

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D)
OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): May 16, 2022 (May 15, 2022)

CHARDAN NEXTECH ACQUISITION 2 CORP.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-40730
(Commission
File Number)

85-1873463
(I.R.S. Employer
Identification No.)

17 State Street, 21st Floor
New York, NY
(Address of principal executive offices)

10004
(Zip Code)

(646) 465-9000
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

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

- ☒ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Units, consisting of one share of Common Stock, \$0.0001 par value per share, and three-quarters of one Redeemable Warrant	CNTQU	NASDAQ Capital Market
Common Stock, par value \$0.0001 per share, included as part of the Units	CNTQ	NASDAQ Capital Market
Redeemable Warrants included as part of the Units, each exercisable for one share of Common Stock for \$11.50 per share	CNTQW	NASDAQ Capital Market

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

Emerging growth company ☒

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

Item 1.01 Entry into a Material Definitive Agreement.

Merger Agreement

Chardan NexTech Acquisition 2 Corp., a Delaware corporation, is a blank check company formed for the purpose of entering into a merger, share exchange, asset acquisition, stock purchase, recapitalization, reorganization or other similar business combination with one or more businesses or entities (“Chardan”). On May 15, 2022, Chardan entered into an Agreement and Plan of Merger (the “Merger Agreement”) with Dragonfly Energy Corp., a Nevada corporation (“Dragonfly”), and Bronco Merger Sub, Inc., a Nevada corporation and a direct, wholly owned subsidiary of Chardan (“Merger Sub”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the agreements related thereto.

The Merger

The Merger Agreement provides that, among other things and upon the terms and subject to the conditions thereof, the following transactions will occur:

(i) at the closing of the transactions contemplated by the Merger Agreement (the “Closing”), upon the terms and subject to the conditions of the Merger Agreement, in accordance with applicable provisions of the Nevada Revised Statutes (“NRS”) and the Delaware General Corporation Law (“DGCL”), Merger Sub will merge with and into Dragonfly, the separate corporate existence of Merger Sub will cease and Dragonfly will be the surviving corporation and a wholly owned subsidiary of Chardan (the “Merger”);

(ii) at the Closing, Chardan will be renamed “Dragonfly Energy Holdings Corp.” and is referred to herein as “New Dragonfly”;

(iii) as a result of the Merger, among other things, all shares of capital stock of Dragonfly outstanding as of immediately prior to the effective time of the Merger will be canceled in exchange for the right to receive shares of common stock, par value \$0.0001 per share, of New Dragonfly (“New Dragonfly Common Stock”);

(iv) as a result of the Merger, each Dragonfly option outstanding as of immediately prior to the effective time of the Merger will be converted into the right to receive a New Dragonfly option, subject to certain exceptions and conditions as set forth in the Merger Agreement;

(v) at the Closing, 40,000,000 shares of New Dragonfly Common Stock shall be issuable to existing holders of Dragonfly capital stock or pursuant to the aforementioned converted options; and

(vi) following the Closing, existing holders of Dragonfly capital stock will have the right to receive up to an aggregate of 40,000,000 additional shares of New Dragonfly Common Stock in three tranches as follows:

(A) New Dragonfly shall issue 15,000,000 shares of New Dragonfly common stock in the aggregate, if, as disclosed in the Annual Report on Form 10-K for the fiscal year ending December 31, 2023 for New Dragonfly filed with the United States Securities and Exchange Commission (the “SEC”), New Dragonfly's (x) total audited revenue for the year ended December 31, 2023 is equal to or greater than \$250,000,000, and (y) audited operating income for the year ended December 31, 2023 is equal to or greater than \$35,000,000;

(B) New Dragonfly shall issue an additional 12,500,000 shares of New Dragonfly common stock, in the aggregate (the “Second Earnout”), if at any time during the period beginning on the Closing Date and ending on December 31, 2026, the VWAP of the New Dragonfly common stock over any 20 Trading Days (which may or may not be consecutive) within any 30 consecutive Trading Day period is greater than or equal to \$22.50 per share of New Dragonfly common stock (the “Second Milestone”); and

(C) New Dragonfly shall issue an additional 12,500,000 shares of New Dragonfly common stock, in the aggregate (the “Third Earnout”), if at any time during the period beginning on the Closing Date and ending on December 31, 2028, the VWAP of the New Dragonfly common stock over any 20 Trading Days (which may or may not be consecutive) within any 30 consecutive Trading Day period is greater than or equal to \$32.50 per share of New Dragonfly common stock (the “Third Milestone”).

