execution of the Securities Purchase Agreement, in accordance with the terms of such Convertible Securities or Options, *provided* that such Convertible Securities or Options have not been amended since such date to directly or indirectly effectively (i) increase the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (ii) decrease the consideration payable to the Company (or the applicable Exercise Price, Conversion Price or Exchange Price) upon such exercise, conversion or exchange;
- (c) pursuant to the Securities issued under the Securities Purchase Agreement, including without limitation shares of Common Stock issued upon exercise of any Warrants or upon conversion or exchange of, as dividends or interest on, in repayment or redemption of, or otherwise with respect to, any Notes and/or Preferred Shares;
- (d) to the Placement Agent consisting of Placement Agent Warrants and shares of Common Stock issued upon the exercise of such Placement Agent Warrants, *provided* that such Placement Agent Warrants have not been amended since the issuance thereof to directly or indirectly effectively (i) increase the number of shares of Common Stock issuable upon the exercise thereof or (ii) decrease the consideration payable to the Company (or the applicable Exercise Price) upon such exercise;
- (e) by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock for which adjustment of the Conversion Price, Exercise Price and/or Exchange Price is provided under the terms of the Notes,

Certificate of Designation and/or Warrants, as applicable; or

- (f) pursuant to any transaction or occurrence which is specified in the Securities Purchase Agreement or the Notes, Certificate of Designation or Warrants as an additional Exempt Issuance;

provided that the Exempt Issuances specified in clauses (a) through (e) above shall be modified or qualified, or removed entirely as an Exempt Issuance, to the extent so specified in the Securities Purchase Agreement or the Notes, Certificate of Designation or Warrants.

“Exercise Price” means the price set forth in any Option (including without limitation any Warrants) as the purchase price the holder of such Option must pay to the Company upon exercise thereof to purchase (a) a single whole share of Common Stock, if the Warrant is for the purchase solely of Common Stock, or (b) a single unit of the Company’s securities, if the Warrant is for the purchase of securities of the Company which are not solely Common Stock (which units may consist of Convertible Securities or Options or a combination of Convertible Securities, Options and/or Common Stock, as the case may be).

“Filing Deadline” means the date which is thirty (30) days following (a) the initial Closing Date (with respect to the initial Registration Statement required to be filed under the Transaction Documents), and (b) the date on which the Company first knows or reasonably should have known that an additional or new Registration Statement (or amendment to an existing Registration Statement) is required to be filed under the Transaction Documents (with respect to any additional or newly existing Registrable Securities that may be required to be registered pursuant to the Transaction Documents), in each case subject to such other date as may be provided in the Securities Purchase Agreement as the Filing Deadline.

“Final Prospectus” means the final Prospectus, including any prospectus supplement thereto, filed by the Company with the Commission pursuant to Rule 424(b), for use in connection with a Registered Direct Offering of the Securities. Any reference to the Final Prospectus shall be deemed to refer to and include any documents and materials incorporated therein by reference (or deemed incorporated therein by reference pursuant to Form S-3 or F-3 if such Registration Statement was filed on such Form) as of the date of such Final Prospectus. If the Registered Direct Registration Statement was filed on Form S-3 or F-3, any reference in the Transaction Documents to the terms “amend”, “amendment” or “supplement” with respect to the Final Prospectus shall be deemed to refer to and include any document filed under the Exchange Act after the date of the Final Prospectus which is incorporated therein by reference.

“FINRA” means the Financial Industry Regulatory Authority (successor to the NASD).

“Form 10” means Form 10 prescribed by the Commission under the Exchange Act.

“Form 10 Information” means the information that is required by Form 10 to register securities under the Exchange Act.

“Form S-1”, “Form S-3”, “Form F-1” and “Form F-3” mean such respective forms under the Securities Act as in effect on the date of the Securities Purchase Agreement, or any successor forms to such registration forms subsequently adopted by the Commission under the Securities Act.

“Full Ratchet Anti-Dilution Adjustment” means that if and whenever during the Anti-Dilution Adjustment Period a Dilutive Issuance (other than an Exempt Issuance) occurs, then the Conversion Price, Exercise Price or Exchange Price, as the case may be, then in effect for the applicable Notes, Preferred Shares or Warrants subject to adjustment as a result of such Dilutive Issuance shall be automatically and immediately reduced to equal the Subsequent Issuance Price under such Dilutive Issuance. No adjustment shall be made pursuant to a Full Ratchet Anti-Dilution Adjustment provision to the extent that such adjustment would result in an increase of the applicable Conversion Price, Exercise Price or Exchange Price then in effect or a decrease in the number of applicable Underlying Shares.

“Fundamental Transaction” means that:

- (a) the Company shall, directly or indirectly, in one or a series of related transactions (i) consolidate, amalgamate or merge with or into another Person (whether or not the Company is the surviving corporation), (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company to another Person (for clarification, excluding the granting of a lien on all or substantially all of the Company’s assets as collateral for a financing), (iii) consummate a stock purchase agreement or other business combination (including without limitation a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby the Company’s stockholders entitled to vote in the election of the Board of Directors prior to such event cease to own 50% or more of such voting stock (or corresponding voting equity interests) of the surviving entity after such event, or (iv) reorganize, recapitalize or reclassify its Common Stock or effect any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (other than as a result of a subdivision or combination of shares of Common Stock described in Section 3.1(a) of PST Document WAR);
- (b) (i) a purchase, tender or exchange offer (whether by the Company or another Person) is accepted by the holders of more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by any Person(s) making or party to, or any Person(s)

associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (ii) any “person”, “syndicate” or “group” (as such terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) is or shall become the “beneficial owner” (as defined in Rule 13d-3), directly or indirectly, of more than 50% of the issued and outstanding Common Stock;

- (c) there is a replacement at one time or over time of more than one-half of the members of the Company’s Board of Directors such that a majority of the members of the Board of Directors are not Continuing Directors; or
- (d) the Company has adopted a plan relating to the liquidation or dissolution of the Company.

“**Funds Escrow Agent**” means such Person(s) identified in and executing the Escrow Agreement as “Escrow Agent” thereunder.

“**GAAP**” means United States generally accepted accounting principles applied on a consistent basis during the periods involved.

“**Guarantee**” means any guarantee or surety agreement executed and delivered by the Company, any of its Subsidiaries and/or any third party in favor of the Purchaser(s) pursuant to the Transaction Documents which guarantees (or otherwise provides assurance with respect to) the Company’s or any of its Subsidiaries’ obligations or liabilities under one or more of the Transaction Documents and/or any of the Securities.

“**Hazardous Material**” means any material or substance that, whether by its nature or use, is defined or regulated as a hazardous waste, hazardous substance, hazardous chemical, pollutant or contaminant under any Environmental, Health and Safety Laws, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel fuel, another petroleum hydrocarbon product, asbestos, asbestos-containing materials or polychlorinated biphenyls.

“**Holder Group**” means, with respect to any Purchaser or any other holder of any Notes, Preferred Shares or Warrants as of the time of determination, such Purchaser or holder together with such Purchaser’s or holder’s Affiliates and any other Person acting as a group with such Purchaser or holder with respect to the Common Stock for purposes of, and as determined in accordance with, Section 13(d) or Section 16 of the Exchange Act and the rules and regulations promulgated under the Exchange Act with respect thereto, including without limitation Regulation 13D-G.

“**IFRS**” means International Financial Reporting Standards (IFRS), as issued by the International Accounting Standards Board, applied on a consistent basis during the periods involved.

“**Indebtedness**” of any Person means (a) all indebtedness for borrowed money, (b) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, except for trade payables entered into in the ordinary course of business, (c) all obligations in respect of letters of credit, surety bonds, bankers acceptances or similar instruments (including without limitation all reimbursement or payment obligations with respect thereto), (d) all obligations evidenced by notes, bonds, debentures or similar instruments, including without limitation obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even if the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (f) all monetary obligations under any leasing or similar arrangement which is classified as a “capital lease” under GAAP (or IFRS if the Company is a foreign issuer), and (g) all Contingent Obligations in respect of Indebtedness of others of the kinds referred to in clauses (a) through (f) above.

“**Indemnified Company Party**” means the Company, its directors, officers, agents, representatives and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the directors, officers, partners, members, shareholders, representatives, agents and employees of each such controlling Person.