Upon the occurrence of the Third Milestone, if the Second Milestone has yet to occur, the Second Milestone will be deemed to have occurred simultaneously with the Third Milestone and the holders of Dragonfly capital stock shall be entitled to receive the Second Earnout as if the Second Milestone had occurred on or prior to December 31, 2026, provided, however, that such date shall only occur once, if at all, and in no event shall such holders be collectively entitled to receive more than an aggregate of 40,000,000 additional shares of New Dragonfly Common Stock.

The Board of Directors of Chardan (the “Board”) has unanimously (i) approved and declared advisable the Merger Agreement, the Merger and the other transactions contemplated thereby and (ii) resolved to recommend approval of the Merger Agreement and related matters by the stockholders of Chardan.

Upon the consummation of the business combination, the Board will be composed of seven members, five of whom will be designated by Dragonfly and two of whom will be designated by Chardan.

Conditions to Closing

The Merger Agreement is subject to the satisfaction or waiver of certain customary closing conditions, including, among others, (i) approval of the Merger and related agreements and transactions by the stockholders of Chardan and the stockholders of Dragonfly (the requisite stockholders of Dragonfly approved the Merger by written consent immediately after the execution of the Merger Agreement), (ii) effectiveness of the proxy statement / registration statement on Form S-4 to be filed by Chardan in connection with the Merger, (iii) expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act, (iv) the absence of any law or order enjoining or prohibiting the Merger, (v) that Chardan have at least \$5,000,001 of net tangible assets upon Closing, (vi) receipt of approval for listing on the Nasdaq Capital Market of the shares of New Dragonfly Common Stock to be issued in connection with the Merger and (vii) the bringdown of representations, warranties and covenants of the other party, subject to certain materiality qualifiers.

Other conditions to Chardan’s obligations to consummate the Merger include, among others, that as of the Closing, (i) the Key Employment Agreements (as defined in the Merger Agreement) shall have been amended and be in full force and effect and shall not have been terminated for any reason, (ii) the Company Preferred Conversion shall have occurred or will occur immediately prior to the Effective Time, (iii) if, and only if, the Debt Financing as contemplated by the Debt Commitment Letter (defined below) is (x) consummated prior to or concurrent with the Closing, Dragonfly shall have delivered the Payoff Consent and Payoff Letter (each as defined in the Merger Agreement) to Chardan and all outstanding PIUS Debt (as defined in the Merger Agreement) shall be paid off substantially concurrently with the Closing or (y) not consummated prior to or concurrent with the Closing, the PIUS Debt shall have been refinanced on terms mutually agreeable to Chardan and Dragonfly and (iv) no Material Adverse Effect (as defined in the Merger Agreement) shall have occurred since the date of the Merger Agreement.

Covenants

The Merger Agreement contains additional covenants, including, among others, providing for (i) the parties to conduct their respective businesses in the ordinary course through the Closing, (ii) the parties to not initiate any negotiations or enter into any agreements for certain alternative transactions, (iii) Dragonfly to prepare and deliver to Chardan certain audited and unaudited consolidated financial statements of Dragonfly, (iv) Chardan to prepare and file a proxy statement/registration statement on Form S-4 and take certain other actions to obtain the requisite approval of Chardan stockholders of certain proposals regarding the Merger, (v) the parties to use commercially reasonable efforts to obtain necessary approvals from governmental agencies and (vi) to the extent Closing has not occurred by August 10, 2022, then, pursuant to Chardan's organizational documents, Chardan shall extend the deadline to consummate its initial business combination by an additional three months from the Termination Date (as defined in Chardan's Amended and Restated Certificate of Incorporation as in effect on May 15, 2022) (such date, the “Extended Termination Date”); provided that if the Closing has not occurred by the date that is two business days prior to the Extended Termination Date, Chardan shall extend the deadline to consummate its initial business combination by an additional three months from the Extended Termination Date.

Representations and Warranties

The Merger Agreement contains customary representations and warranties by Chardan, Merger Sub, and Dragonfly. The representations and warranties of the respective parties to the Merger Agreement generally will not survive the Closing.

Termination

The Merger Agreement may be terminated at any time prior to the Closing (i) by mutual written consent of Chardan and Dragonfly, (ii) by Dragonfly, if there has been a Modification in Recommendation (as defined in the Merger Agreement) by the Board, or (iii) by either Chardan or Dragonfly in certain other circumstances set forth in the Merger Agreement, including (a) if certain approvals of the stockholders of Chardan are not obtained as set forth in the Merger Agreement, (b) if any Governmental Authority (as defined in the Merger Agreement) shall have issued or otherwise entered a final, nonappealable order making consummation of the Merger illegal or otherwise preventing or prohibiting consummation of the Merger, (c) in the event of certain uncured breaches by the other party, or (d) if the Closing has not occurred on or before the date that is nine (9) months from the date of the Merger Agreement.

Certain Related Agreements

Registration Rights & Certain Restrictions on Transfer

The Merger Agreement contemplates that, at the Closing, New Dragonfly, Chardan NexTech Investments 2 LLC, a Delaware limited liability company (the “Sponsor”), Chardan’s initial stockholders, certain shareholders of Dragonfly and certain of each of their respective affiliates, as applicable, and the other parties thereto, will enter into an Amended and Restated Registration Rights Agreement (the “Registration Rights Agreement”), pursuant to which New Dragonfly will agree to register for resale, pursuant to Rule 415 under the Securities Act of 1933, as amended (the “Securities Act”), certain shares of New Dragonfly Common Stock and other equity securities of New Dragonfly that are held by the parties thereto from time to time and the parties thereto will be provided with customary demand and piggyback registration rights.

Additionally, the Registration Rights Agreement and the Bylaws of New Dragonfly contain certain restrictions on transfer with respect to (i) shares of New Dragonfly Common Stock and any other equity securities convertible into or exercisable or exchangeable for shares of New Dragonfly Common Stock held by the Dragonfly Stockholders immediately following the Closing (other than any shares purchased in the public market or in the PIPE Investment) and (ii) any Earnout Shares (as defined in the Merger Agreement) issued within six (6) months of the closing date and any shares of New Dragonfly Common Stock issued with respect to or in exchange for such Earnout Shares (the “Lock-up Shares”). Such restrictions begin at the Closing and end on the date that is six months after Closing.

Sponsor Support Agreement

On May 15, 2022, the Sponsor, Chardan and Dragonfly entered into the Sponsor Support Agreement (the “Sponsor Support Agreement”), pursuant to which, among other things, the Sponsor agreed to (i) vote in favor of the Merger Agreement and the transactions contemplated thereby and against any proposal that would reasonably be expected to result in (x) a breach of any of Chardan’s or Merger Sub’s covenants, agreements or obligations under the Merger Agreement or in any Ancillary Agreements or (y) any Closing conditions set forth in Section 9.1 or 9.3 or the Merger Agreement not being satisfied, (ii) retain and not redeem its holdings in Chardan prior to the Closing, (iii) be subject to certain transfer restrictions with respect to its holdings in Chardan and (iv) be bound by certain provisions of the Merger Agreement as if it were an original signatory thereto, in each case, on the terms and subject to the conditions set forth in the Sponsor Support Agreement.

Subscription Agreement

On May 15, 2022, concurrently with the execution of the Merger Agreement, Chardan entered into a subscription agreement (the “Subscription Agreement”) with the Sponsor (the “PIPE Investor”). Pursuant to and subject to the terms and conditions contained in the Subscription Agreement, the PIPE Investor has subscribed to purchase up to 500,000 shares of New Dragonfly Common Stock at a purchase price of \$10.00 per share for an aggregate purchase price of up to \$5,000,000 (the “PIPE Investment”).