“**Indemnified Purchaser Party**” means each Purchaser and holder of Registrable Securities, the directors, officers, partners, members, shareholders, agents, representatives, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees of each of them, each Person who controls any such Purchaser or holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the directors, officers, partners, members, shareholders, representatives, agents and employees of each such controlling Person.

“**Insolvent**” means, with respect to any Person (a) the present fair saleable value of such Person's assets is less than the amount required to pay such Person's existing debts and other liabilities (including known contingent liabilities) as they become absolute and matured, (b) such Person is generally not paying or unable to pay its debts and liabilities, whether subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, (c) such Person has unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and currently proposed to be conducted including its capital needs, taking into account the particular projected capital requirements of the business conducted and to be conducted by such Person and the capital availability therefor, or (d) the current cash flow of such Person, together with the proceeds

such Person would receive were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be insufficient to pay all amounts on or in respect of its debt and liabilities when such amounts are required to be paid.

“Intellectual Property” means (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications and patent disclosures, together with all reissues, continuations, continuations-in-part, revisions, extensions and reexaminations thereof, (b) all trademarks, service marks, trade dress, trade styles, logos, trade names and corporate names, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (c) all copyrightable works, all copyrights and all applications, registrations and renewals in connection therewith, (d) all mask works (as defined in the United States Semiconductor Chip Protection Act) and all applications, registrations and renewals in connection therewith, (e) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), (f) all computer software (including data and related documentation), (g) all other proprietary rights, intellectual property rights and other similar rights, and (h) all copies and tangible embodiments of any of the foregoing (in whatever form or medium).

“Investment Company Act” means the United States Investment Company Act of 1940, as amended, and the rules and regulations thereunder.

“IRC” means the United States Internal Revenue Code of 1986, as amended, including the rules, regulations and published interpretations thereunder.

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433 promulgated by the Commission under the Securities Act (as such rule may be amended from time to time or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule), relating to the Securities in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to clause (g) of such Rule 433.

“knowledge” means (a) when used in reference to a corporation, means the knowledge of the directors and executive officers (as defined in Rule 405 of the Securities Act) of such corporation (including, if applicable, any person designated as a chief scientific, medical or technical officer) assuming such persons shall have made inquiry that is customary and reasonably appropriate under the circumstances to which reference is made, and (b) when used in reference to an individual, means the knowledge of such individual

assuming such individual shall have made inquiry that is customary and reasonably appropriate under the circumstances to which reference is made.

“Legal Opinion” shall have the meaning set forth in Section 2.3(a)(viii)(B) of PST Document GTC.

“Legend Removal Date” means the third Trading Day, or such other Trading Day as may be set forth in the Securities Purchase Agreement, following the date on which a Purchaser delivers to the Company a legended certificate or instrument evidencing any of the Securities or Underlying Shares with a request that such legend be removed, provided that such delivery is made during a Legend Removal Period with respect to such securities.

“Legend Removal Period” means, with respect to any securities, any period during which (i) a registration statement (including the Registration Statement) covering the resale of such securities is effective under the Securities Act, (ii) such securities have been or are being sold pursuant to Rule 144 or Rule 144A and the holder of such securities has provided the Company with reasonable assurance thereof, (iii) such securities are eligible for resale under Rule 144(b)(1), or (iv) no restrictive legend is required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission).

“Liability” means any liability, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, including without limitation any liability for Taxes and any off-balance-sheet obligations.

“Liens” means a lien, charge, security interest, mortgage, encumbrance, pledge, right of first refusal or other restriction, other than (a) liens for Taxes not yet due and payable or for Taxes that the taxpayer is contesting in good faith through appropriate proceedings, (b) mechanic’s, materialmen’s and similar liens, (c) purchase money security interests and liens securing rental payments under capital lease arrangements, (d) transfer restrictions under applicable securities laws or under the Transaction Documents (if any), and (e) liens imposed by the Party who is the recipient of the applicable representation, warranty or covenant.

“Liquidated Damages” means the Company’s and each Purchaser’s good faith quantification or estimation of a portion of the amount of damages suffered or to be suffered by the Purchaser(s) or holder(s) of Securities, Underlying Shares or Registrable Securities as a result of the Company’s failure, refusal or inability to comply with the applicable provision in the Transaction Documents which provides for Liquidated Damages, including without limitation damages resulting from the loss of liquidity and/or additional investment risk in holding the Securities and/or Underlying Shares.

“**Liquidated Damages Percentage**” means one and one-half percent (1½%) or such other percentage or percentages as may be indicated in the Securities Purchase Agreement for Liquidated Damages, which percentage(s) may vary based upon the circumstances for which such percentage(s) may apply or the time frames for which such percentages are applicable, in each case as indicated in the Securities Purchase Agreement.

“**Listing Default**” shall have the meaning set forth in Section 6.6 of PST Document GTC.

“**Listing Default Date**” shall have the meaning set forth in Section 6.6 of PST Document GTC.

“**Lock-Up Agreement**” means any agreement executed and delivered by a designated executive officer or director of the Company or any third party pursuant to the Transaction Documents which restricts such Person from disposing of (or otherwise exercising certain rights with respects to) securities of the Company beneficially owned by such Person.

“**Losses**” means any and all losses, claims, damages, liabilities, obligations, judgments, fines, penalties, fees, charges, diminution in value, costs (including without limitation reasonable attorneys’ fees and disbursements) and expenses, including without limitation amounts paid in settlement or following judgment in connection with any Action and Losses in connection with investigating, preparing and defending any such Action.

“**Majority-in-Interest**” means such Purchasers or holders holding (or prior to Closing such Purchasers agreeing to purchase) in the aggregate at least 50% of the number of Shares or Preferred Shares then outstanding (or prior to Closing agreed to be purchased) or 50% of the principal amount of Notes then outstanding (or prior to Closing agreed to be purchased), or if no Shares, Preferred Shares or Notes remain outstanding at any time after Closing, then such Purchasers or holders holding in the aggregate at least 50% of the number of Warrant Shares issuable under the outstanding Warrants.

“**Market Price**” means the arithmetic average of Daily VWAPs for the five (5) Trading Days immediately preceding the date as of which the Market Price is being determined, or such other average or formula as may be set forth in the Securities Purchase Agreement or other applicable Transaction Document for determining the “Market Price”.

“**Material Adverse Change**” means any change of the Company and/or any of its Subsidiaries that has a Material Adverse Effect.

“**Material Adverse Effect**” means a material adverse effect on (i) the operations, results of operations, management, assets, properties, prospects, business or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, (ii) the legality, validity or enforceability of any

Transaction Document, (iii) the Company’s ability to perform in any material respect on a timely basis its obligations under any Transaction Document, or (iv) the rights and remedies of any Purchaser or holder of Underlying Shares or Registrable Securities under the terms of any Transaction Document in any material respect.

“**Maximum Aggregate Investment Amount**” means the maximum aggregate Subscription Amount permitted by all Purchasers in the aggregate at all Closings collectively under the Securities Purchase Agreement, which amount (if any) shall be designated in the Securities Purchase Agreement.

“**Maximum Ownership Percentage**” means the percentage specified by a Purchaser in the Securities Purchase Agreement, or otherwise specified by a holder of any Notes, Preferred Shares or Warrants in accordance with the terms of such securities, as the Maximum Ownership Percentage for such Purchaser or holder under any Beneficial Ownership Limitation contained in any of the Transaction Documents.

“**Maximum Permitted Blackout Period**” means a period of one or more Permitted Blackouts not exceeding (a) ten (10) consecutive Trading Days nor (b) an aggregate of twenty-five (25) Trading Days (which need not be consecutive) in any 12-month period, *provided that* (i) any such Permitted Blackout does not occur during the first twenty (20) Trading Days following the Effective Date, (ii) no Permitted Blackout may occur within five (5) Trading Days following the end of another Permitted Blackout, and (iii) the Maximum Permitted Blackout Period shall be such other period of time as may be specified in the Securities Purchase Agreement.

“**Maximum Share Issuance**” means the maximum number of Shares and Underlying Shares that the Company may issue without breaching the Company’s obligations under the 20% Rule (after accounting for any aggregation with any other shares of Common Stock the issuance of which may be integrated which the Transactions for purposes of the 20% Rule).

“**Maximum Share Issuance Allocation**” means, with respect to any Purchaser, the product of (a) the Maximum Share Issuance multiplied by (b) such Purchaser’s Original Allocation Percentage, as may be subject to reallocation and adjustment pursuant to the terms of the Securities Purchase Agreement (including without limitation Section 4.15(a) of PST Document GTC incorporated therein by reference).