As set forth in the Subscription Agreement, the PIPE Investor may purchase shares of Chardan Common Stock in the open market, and reduce (i) its purchase price under the Subscription Agreement by an amount equal to the number of shares that the PIPE Investor purchased in the open market multiplied by the per share redemption amount received by public stockholders who elect to redeem their shares prior to the Closing and (ii) the number of shares it subscribed for by an amount equal to the number of Shares Subscriber purchased in the open market and not redeemed as contemplated above. The PIPE Investor agreed that it will not exercise its right to vote any shares it may purchase in the open market following the date of the Subscription Agreement and prior to the Closing, in connection with any vote to approve the Merger.

The PIPE Investment will be consummated substantially concurrently with the Closing.

The Subscription Agreement will terminate with no further force and effect upon the earliest to occur of: (i) such date and time as the Merger Agreement is terminated in accordance with its terms, (ii) the mutual written agreement of the parties to the Subscription Agreement, (iii) if the conditions to closing set forth in the Subscription Agreement are not satisfied at, or are not capable of being satisfied on or prior to, the Closing and, as a result thereof, the transactions contemplated by the Subscription Agreement will not be or are not consummated at the Closing and (iv) May 15, 2023, if the Closing has not occurred on or before such date.

Debt Commitment Letter

On May 15, 2022, Chardan and Dragonfly entered into a commitment letter (the “Debt Commitment Letter”), with EICF Agent LLC (“EIP”) and CCM Investments 5 LLC, an affiliate of the Sponsor (“CCM 5”, and collectively with EIP, the “Initial Lenders”), pursuant to which the Initial Lenders have agreed to provide Dragonfly with a senior secured term loan facility in an aggregate principal amount of \$75,000,000 (the “Term Loan Facility”) subject to the satisfaction of a number of specified conditions set forth in the Debt Commitment Letter. CCM 5 intends to backstop its commitment under the Debt Commitment Letter by entering into a backstop commitment letter (the “Backstop Commitment Letter”) with certain third party financing sources prior to the Closing Date.

The proceeds of the Term Loan Facility will be used (i) to support the Merger, (ii) to repay all outstanding PIUS Debt and other obligations of Dragonfly, (iii) to pay for fees and expenses in connection with the foregoing, (iv) to provide additional growth capital and (v) for other general/corporate purposes. The Term Loan Facility must be fully drawn on the Closing Date, will mature four years from the Closing Date and will be subject to quarterly amortization of 5% per annum beginning 24 months after the Closing Date. Chardan will be a guarantor under the Term Loan Facility.

As part of the consideration for the Term Loan Facility, New Dragonfly will also issue to the Initial Lenders (but not CCM 5 to the extent it has not backstopped its commitment pursuant to the Backstop Commitment Letter) on the Closing Date: (i) penny warrants (the “Penny Warrants”) exercisable to purchase 3.6% of New Dragonfly’s common stock on a fully-diluted basis, calculated as of the Closing Date, and (ii) warrants (the “\$10 Per Share Warrants”) exercisable to purchase 1.6 million shares of New Dragonfly’s common stock at \$10 per share. The Penny Warrants will have an exercise period of ten years from the date of issuance. The \$10 Per Share Warrants will have an exercise period of five years from the date of issuance and will have customary cashless exercise provisions. The warrants will have standard anti-dilution protections. The shares of New Dragonfly common stock issuable upon exercise of the warrants shall have customary registration rights requiring New Dragonfly to file and keep effective a registration statement registering the resale of such shares.