“**Maximum Shares Deemed Outstanding**” [see “Subsequent Issuance”]

“**MFN Transaction**” means a transaction in which the Company or any of its Subsidiaries issues or sells any securities to an investor in one or a series of related capital raising transactions which grants to such investor the right to receive additional securities or better terms based in some manner upon future sales or issuances of Common Stock, Options or

Convertible Securities on terms more favorable than those granted to such investor in such capital raising transaction(s).

“Minimum Aggregate Investment Amount” means the minimum aggregate Subscription Amount required as a condition for Closing, which amount (if any) shall be designated in the Securities Purchase Agreement.

“Minimum Listing” means, as of any date, the Minimum Reserve plus the number of Shares and Underlying Shares previously issued.

“Minimum Reserve” means, as of any date, the maximum aggregate number of shares of Common Stock potentially issuable in the future pursuant to the Transaction Documents, including without limitation any and all Shares and any and all Underlying Shares issuable directly or indirectly upon conversion, exercise and/or exchange in full of all Securities in accordance with the terms of such Securities (including Underlying Shares reasonably anticipated to be issued or issuable as payment of interest, dividends, amortization payment or otherwise through the end of the term of such security), without regard for any conversion, exercise or exchange limitations or restrictions set forth therein and whether or not such Securities are then convertible, exercisable or exchangeable, and assuming that (a) the effective applicable Conversion Price, Exercise Price and/or Exchange Price is at all times on and after the date of determination equal to the lowest fixed conversion, exercise and/or exchange price in effect or to be in effect over the term of the Security, *provided* that if any such Conversion Price, Exercise Price and/or Exchange Price is subject to Full-Ratchet Anti-Dilution Adjustment, Weighted-Average Anti-Dilution Adjustment, Below-Market Anti-Dilution Adjustment or other adjustment in the future or such Securities are subject to conversion, exercise or exchange based on a future market price, then 75% of such lowest conversion, exercise and/or exchange price shall be used, unless such adjustment provision provides for a minimum conversion, exercise and/or exchange price, in which case such minimum price shall be used, and (b) if the number of Warrant Shares is subject to increase in the future, whether based upon and/or varying with the trading prices of or quotations for the Common Stock at any time after the initial issuance of such Warrants or based upon other events or time, then 133% of the maximum aggregate number of Warrant Shares potentially issuable under the Warrants determined as of such date shall be used, unless such Warrants provide for a maximum number of shares which may be issued thereunder, in which case such maximum number shall be used. Such Minimum Reserve shall be appropriately and equitably adjusted for any stock split, reverse split, stock dividend, reclassification or similar event with respect to the Common Stock.

“Most Recent Fiscal Report” means the Quarterly Report for the most recent fiscal quarter ended, provided that Most Recent Fiscal Report means the Annual Report for the most recent fiscal year or transitional period ended if (a) the most recent fiscal quarter ended is also the end of the Company’s fiscal year, or (b) if the Company has filed an Annual Report for a

transitional period which ended on or after the Company’s most recent fiscal quarter.

“NASD” means the National Association of Securities Dealers, Inc.

“Notes” means any and all debentures, promissory notes, bonds or similar debt securities, whether secured or unsecured, purchased or contemplated to be purchased (a) pursuant to the Securities Purchase Agreement as may be set forth therein, or (b) upon exercise of Warrants entitling the holder thereof to purchase such Notes, in each case which Notes shall be in the form set forth as an exhibit to the Securities Purchase Agreement and have such Conversion Price and maturity date as set forth in the Securities Purchase Agreement or such exhibit. The term Notes shall include (a) any other debentures, promissory notes, bonds or similar debt securities (whether secured or unsecured) of the Company issued in exchange for or substitution or replacement of any Notes, and (b) any Notes as may be amended, restated or modified and in effect from time to time.

“OFAC” means the Office of Foreign Assets Control of the United States Treasury Department.

“Offering” means the offering and sale of the Securities pursuant to the Securities Purchase Agreement and/or, if the Offering is a Registered Direct Offering, the Registered Direct Registration Statement. The Offering shall constitute a PIPE Transaction, unless it is otherwise specified in the Securities Purchase Agreement that the Offering is being made pursuant to an effective Registration Statement filed by the Company with the Commission, in which case the Offering shall constitute a Registered Direct Offering.

“Offering Termination Date” means the thirtieth (30th) day following the initial Closing, or such other date as may be designated in the Securities Purchase Agreement as the Offering Termination Date (as may be extended pursuant to the terms of the Securities Purchase Agreement).

“Options” means any rights, warrants or options to subscribe for, purchase or otherwise acquire shares of Common Stock, Convertible Securities or other Options, including without limitation any Warrants.

“Organizational Documents” means the Certificate of Incorporation, By-Laws, operating agreement, partnership agreement and any and all other documents adopted, filed or agreed upon in connection with the formation or organization of such Person or relating to the conduct of such Person’s affairs or the rights, powers and obligations of its shareholders, partners or members.

“Original Allocation Percentage” means, with respect to each Purchaser, a fraction, the numerator of which is the Subscription Amount paid by such Purchaser for the Securities under the Securities Purchase Agreement, and the denominator

of which is the aggregate Subscription Amount paid by all Purchasers for the Securities under the Securities Purchase Agreement.

“**Party**” means the Company, a Purchaser or another party to a Transaction Document.

“**Periodic Report**” means each Annual Report, Quarterly Report and Current Report.

“**Permit**” means any permit, certificate, certification, clearance, authorization, approval, exemption, notification, order, franchise, license, registration or consent issued by the applicable or appropriate federal, state, local or foreign governmental or regulatory authority or agency under applicable law or regulation with respect to the conduct or operation of any business or the ownership, lease or use of any property or substance.

“**Permitted Blackout**” shall have the meaning set forth in Section 6.1(d)(i) of PST Document GTC.

“**Per Share Purchase Price**” equals the price set forth in the Securities Purchase Agreement as the Per Share Purchase Price, subject to appropriate and equitable adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions with respect to the Common Stock that occur after the date of the Securities Purchase Agreement.

“**Person**” means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, governmental authority or agency or any other form of entity not specifically listed herein.

“**Pink Sheets**” means the Pink Sheets Electronic Quotation Service operated by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.), or a similar organization or agency succeeding to its functions of reporting prices in the Over-the-Counter non-Bulletin Board market.

“**PIPE Transaction**” means the offer and sale of equity securities, and/or securities convertible, exercisable and/or exchangeable into or for equity securities, in a transaction exempt from the registration requirements of the Securities Act, by an issuer whose common stock (or class thereof) is registered pursuant to Section 12 of the Exchange Act or otherwise publicly traded or contemplated to be publicly traded.

“**PipeFund**” or “**PipeFund Services Organization**” means PipeFund Services Organization, LLC, a Delaware limited liability company.

“**PipeFund Services Organization Standard Transaction Document**” [see “PST Document”]

“**PipeFund Transaction Code**” means the number or code assigned to a PIPE Transaction or Registered Direct Offering by PipeFund Services Organization, which number or code consists of the Company’s ticker symbol, followed by the two digit year in which the applicable offering commenced and the sequential alphabetical letter, starting with “A”, indicating the applicable offering/transaction within such year. For example, the second PIPE Transaction or Registered Direct Offering by IBM in 2008 would be assigned the code “IBM-08-B”.

“**Placement Agent**” means, collectively, any and all placement agents, brokers, underwriters or finders designated as a “Placement Agent” in the Securities Purchase Agreement.

“**Placement Agent Warrants**” means any Warrants issued to the Placement Agent on or about the Closing Date as compensation solely for its services in connection with the Transactions.

“**Placement Agreement**” means, collectively, any and all underwriting, placement agency or similar agreement(s) pursuant to which a Placement Agent acts as the Company’s placement agent, broker, underwriter or finder with respect to a Registered Direct Offering and receives a fee in connection with the sale of the Securities.

“**Placement Fee**” means, collectively, any and all fees, charges and commissions and costs payable to the Placement Agent in connection with the Transactions.

“**Plan of Distribution**” means the section of a Prospectus within a Registration Statement entitled “Plan of Distribution” which sets forth the plan of distribution and/or sale of Registrable Securities by the Purchasers and/or holders of Registrable Securities in accordance with Item 508 of Regulation S-K under the Securities Act.