Equity Facility Letter Agreement

On May 15, 2022, Chardan, Dragonfly and CCM 5 (the “Equity Facility Investor”) entered into a letter agreement (together with the Summary of Indicative Terms attached as an exhibit thereto, the “Equity Facility Letter Agreement”) pursuant to which Chardan and Dragonfly agreed to enter into definitive documentation (the “Equity Facility Definitive Documentation”) to establish a committed equity facility (the “Equity Facility”) prior to the Closing. The Equity Facility Definitive Documentation will contain terms that are consistent with the Equity Facility Letter Agreement and customary for documentation of this nature. Pursuant to and subject to the conditions to be set forth in the Equity Facility Definitive Documentation, New Dragonfly will have the right from time to time at its option to direct the Equity Facility Investor to purchase up to a specified maximum amount of shares of New Dragonfly common stock, up to a maximum aggregate purchase price of \$150,000,000 over the 36-month term of the Equity Facility Letter Agreement.

The foregoing descriptions of the Merger Agreement, form of the Registration Rights Agreement, the Sponsor Support Agreement, the Subscription Agreement, the Debt Commitment Letter and the Equity Facility Letter Agreement and the transactions and documents contemplated thereby are not complete and are subject to and qualified in their entirety by reference to the Merger Agreement, form of the Registration Rights Agreement, the Sponsor Support Agreement, the Subscription Agreement, the Debt Commitment Letter and the Equity Facility Letter Agreement, copies of which are filed with this Current Report on Form 8-K, and the terms of which are incorporated by reference herein.

The Merger Agreement, the Registration Rights Agreement, the Sponsor Support Agreement, the Subscription Agreement, the Debt Commitment Letter and the Equity Facility Letter Agreement have been included to provide investors with information regarding their terms. They are not intended to provide any other factual information about Chardan, Dragonfly, or their affiliates. The representations, warranties, covenants and agreements contained in the Merger Agreement, the Registration Rights Agreement, the Sponsor Support Agreement, the Registration Rights Agreement, the Subscription Agreement, the Debt Commitment Letter and the Equity Facility Letter Agreement and the other documents related thereto were made only for purposes of such agreements as of the specific dates therein, were solely for the benefit of the parties to the Merger Agreement, the Registration Rights Agreement, the Sponsor Support Agreement, the Subscription Agreement, the Debt Commitment Letter and the Equity Facility Letter Agreement, as applicable, and may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to the Merger Agreement, the Sponsor Support Agreement, the Subscription Agreement, the Debt Commitment Letter or the Equity Facility Letter Agreement, as applicable, instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries under the Merger Agreement, the Registration Rights Agreement, the Sponsor Support Agreement, the Subscription Agreement, the Debt Commitment Letter or the Equity Facility Letter Agreement and should not rely on the representations, warranties, covenants and agreements or any descriptions thereof as characterizations of the actual state of facts or condition of the parties thereto or any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of representations and warranties may change after the date of the Merger Agreement, the Registration Rights Agreement, the Sponsor Support Agreement, the Subscription Agreement, the Debt Commitment Letter or the Equity Facility Letter Agreement, as applicable, which subsequent information may or may not be fully reflected in Chardan’s public disclosures.

Item 3.02 Unregistered Sales of Equity Securities

The disclosure set forth above in Item 1.01 of this Current Report on Form 8-K with respect to the PIPE Investment and the warrants related to the Term Loan Facility is incorporated by reference in this Item 3.02. The shares of Chardan Common Stock and warrants exercisable to purchase shares of Chardan Common Stock to be issued in connection with the PIPE Investment and the Term Loan Facility will not be registered under the Securities Act, and will be issued in reliance on the exemption from registration requirements thereof provided by Section 4(a)(2) of the Securities Act.

Additional Information and Where to Find It

This Current Report on Form 8-K relates to a proposed transaction between Chardan and Dragonfly. Chardan intends to file a registration statement on Form S-4 with the SEC, which will include a document that serves as a prospectus and proxy statement of Chardan, referred to as a proxy statement/prospectus. A proxy statement/prospectus will be sent to all Chardan stockholders. Chardan also will file other documents regarding the proposed transaction with the SEC. Before making any voting decision, investors and security holders of Chardan are urged to read the registration statement, the proxy statement/prospectus and all other relevant documents filed or that will be filed with the SEC in connection with the proposed transaction as they become available because they will contain important information about the proposed transaction.