“**Preferred Shares**” means any and all shares of preferred stock of the Company purchased or contemplated to be purchased (a) pursuant to the Securities Purchase Agreement as may be set forth therein, or (b) upon exercise of Warrants entitling the holder thereof to purchase such Preferred Shares, in each case having the rights, preferences and privileges set forth in the Certificate of Designation for such Preferred Shares, which shall be in the form set forth as an exhibit to the Securities Purchase Agreement and have such Conversion Price as set forth in the Securities Purchase Agreement or such exhibit. The term Preferred Shares shall include (a) any other shares of preferred stock of the Company issued in exchange for or substitution or replacement of any Preferred Shares, and (b) any Preferred Shares regardless of any amendment, restatement or modification of the Certificate of Designation for the Preferred Shares in effect from time to time.

“**Preliminary Prospectus**” means any preliminary Prospectus, subject to completion, included in the Registered Direct Registration Statement or filed by the Company with the Commission pursuant to Rule 424(b), including the Base

Prospectus and any preliminary prospectus supplement thereto, for use in connection with a Registered Direct Offering of the Securities. Any reference to any Preliminary Prospectus shall be deemed to refer to and include any documents and materials incorporated therein by reference (or deemed incorporated therein by reference pursuant to Form S-3 or F-3 if such Registration Statement was filed on such Form) as of the date of such Preliminary Prospectus. If the Registered Direct Registration Statement was filed on Form S-3 or F-3, any reference in the Transaction Documents to the terms “amend”, “amendment” or “supplement” with respect to the Preliminary Prospectus shall be deemed to refer to and include any document filed under the Exchange Act after the date of such Preliminary Prospectus which is incorporated therein by reference.

“**Principal Market**” means the principal Trading Market on which the Common Stock is then publicly traded.

“**Proceeding**” [*see* “Action”]

“**Prospectus**” means the prospectus (preliminary, final, summary or free writing or an offering circular or similar document) contained in or related to a Registration Statement or Registered Direct Registration Statement (including without limitation a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement or the Securities and/or Underlying Shares covered by a Registered Direct Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all documents and materials incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“**PST Document**” and/or “**PipeFund Services Organization Standard Transaction Document**” refers to each standard transaction document of PipeFund Services Organization as designated and referenced by name and (where applicable) version number and generally available and accessible at www.pipfund.com.

“**PST Document DEF #-#**” means the PST Document labeled DEF (Definitions), with the applicable version number of such document as may be indicated thereon in lieu of “#-#” (which represents the month and year such document was last updated), and “**PST Document DEF**” means the applicable version of such PST Document used in the Transaction Documents.

“**PST Document ESC #-#**” means the PST Document labeled ESC (Standard Escrow Terms), with the applicable version number of such document as may be indicated thereon in lieu of “#-#” (which represents the month and year such document was last updated), and “**PST Document ESC**” means the

applicable version of such PST Document used in the Transaction Documents.

“**PST Document ESC-D #-#**” means the PST Document labeled ESC-D (Standard Escrow Terms for Documents), with the applicable version number of such document as may be indicated thereon in lieu of “#-#” (which represents the month and year such document was last updated), and “**PST Document ESC**” means the applicable version of such PST Document used in the Transaction Documents.

“**PST Document GTC #-#**” means the PST Document labeled GTC (General Terms and Conditions) or GTC-RD (General Terms and Conditions – Registered Direct Offering) (depending on whether the transaction is a PIPE Transaction or Registered Direct Offering, respectively), with the applicable version number of such document as may be indicated thereon in lieu of “#-#” (which represents the month and year such document was last updated), and “**PST Document GTC**” means the applicable version of such PST Document used in the Transaction Documents.

“**PST Document WAR #-#**” means the PST Document labeled WAR (Standard Warrant Terms), with the applicable version number of such document as may be indicated thereon in lieu of “#-#” (which represents the month and year such document was last updated), and “**PST Document WAR**” means the applicable version of such PST Document used in the Transaction Documents.

“**Public Offering Legal Opinion**” means an opinion letter of independent counsel to the Company addressed to each Purchaser and holder of Registrable Securities and each underwriter, if any, which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to each such Purchaser, holder and/or underwriter(s), if any, and their counsel and covering, without limitation, such matters as the due authorization and issuance of the securities being registered and compliance with securities laws by the Company in connection with the authorization, issuance and registration thereof and other matters that are customarily given to underwriters in secondary public offerings.

“**Purchase Price**” [*see* “Subscription Amount”]

“**Purchaser**” means each Person who is a party to the Securities Purchase Agreement as a “Purchaser” thereunder and such Purchaser’s successors, assigns and heirs (but not including any Person purchasing Securities or Registrable Securities from such Purchaser through any public trading market or exchange).

“**Purchaser Closing Documents**” shall have the meaning set forth in Section 2.3(b)(iv) of PST Document GTC.

“**Purchaser Closing Representative**” means such Person designated as the Purchaser Closing Representative for purposes of authorizing, on behalf of the Purchasers, the

release or return of funds or documents pursuant to the Escrow Agreement (which may be the Placement Agent, any Purchaser, any Purchaser's(s') counsel or any other Person not affiliated with the Company). The Purchaser Closing Representative shall be identified in the Escrow Agreement and the Securities Purchase Agreement, provided that (a) if there is a broker-dealer registered under the Exchange Act participating in the transaction, then such Placement Agent (or lead Placement if more than one) shall serve as the Purchaser Closing Representative unless another Person is so designated in the Escrow Agreement, and (b) in the event of any conflict between the Person designated in the Escrow Agreement and the Securities Purchase Agreement, then the Escrow Agreement shall control.

“Purchaser Registration Counsel” means one legal counsel, if any, designated by Persons holding a majority of the Registrable Securities to review any Registration Statement (and the offering with respect thereto), which counsel may be specified in the Securities Purchase Agreement and/or by notice of such majority to the Company selecting or changing such counsel.

“Quarterly Report” means each Company quarterly report on Form 10-Q filed or to be filed by the Company with the Commission pursuant to the Exchange Act, or if the Company is not required to file periodic reports under the Exchange Act, such equivalent report(s) as may be required to be filed with the applicable governmental or self-regulatory authorities of the jurisdiction to which the Company is subject.

“Recent Reports” means the Company's most recent Annual Report and all Quarterly Reports and Periodic Reports filed by the Company with the Commission (or such other applicable governmental or self-regulatory authority of the jurisdiction to which the Company is subject) since such Annual Report and filed via EDGAR or SEDAR, as applicable, at least five (5) days prior to the date of execution of the Securities Purchase Agreement.

“Record Date” means the date on which a record of holders of Common Stock is taken by the Company for the determination of holders entitled to receive a dividend or distribution (or other grant, issuance or sale), or if no such record is taken, the date as of which the record holders of shares of Common Stock are determined for a dividend or distribution (or other grant, issuance or sale) to all holders of Common Stock (which may be the date of such dividend, distribution, grant, issuance or sale).

“Register”, “registered” and “registration” shall refer to a registration of the offer, sale or resale of securities effected by preparing and filing a registration statement or similar document in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of the effectiveness of such registration statement or document by the Commission.

“Registered Direct Disclosure Package” means, in connection with any Registered Direct Offering of the Securities (a) the Statutory Prospectus, (b) the Final Prospectus, (c) each Issuer Free Writing Prospectus, if any, filed or delivered by the Company to a Purchaser on or before the date of execution of the Securities Purchase Agreement by such Purchaser (other than a “road show” that is an Issuer Free Writing Prospectus but is not required to be filed under Rule 433 promulgated under the Securities Act), and (d) any pricing information set forth in or as an exhibit to the Securities Purchase Agreement, all considered together.

“Registered Direct Offering” means the offer and sale of equity securities, and/or securities convertible, exercisable and/or exchangeable into or for equity securities, pursuant to a Prospectus contained in a registration statement filed under the Securities Act which has been declared effective by the Commission, by an issuer whose common stock is registered pursuant to Section 12 of the Exchange Act.

“Registered Direct Registration Statement” means, if the Offering is a Registered Direct Offering, that certain registration statement specified in the Securities Purchase Agreement by its registration number and the date on which it first became effective, together with any registration statement related to such Registered Direct Offering and filed pursuant to Rule 462(b) under the Securities Act, and including (a) all documents filed as a part thereof or incorporated or deemed to be incorporated by reference therein and (b) any information in the corresponding Base Prospectus or any prospectus supplement filed with the Commission to the extent such information is deemed pursuant to Rule 430A, Rule 430B or Rule 430C under the Securities Act to be a part thereof at the Effective Time, and each amendment or supplement thereto. If the Registered Direct Registration Statement was filed on Form S-3 or F-3, any reference in the Transaction Documents to the terms “amend”, “amendment” or “supplement” with respect to the Registered Direct Registration Statement shall be deemed to refer to and include any document filed under the Exchange Act after the Effective Time which is incorporated therein by reference.