Investors and security holders will be able to obtain free copies of the registration statement, the proxy statement/prospectus and all other relevant documents filed or that will be filed with the SEC by Chardan through the website maintained by the SEC at www.sec.gov.

The documents filed by Chardan with the SEC also may be obtained by contacting Chardan NexTech Acquisition 2 Corp. at 17 State Street, 21st Floor, New York, New York 10004, or by calling (646) 465-9001.

NEITHER THE SEC NOR ANY STATE SECURITIES REGULATORY AGENCY HAS APPROVED OR DISAPPROVED THE TRANSACTIONS DESCRIBED IN THIS CURRENT REPORT ON FORM 8-K, PASSED UPON THE MERITS OR FAIRNESS OF THE BUSINESS COMBINATION OR RELATED TRANSACTIONS OR PASSED UPON THE ADEQUACY OR ACCURACY OF THE DISCLOSURE IN THIS CURRENT REPORT ON FORM 8-K. ANY REPRESENTATION TO THE CONTRARY CONSTITUTES A CRIMINAL OFFENSE.

Participants in the Solicitation

Dragonfly, Chardan and certain of their respective directors, executive officers and other members of management and employees may, under SEC rules, be deemed to be participants in the solicitation of proxies from Chardan's shareholders in connection with the proposed business combination. A list of the names of such persons and information regarding their interests in the proposed business combination will be contained in the proxy statement/prospectus when available. You may obtain free copies of these documents free of charge by directing a written request to Chardan or Dragonfly. The definitive proxy statement will be mailed to Chardan's shareholders as of a record date to be established for voting on the proposed business combination when it becomes available.

No Offer or Solicitation

This Current Report on Form 8-K is and the information contained therein are not intended to and does not constitute an offer to sell or the solicitation of an offer to buy, sell or solicit any securities or any proxy, vote or approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be deemed to be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act or an exemption therefrom.