“Registrable Securities” means:

- (a) all Shares and Underlying Shares (without regard to any limitations on beneficial ownership or issuance contained in the Transaction Documents) and any and all other shares of Common Stock directly or indirectly issued or issuable to each Purchaser or its transferee or designee:
 - (i) upon conversion or exchange of any Notes and/or Preferred Shares and/or upon exercise of the Warrants;
 - (ii) as interest or dividends on any Notes or Preferred Shares (assuming all permissible interest, principal and dividend payments are made in shares of Common Stock and such Notes or Preferred Shares are held until maturity or the term thereof);

- (iii) as repayment of or upon redemption or repurchase of any Notes or Preferred Shares;
 - (iv) in connection with any anti-dilution provisions in the Securities Purchase Agreement, the Securities, the Certificate of Designation or other Transaction Documents;
 - (v) as or for Liquidated Damages under the Transaction Documents; and
 - (vi) upon any other distribution with respect to, any exchange for or any replacement of such Notes, Preferred Shares or Warrants or upon any conversion, exercise or exchange of any such securities issued in connection with any such distribution, exchange or replacement;
- (b) any and all securities issued or issuable upon any stock split, stock dividend, distribution, recapitalization or similar event with respect to the foregoing or in connection with a merger, consolidation or other reorganization or otherwise with respect to the foregoing;
 - (c) any and all other securities issued or issuable in payment of interest on or as a dividend or other distribution with respect to, in exchange for, in replacement or redemption of, or in reduction of the principal amount or liquidation value of, any of the securities referred to in the preceding clauses; and
 - (d) any and all shares of Common Stock issued or issuable upon exercise of any warrants issued to the Placement Agent (or its designees or transferees) as part of the Placement Fee, *provided that* (i) such shares shall not be included in the definition of Registrable Securities unless the Placement Agent requests in writing to the Company that such shares be so included, and (ii) notwithstanding any such inclusion in such definition, the Placement Agent shall not have any rights, and such warrants and shares shall not contain any rights, under the Transaction Documents to the extent such rights would or may cause such warrants, shares or rights to constitute unfair or unreasonable compensation, individually or in the aggregate, to the Placement Agent under Rule 2710.
- “**Registration**” [see “Register”]
- “**Registration Compliance**” means that, at such time as or for such period that Registration Compliance is being determined, each of the following conditions (“**Equity Conditions**”) is satisfied at such time or for the entire such period:
- (a) the number of authorized but unissued shares of Common Stock is sufficient for the issuance of all the then Underlying Shares, and the number of such shares required to be reserved for issuance as Underlying Shares pursuant to the terms of the Transaction Documents has been so reserved;
 - (b) all the Underlying Shares either (i) are registered for resale by the Purchasers pursuant to an effective Registration Statement in accordance with the terms of the Transaction Documents which Registration Statement is not subject to any suspension or stop order, and the Prospectus thereunder is current and available for use by the Purchasers to sell such shares and not subject to any blackout or similar circumstance, or (ii) may be sold pursuant to Rule 144 without any volume restrictions, manner of sale requirements or notice requirements and without the need for registration under any applicable state securities laws;
 - (c) the Company has no knowledge of any fact that would cause (i) the Registration Statement(s) required pursuant to the Transaction Documents not to be effective and available for the resale of all remaining Registrable Securities in accordance with the terms of the Transaction Documents or (ii) any Underlying Shares issuable upon conversion or exchange of any Notes or Preferred Shares or upon exercise of any Warrants not to be eligible for sale pursuant to Rule 144 without any volume restrictions, manner of sale requirements or notice requirements and without the need for registration under any applicable state securities laws;
 - (d) the Common Stock is listed or quoted and is not suspended from trading on an Eligible Market, all the Underlying Shares are approved for listing on such Eligible Market upon issuance, and no delisting or suspension by such Eligible Market is effective, pending or threatened in writing to occur within 90 days (and trading generally has not been suspended on such Eligible Market);
 - (e) the issuance of all Underlying Shares is permitted in full without violating the rules or regulations of the Eligible Market or other market or exchange on which such the Common Stock is listed or quoted;
 - (f) no public announcement of a pending, proposed or intended Fundamental Transaction has occurred that has not been consummated;
 - (g) the Company has previously delivered all shares of Common Stock which were required to be issued upon conversion or exchange of the Notes or Preferred Shares or upon exercise of the Warrants on a timely basis;
 - (h) no Bankruptcy Event has occurred;
 - (i) the Company has otherwise complied with its material obligations under all the Transaction Documents in all material respects and has not made any material misrepresentations under any of the Transaction Documents, except for those breaches or defaults which

are capable of being cured and have been so cured within a reasonable time following notice of such breach or default, and no Event of Default, as may be defined in any Transaction Document, shall have occurred and be continuing under such Transaction Document; and

- (j) each other condition, if any, specified in the Securities Purchase Agreement as an additional Equity Condition for Registration Compliance has been satisfied;

provided that the Equity Conditions for Registration Compliance specified in clauses (a) through (i) above shall be modified or qualified, or removed entirely as an Equity Condition, to the extent so specified in the Securities Purchase Agreement or the Notes, Certificate of Designation or Warrants.

“**Registration Default**” occurs if or when:

- (a) any Registration Statement is not filed on or prior to the Filing Deadline (with such Filing Deadline constituting a “**Registration Default Date**” under this clause) (if the Company files such Registration Statement on or prior to the Filing Deadline but without affording the Purchaser(s) the opportunity to review and comment thereon as required by Section 6.2(c) of PST Document GTC, a Registration Default shall be deemed to have occurred as of the Filing Deadline and be continuing under this clause (a) until the fifth Trading Day following the date on which such Registration Statement is so furnished by the Company for review and comment);
- (b) prior to the Effective Date of any Registration Statement, the Company fails to file a pre-effective amendment and otherwise respond in writing to any comments made by the Commission in respect of such Registration Statement within ten (10) Business Days after the receipt of such comments (with the day after such 10th Business Day constituting a “**Registration Default Date**” under this clause);
- (c) a Registration Statement filed or required to be filed under the Transaction Documents is not declared effective by the Commission on or prior to the Effectiveness Deadline (with such Effectiveness Deadline constituting a “**Registration Default Date**” under this clause);
- (d) the Company fails to (i) notify the holders of Registrable Securities of the Effective Date of a Registration Statement or (ii) file a final Prospectus for such Registration Statement with the Commission in accordance with Rule 424 as may be required by such Rule or as may be reasonably requested by the Requisite Holders, each within one (1) Trading Day after such Effective Date (with the day after such one Trading Day constituting a “**Registration Default Date**” under this clause); or

- (e) at any time during the Registration Period any holder of Registrable Securities is unable to sell any Registrable Securities under an effective Registration Statement due to an Effectiveness Suspension, other than a Permitted Blackout not exceeding the Maximum Permitted Blackout Period (with the day after the last day of such the Maximum Permitted Blackout Period constituting a “**Registration Default Date**” under this clause).

“**Registration Default Date**” means each of the dates indicated as a Registration Default Date in the definition of Registration Default above.

“**Registration Expenses**” means any and all fees and expenses incident to the Company’s performance of or compliance with its registration obligations under Article VI of PST Document GTC, whether or not any Registrable Securities are actually sold pursuant to a Registration Statement, including without limitation (a) all registration and filing fees (including without limitation fees and expenses with respect to filings with the Commission, any Trading Market (including without limitation all listing fees for listing thereon), any state or other jurisdiction under applicable state securities or “blue sky” or foreign laws, and FINRA under Rule 2710 (whether any such filing is made by the Company or the applicable broker-dealer, and provided that such broker-dealer is receiving no more than a customary brokerage commission in connection with such sale)), (b) printing expenses (including without limitation expenses of printing certificates for Registrable Securities and of printing or photocopying Prospectuses requested by any Purchaser or holder of Registrable Securities), (c) messenger, telephone and delivery expenses, (d) fees and disbursements of counsel for the Company (including without limitation in connection with complying with “blue sky” registrations, qualifications or exemptions with respect to the Registrable Securities) and reasonable fees and disbursements of Purchaser Registration Counsel, if any, (e) Securities Act liability insurance, if the Company so desires such insurance, (f) fees and expenses of all other Persons retained by the Company in connection with the registration(s) contemplated by the Transaction Documents, including without limitation the Company’s independent public accountants (including, in the case of an underwritten offering, the expenses and costs associated with the delivery by such accountants or Company legal counsel of any Comfort Letter(s) or Public Offering Legal Opinion(s)), and (g) transfer taxes and fees of transfers agent(s) and registrar(s).

“**Registration Period**” means the period commencing on the Effective Date and ending on the earlier of (a) the date when all Registrable Securities covered by such Registration Statement have been sold publicly, (b) the date on which all Registrable Securities are eligible for sale without registration or restriction pursuant to Rule 144 (or successor thereto) but no less than one year following the Closing Date, or (c) such other date as may be provided in the Securities Purchase Agreement as the end of the Registration Period.

“Registration Statement” means each registration statement filed or to be filed by the Company under the Securities Act pursuant to the Transaction Documents covering the sale or resale of the Registrable Securities, including any additional registration statements filed to cover additional Registrable Securities which come into existence after the initial registration statement or which otherwise cannot be filed on such initial registration statement, and including (in each case) the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre-effective and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in such registration statement or Prospectus.

“Regular Trading Session” means, with respect to any Trading Market on any Trading Day, the period commencing at 9:30:00 a.m. Eastern (New York) time (or such other time as the Principal Market publicly announces is the official open of trading) and ending at 4:00:00 p.m. Eastern (New York) time (or such other time as the Principal Market publicly announces is the official close of trading).

“Regulation 13D-G” means Regulation 13D-G, as promulgated by the Commission under the Exchange Act, as such regulation may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such regulation.

“Regulation D” means Regulation D, as promulgated by the Commission under the Securities Act, as such regulation may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such regulation.

“Related Party” means (a) any individual who is currently, or at any time during the past two years was, an officer, director or key employee of the Company or any of its Subsidiaries, (b) any individual related by blood, marriage or adoption to any of the foregoing individuals, and (c) any entity in which any of the foregoing individuals owns a significant beneficial interest (other than ownership of less than 1% of the outstanding common stock of a publicly traded corporation).

“Requisite Holders” means a Majority-in-Interest of the holders of the Securities or Registrable Securities in question, or such other #-in-Interest of such holders as may otherwise be set forth in the Securities Purchase Agreement as the Requisite Holders (provided that if a percentage only for Requisite Purchasers is set forth in the Securities Purchase Agreement, such percentage shall also apply to Requisite Holders).

“Requisite Purchasers” means a Majority-in-Interest of the Purchasers or such other #-in-Interest of the Purchasers as may otherwise be set forth in the Securities Purchase Agreement as the Requisite Purchasers (provided that if a percentage only for Requisite Holders is set forth in the

Securities Purchase Agreement, such percentage shall also apply to Requisite Purchasers).

“Reserve Default Date” shall have the meaning set forth in Section 5.5 of PST Document GTC or Section 5.1 of PST Document GTC-RD.

“Rule 13d-3” means Rule 13d-3, together with Rules 13d-4 and 13d-5, each as promulgated by the Commission under the Exchange Act, as such rules may be amended from time to time, or any similar rules or regulations hereafter adopted by the Commission having substantially the same effect as such rules.

“Rule 144”, “Rule 144A”, “Rule 172”, “Rule 405” “Rule 415”, “Rule 424” and “Rule 461” mean Rule 144, Rule 144A, Rule 172, Rule 405, Rule 415, Rule 424 and Rule 461, respectively, each as promulgated by the Commission under the Securities Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

“Rule 2710” mean Rule 2710, Corporate Financing Rule — Underwriting Terms and Arrangements, of the Business Conduct Rules of the NASD Manual or FINRA, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by FINRA having substantially the same effect as such Rule.

“Sarbanes-Oxley” means the United State Sarbanes-Oxley Act of 2002 and any related rules and regulations promulgated by the Commission thereunder, all as the same shall be in effect from time to time.

“SEC” [see “Commission”]

“Securities” means any and all Shares, Notes, Preferred Shares and/or Warrants purchased pursuant to the Securities Purchase Agreement.

“Securities Act” means the United States Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations promulgated by the Commission thereunder, all as the same shall be in effect from time to time.

“Securities Purchase Agreement” means that certain securities purchase agreement, subscription agreement or similar agreement relating to the purchase and sale of securities entered into between the Company, on the one hand, and each of the Purchasers, on the other hand, which Securities Purchase Agreement incorporates by reference, in whole or in part, the applicable version of PST Document GTC set forth therein (with modifications to such PST Document GTC to the extent set forth therein).

“Securities Purchase Agreement Termination Date” means the fifth (5th) Business Day following the date of full execution of the Securities Purchase Agreement by the Company, on the

one hand, and Purchasers for Subscription Amounts aggregating to an amount equal to or greater than the Minimum Aggregate Investment Amount (if any), on the other hand, or such other date as may be designated in the Securities Purchase Agreement as the Securities Purchase Agreement Termination Date.

“**Security Agreements**” means any and all agreements, if any, including without limitation any security agreements, pledge agreements, hypothecation agreements, collateral assignments, mortgages, deeds of trust, control agreements and similar such agreements, executed and delivered (or to be executed and delivered) by the Company, any of its Subsidiaries and/or any third party in favor of the Purchaser(s) pursuant to the Transaction Documents which secures the Company’s and its Subsidiaries’ obligations under the Transaction Documents and/or any of the Securities.

“**Security Documents**” means any and all Security Agreements and other documents executed, delivered and/or filed (or to be executed, delivered and/or filed) by the Company, any of its Subsidiaries, any third party and/or the Purchasers as permitted or required under any Security Agreements.

“**SEDAR**” means the System for Electronic Document Analysis and Retrieval operated by the Canadian Securities Administrators, or any successor system adopted by the Canadian Securities Administrators (or any successor thereto) for the same or similar purpose.

“**Selling Expenses**” means all commissions and fees of selling brokers, dealer managers, underwriters or similar securities industry professionals, underwriting discounts, income taxes applicable to the sale of the Registrable Securities, and attorney fees and disbursements of any Purchaser or holder except to the extent included in Registration Expenses under the Transaction Documents.

“**Selling Stockholder Questionnaire**” means a questionnaire, if any, furnished by the Company to each Purchaser and/or holder of Registrable Securities soliciting information from such Purchaser and/or holder in connection with the preparation of a Registration Statement and/or the offer and sale of the Securities in a Registered Direct Offering or PIPE Transaction, which questionnaire in form and substance shall be reasonably acceptable to the Purchasers and/or holders and/or substantially as set forth as an exhibit to the Securities Purchase Agreement.

“**Shares**” means any and all shares of Common Stock purchased or contemplated to be purchased pursuant to the Securities Purchase Agreement.

“**Share Certificates**” shall have the meaning set forth in Section 2.3(a)(viii)(A)(1) of PST Document GTC or Section 2.3(a)(viii)(A)(2) of PST Document GTC-RD.

“**Shell Company**” means an entity that has (a) no or nominal operations, *and* (b) either (i) no or nominal assets, (ii) assets consisting solely of cash and cash equivalents, or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets.

“**Short Sale**” means any sale of shares of Common Stock which the seller does not own or any sale of shares of Common Stock which is consummated by the delivery of shares of Common Stock borrowed by, or for the account of, such seller, as determined in accordance with Rule 200 of Regulation SHO under the Exchange Act, *provided* that solely locating or reserving shares of Common Stock available to be borrowed shall not constitute a Short Sale unless otherwise set forth by the Commission in its rules, regulations or interpretations.

“**Significant Subsidiary**” means a “significant subsidiary” of the Company as defined in Rule 1-02(w) of Regulation S-X promulgated under the Exchange Act, *provided* that if two or more Affiliates of the Company, none of which constitute a “significant subsidiary” as so defined, would constitute a “significant subsidiary” as so defined when considered in the aggregate as a single subsidiary, then each of such Affiliates shall also constitute a “Significant Subsidiary”.

“**Statutory Prospectus**” means the Base Prospectus and any Preliminary Prospectus, including any document incorporated by reference therein and any prospectus supplement deemed to be a part thereof.

“**Stockholder Approval**” means a vote of or written consent by the requisite number of stockholders of the Company under applicable corporate law, in accordance with the Company’s Certificate of Incorporation and By-Laws, and in accordance with the applicable rules and regulations of the Principal Market and the Commission, which either, as applicable (a) approves the Transactions, including the issuance of any and all Shares and Underlying Shares equal to and in excess of twenty percent (20%) of the Common Stock and voting power of the Company outstanding before the Closing Date in satisfaction of the 20% Rule, (b) amends the Company’s Certificate of Incorporation to increase the number of authorized shares of Common Stock, or (c) other applicable corporate action.

“**Stockholder Approval Triggering Date**” shall have the meaning set forth in Section 4.15(b) of PST Document GTC.

“**Stockholder Meeting**” means a special meeting of stockholders (which may also be at the annual meeting of stockholders) at which specific action(s) will be taken or specific approval shall be sought.

“**Stockholder Meeting Default Date**” shall have the meaning set forth in Section 4.15(c) of PST Document GTC.

“**Subscription Amount**” or “**Purchase Price**” means, as to each Purchaser, the aggregate dollar amount to be paid by such Purchaser for the Securities under the Securities Purchase

Agreement, as specified on such Purchaser's signature page to the Securities Purchase Agreement.

“**Subsequent Issuance**” means that:

- (a) the Company or any of its Subsidiaries issues, sells or grants any shares of Common Stock (including without limitation any securities held by or for the account of the Company);
- (b) the Company or any of its Subsidiaries issues, sells or grants any Options or Convertible Securities (including without limitation any securities held by or for the account of the Company), in which case the maximum number of shares of Common Stock (“**Maximum Shares Deemed Outstanding**”) potentially issuable upon full conversion, exercise or exchange thereof (or upon conversion, exercise or exchange of any Convertible Securities or Options issuable upon full conversion, exercise or exchange thereof) shall be deemed to be outstanding and to have been issued and sold by the Company at the time of such granting, issuance or sale of such Options or Convertible Securities, regardless of whether such Options or Convertible Securities are then exercisable, convertible or exchangeable and without regard to any limitations on beneficial ownership contained therein;
- (c) the Company or any of its Subsidiaries amends the terms of any Options or Convertible Securities (whether issued before or after execution of the Securities Purchase Agreement) to directly or indirectly effectively (i) increase the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (ii) decrease the consideration payable to the Company (or the applicable Exercise Price, Conversion Price or Exchange Price) upon such exercise, conversion or exchange (in each case including without limitation any such increase or decrease under any Convertible Securities or Options issuable upon conversion, exercise or exchange thereof); or
- (d) pursuant to the provisions contained in any Options or Convertible Securities issued (or deemed issued) after execution of the Securities Purchase Agreement, either (i) the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof is directly or indirectly effectively increased or (ii) the consideration payable to the Company upon such exercise, conversion or exchange (or the applicable Exercise Price, Conversion Price or Exchange Price) is directly or indirectly effectively decreased (in each case including without limitation any such increase or decrease under any Convertible Securities or Options issuable upon conversion, exercise or exchange thereof), which increase and/or decrease was not fully reflected in any Weighted-Average Anti-Dilution Adjustment, Full Ratchet Anti-Dilution Adjustment or Below-Market Anti-Dilution Adjustment at the time of original issuance of such

Option or Convertible Security;

provided that “Subsequent Issuance” shall not include stock dividends, stock splits or other *pro rata* distributions to the Company’s stockholders if appropriate adjustment of the applicable Conversion Price, Exercise Price and/or Exchange Price is provided therefore under the terms of the applicable Notes, Preferred Shares or Warrants subject to adjustment as a result of such Subsequent Issuance. The Subsequent Issuance shall be deemed to occur upon the date of (1) such issuance, sale or grant of such Common Stock, Options or Convertible Securities in the case of clauses (a) or (b) above, (2) such amendment in the case of clause (c) above, and (3) such increase or decrease in the case of clause (d) above.

“**Subsequent Issuance Price**” shall mean, for purposes of determination of any Dilutive Issuance or Weighted-Average Anti-Dilution Adjustment, Full Ratchet Anti-Dilution Adjustment or Below-Market Anti-Dilution Adjustment, the amount actually paid or payable for one share of Common Stock upon the issuance or deemed issuance thereof by the Company. Such amount shall be determined in accordance with the following provisions:

- (a) *Issuance of Options or Convertible Securities.* In the event of any Subsequent Issuance of Options or Convertible Securities, the Maximum Shares Deemed Outstanding (as defined in the definition of “Subsequent Issuance” above) shall be deemed to have been sold for a price per share equal to the lowest price for which one share of Common Stock is issuable upon the conversion, exercise or exchange thereof (or upon conversion, exercise or exchange of any Convertible Securities or Options issuable upon conversion, exercise or exchange of any such Options or Convertible Securities), regardless of whether such Options or Convertible Securities are then exercisable, convertible or exchangeable and without regard to any limitations on beneficial ownership contained therein. Such “lowest price” shall be determined by dividing (i) the sum of the total minimum amount of aggregate consideration (if any) effectively received or receivable by the Company for and upon (A) the granting, issuance or sale of such Options or Convertible Securities, (B) the full conversion, exercise or exchange of such Options or Convertible Securities, and (C) if applicable, the full conversion, exercise or exchange of any other Options or Convertible Securities issuable upon conversion, exercise or exchange of such Options or Convertible Securities, by (ii) the Maximum Shares Deemed Outstanding with respect to such Options and Convertible Securities.
- (b) *Variable Rate or MFN Transaction.* Without limiting the foregoing, if any Subsequent Issuance of Options or Convertible Securities constitutes a Variable Rate Transaction or an MFN Transaction, then for purposes of determining the “lowest price” in the preceding paragraph (a), the Conversion Price, Exercise Price or Exchange Price (as the case may be) under such Options or

Convertible Securities shall be (i) on the date of issuance thereof, the effective Conversion Price, Exercise Price or Exchange Price under such Options or Convertible Securities in effect on such date (regardless of whether such Options or Convertible Securities are then exercisable, convertible or exchangeable and without regard to any limitations on beneficial ownership contained therein), and (ii) on each and every date thereafter, the Conversion Price, Exercise Price or Exchange Price under such Options or Convertible Securities in effect on such date (regardless of whether such Options or Convertible Securities are then exercisable, convertible or exchangeable and without regard to any limitations on beneficial ownership contained therein) if such Conversion Price, Exercise Price or Exchange Price is less than every preceding Conversion Price, Exercise Price or Exchange Price, in which case the Subsequent Issuance Price shall be adjusted downward accordingly on each such date and each such adjustment shall constitute a Subsequent Issuance under clause (d) of the definition of “Subsequent Issuance” above.

- (c) *Change in Option Price or Rate of Conversion/Exchange.* In the event of any Subsequent Issuance pursuant to an amendment or automatic revision to the terms of any Option or Convertible Security described in clauses (c) or (d) of the definition of “Subsequent Issuance” (including without limitation any automatic adjustment or change to the Conversion Price, Exercise Price or Exchange Price thereunder), then the Subsequent Issuance Price shall be determined in accordance with the provisions of this definition as of the date of such effective Subsequent Issuance as if such Convertible Security or Option were originally issued for such amended or revised Subsequent Issuance Price.
- (d) *Calculation of Consideration Received.* In case any Option is issued in connection with the issuance or sale of other securities of the Company, together comprising one integrated transaction in which no specific consideration is allocated to such Options by the parties thereto, the Options will be deemed to have been issued for a consideration of \$0.01 in the aggregate. If any shares of Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount received by the Company therefor. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company shall be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company will be the closing sale price of one share of such security as of the date of receipt. If any shares of Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in

which the Company is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such shares of Common Stock, Options or Convertible Securities, as the case may be. Calculations of fair value pursuant to this paragraph shall be determined in good faith using standard commercial valuation methods appropriate for valuing such assets by the Company’s independent certified public accounting firm that regularly examines the financial statements of the Company, subject to dispute resolution as set forth in the applicable Notes, Certificate of Designation or Warrants or other Transaction Document. In the event a fee is paid by the Company in connection with any issuance of any shares of Common Stock, Options or Convertible Securities directly or indirectly to the recipient of such Common Stock, Options or Convertible Securities or its affiliates, any such fee shall be deducted from the issuance price therefor *pro rata* to all shares of Common Stock sold (or deemed sold) in such transaction in determining the Subsequent Issuance Price.

- (e) *Other Provisions.* For purposes of any Subsequent Issuance, any shares of Common Stock issued or issuable upon redemption or repayment of, or otherwise with respect to, the terms of any Convertible Security shall be deemed to be issued and sold by the Company at the price or rate at which such shares are issued or issuable thereunder. If the number of shares of Common Stock to be issued to the holder of any Convertible Security upon conversion thereof is based on a rate or ratio of exchange instead of a dollar amount per share of Common Stock, such rate or ratio shall be utilized for appropriately and equitably determining the effective Conversion Price or Exchange Price expressed as a dollar amount per share of Common Stock for purposes of determining the Subsequent Issuance Price. Following any Weighted-Average Anti-Dilution Adjustment, Full Ratchet Anti-Dilution Adjustment or Below-Market Anti-Dilution Adjustment upon the issuance of Options or Convertible Securities, no further adjustment of the applicable Conversion Price, Exercise Price or Exchange Price shall be made upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Options or Convertible Securities (or upon the actual issuance of new Convertible Securities or Options issuable upon conversion, exercise or exchange of such Convertible Securities or Options or the actual issuance of shares of Common Stock underlying such new Convertible Securities or Options), provided adjustment for such issuance was effected upon the original issuance of such Options or Convertible Securities.

“**Subsidiary**” means a “subsidiary” of the Company as defined in Rule 1-02(x) of Regulation S-X promulgated under the Exchange Act.

“**Suspension Notice**” shall have the meaning set forth in Section 6.1(d)(ii) of PST Document GTC.

“**T+3**” means three (3) Trading Days following the applicable conversion, exchange or exercise date or other date which requires delivery of securities from the Company, as the case may be, and “**T+#**” means such other number of Trading Days, as indicated in lieu of “**#**”, following the applicable conversion, exchange or exercise date or other date which requires delivery of securities from the Company, as the case may be.

“**Tax**” means any federal, state, local, county or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.

“**Tax Return**” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto and including any amendment thereof.

“**Trading Day**” means any day on which the Principal Market is open for general trading, or if the Common Stock is quoted in the over-the-counter market on the Pink Sheets, a day on which there is trading generally on the Pink Sheets, *provided* that Trading Day shall not include any day on which trading is scheduled on such exchange or market for less than 3.5 hours, and *provided further* that in the event that the Common Stock is not listed or quoted on a Trading Market or on the Pink Sheets, then Trading Day shall mean a Business Day.

“**Trading Market**” means any national securities exchange, market or trading or quotation facility (including without limitation the Bulletin Board).

“**Transaction Documents**” means the Securities Purchase Agreement, any and all Notes and Warrants directly or indirectly issued pursuant thereto, any and all Certificates of Designation designating the rights, preferences and privileges of any Preferred Shares directly or indirectly issued pursuant thereto, any and all Security Documents, Guarantees and Lock-Up Agreements, and any and all other agreements or documents executed and/or delivered pursuant thereto or in connection with the Transactions.

“**Transactions**” means collectively all transactions contemplated by the Securities Purchase Agreement and other Transaction Documents.

“**Transfer Agent**” means, as of the time in question, the Company’s transfer agent for issuing and transferring shares of Common Stock, which transfer agent may be identified in the Securities Purchase Agreement.

“**Transfer Agent Instructions**” shall have the meaning set forth in Section 2.3(a)(viii)(A)(1) of PST Document GTC.

“**Underlying Shares**” means any and all Conversion Shares and Warrant Shares.

“**United States**” or “**U.S.**” means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

“**U.S. Person**” shall have the meaning set forth in Rule 902(k) of Regulation S promulgated under the Securities Act.

“**Variable Rate Transaction**” shall mean a transaction in which the Company or any of its Subsidiaries issues or sells, or agrees to issue or sell (a) any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive additional shares of, Common Stock either (i) at a conversion, exercise or exchange price or other rate that is based upon and/or varies with, or is subject to adjustment based (directly or indirectly) on, the trading prices of or quotations for the Common Stock at any time after the initial issuance of such debt or equity securities, (ii) with a fixed conversion, exercise or exchange price or other rate that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock (but excluding standard stock split anti-dilution provisions), or (iii) under a warrant exercisable for a number of shares based upon and/or varying with the trading prices of or quotations for the Common Stock at any time after the initial issuance of such warrant, or (b) any securities of the Company pursuant to an agreement whereby the Company may sell securities of the Company at a future determined price, including without limitation an “equity line” structure which provides for the sale, from time to time, of securities of the Company which are registered for sale or resale pursuant to the Securities Act.

“**VWAP**” means on any particular Trading Day or for any particular period (a) the volume-weighted average sale price per share of Common Stock on the Principal Market on such Trading Day during the Regular Trading Session or for such period, respectively, as reported by Bloomberg through its “Volume at Price” function, or (b) if no shares of Common Stock are traded on the Principal Market during any such Regular Trading Session, then the volume-weighted average sale price per share of Common Stock on the Principal Market during the Regular Trading Session, as reported by Bloomberg through its “Volume at Price” function, on the nearest preceding Trading Day on which the Common Stock was traded (but not more than ten Trading Days prior), or (c) if the Common Stock is not then listed or quoted on any Trading Market and prices for the Common Stock are then reported in the Pink Sheets, then the average of the highest closing bid price and the lowest closing ask price of any of the market makers for the Common Stock as reported in the Pink Sheets, or (d) if none of the foregoing applies, then the Appraised Share Value. All such determinations shall be appropriately

and equitably adjusted for any stock dividend, stock split, stock combination or other similar transaction occurring during any pricing period for which VWAPs are included in the calculation.

“**Warrant Coverage Percentage**” shall mean each percentage, if any, set forth as such in the Securities Purchase Agreement, with respect to one of more types of Warrants being issued pursuant to, and as designated or set forth in, the Securities Purchase Agreement.

“**Warrants**” mean any and all warrants, options or similar subscription or purchase rights purchased or contemplated to be purchased pursuant to the Securities Purchase Agreement entitling the Purchasers to purchase (a) shares of Common Stock, which Warrants are in the form set forth as an exhibit to the Securities Purchase Agreement (including without limitation PST Document WAR to the extent incorporated therein by reference), or (b) Preferred Shares, Notes and/or Warrants which are directly or indirectly convertible, exercisable or exchangeable for shares of Common Stock. The term “Warrants” shall include (i) any other warrants, options or similar subscription or purchase rights of the Company issued in exchange for or substitution or replacement of any Warrants, and (ii) any Warrants as may be amended, restated or modified and in effect from time to time.

“**Warrant Shares**” means the shares of Common Stock issued or issuable upon exercise or redemption of, in exchange for and/or otherwise pursuant to, the Warrants.

“**Weighted-Average Anti-Dilution Adjustment**” means that if and whenever during the Anti-Dilution Adjustment Period a Dilutive Issuance (other than an Exempt Issuance) occurs, then the Conversion Price, Exercise Price or Exchange Price, as the case may be, then in effect for the applicable Notes, Preferred Shares or Warrants subject to adjustment as a result of such Dilutive Issuance shall be automatically and immediately reduced to equal an amount equal to such Conversion Price, Exercise Price or Exchange Price, as the case may be, multiplied by a fraction, the numerator of which shall be the sum of (a) the number of shares of Common Stock actually outstanding immediately prior to such Dilutive Issuance, plus (b) the number of shares of Common Stock which the aggregate consideration received or receivable (or deemed received or receivable) by the Company in connection with such Dilutive Issuance (based on the Subsequent Issuance Price) would purchase at such Conversion Price, Exercise Price or Exchange Price, as the case may be, and the denominator of which shall be the sum of (1) the number of shares of Common Stock of the Company actually outstanding immediately after such Dilutive Issuance plus (2) the Maximum Shares Deemed Outstanding as a result of such Dilutive Issuance. No adjustment shall be made pursuant to a Weighted-Average Anti-Dilution Adjustment provision to the extent that such adjustment would result in an increase of the applicable Conversion Price, Exercise Price or Exchange Price then in effect or a decrease in the number of applicable Underlying Shares. Simultaneously with any reduction of the Exercise

Price under any Warrant pursuant to a Weighted-Average Anti-Dilution Adjustment, the number of Warrant Shares that may be purchased upon exercise of such Warrant shall be inversely proportionately increased so that after such adjustment the aggregate Exercise Price payable under the Warrant for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

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