Cautionary Statement Regarding Forward-Looking Statements

This Current Report on Form 8-K contains certain “forward-looking statements” within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended (the “Securities Act”) and Section 21E of the Securities Exchange Act of 1934, as amended, including certain financial forecasts and projections. All statements other than statements of historical fact contained in this Current Report on Form 8-K, including statements as to the transactions contemplated by the business combination and related agreements, future results of operations and financial position, revenue and other metrics, planned products and services, business strategy and plans, objectives of management for future operations of Dragonfly, market size and growth opportunities, competitive position and technological and market trends, are forward-looking statements. Some of these forward-looking statements can be identified by the use of forward-looking words, including “may,” “should,” “expect,” “intend,” “will,” “estimate,” “anticipate,” “believe,” “predict,” “plan,” “targets,” “projects,” “could,” “would,” “continue,” “forecast” or the negatives of these terms or variations of them or similar expressions. All forward-looking statements are subject to risks, uncertainties, and other factors (some of which are beyond the control of Dragonfly or Chardan) which could cause actual results to differ materially from those expressed or implied by such forward-looking statements. All forward-looking statements are based upon estimates, forecasts and assumptions that, while considered reasonable by Chardan and its management, and Dragonfly and its management, as the case may be, are inherently uncertain and many factors may cause the actual results to differ materially from current expectations which include, but are not limited to: 1) the occurrence of any event, change or other circumstances that could give rise to the termination of the definitive merger agreement with respect to the business combination; 2) the outcome of any legal proceedings that may be instituted against Dragonfly, Chardan, the combined company or others following the announcement of the business combination and the transactions contemplated thereby; 3) the inability to complete the business combination due to the failure to obtain approval of the stockholders of Chardan or Dragonfly, or to satisfy other conditions to closing the business combination; 4) changes to the proposed structure of the business combination that may be required or appropriate as a result of applicable laws or regulations or as a condition to obtaining regulatory approval of the business combination; 5) the ability to meet Nasdaq’s listing standards following the consummation of the business combination; 6) the risk that the business combination disrupts current plans and operations of Dragonfly as a result of the announcement and consummation of the business combination; 7) the inability to recognize the anticipated benefits of the business combination; 8) ability of Dragonfly to successfully increase market penetration into its target markets; 9) the addressable markets that Dragonfly intends to target do not grow as expected; 10) the loss of any key executives; 11) the loss of any relationships with key suppliers including suppliers in China; 12) the loss of any relationships with key customers; 13) the inability to protect Dragonfly’s patents and other intellectual property; 14) the failure to successfully optimize solid state cells or to produce commercially viable solid state cells in a timely manner or at all, or to scale to mass production; 15) costs related to the business combination; 16) changes in applicable laws or regulations; 17) the possibility that Dragonfly or the combined company may be adversely affected by other economic, business and/or competitive factors; 18) Dragonfly’s estimates of its growth and projected financial results for 2022 and 2023 and meeting or satisfying the underlying assumptions with respect thereto; 19) the risk that the business combination may not be completed in a timely manner or at all, which may adversely affect the price of Chardan’s securities; 20) the risk that the transaction may not be completed by Chardan’s business combination deadline (as may be extended pursuant to Chardan’s governing documents); 21) the impact of the novel coronavirus disease pandemic, including any mutations or variants thereof, and its effect on business and financial conditions; 22) inability to complete the PIPE investment, the term loan and equity line (ChEF) in connection with the business combination; and 23) other risks and uncertainties set forth in the sections entitled “Risk Factors” and “Cautionary Note Regarding Forward-Looking Statements” in Chardan’s Form S-1 (File Nos. 333-252449 and 333-253016), Annual Report on Form 10-K for the year ended December 31, 2021 and registration statement on Form S-4 with the SEC, which will include a document that serves as a prospectus and proxy statement of Chardan, referred to as a proxy statement/prospectus and other documents filed by Chardan from time to time with the SEC. These filings identify and address other important risks and uncertainties that could cause actual events and results to differ materially from those contained in the forward-looking statements. Nothing in this Current Report on Form 8-K should be regarded as a representation by any person that the forward-looking statements set forth herein will be achieved or that any of the contemplated results of such forward looking statements will be achieved. You should not place undue reliance on forward-looking statements, which speak only as of the date they are made. Neither Chardan or Dragonfly gives any assurance that either Chardan or Dragonfly or the combined company will achieve its expected results. Neither Chardan nor Dragonfly undertakes any duty to update these forward-looking statements, except as otherwise required by law. For additional information, see “Risk Considerations” in the investor presentation, which will be provided in a Current Report on Form 8-K to be filed by Chardan with the SEC and available at www.sec.gov.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
<u>2.1*</u>	<u>Merger Agreement, dated as of May 15, 2022</u>
<u>10.1</u>	<u>Sponsor Support Agreement, dated as of May 15, 2022</u>
<u>10.2</u>	<u>Subscription Agreement, dated as of May 15, 2022</u>
<u>10.3</u>	<u>Form of Amended and Restated Registration Rights Agreement</u>
<u>10.4</u>	<u>Debt Commitment Letter, dated as of May 15, 2022</u>
<u>10.5</u>	<u>Equity Facility Letter Agreement, dated as of May 15, 2022</u>
104	The cover page of this Current Report on Form 8-K, formatted in Inline XBRL.
*	Certain exhibits and schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601(b)(2). Chardan agrees to furnish supplementally a copy of all omitted exhibits and schedules to the Securities and Exchange Commission upon its request.

SIGNATURE

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

CHARDAN NEXTECH ACQUISITION 2 CORP.

Date: May 16, 2022

By: /s/ Jonas Grossman

Name: Jonas Grossman

Title: Chief Executive Officer

AGREEMENT AND PLAN OF MERGER

by and among

CHARDAN NEXTECH ACQUISITION 2 CORP.,

BRONCO MERGER SUB, INC.

and

DRAGONFLY ENERGY CORP.

dated as of May 15, 2022

TABLE OF CONTENTS

Page

ARTICLE I

CERTAIN DEFINITIONS

Section 1.1.	Definitions	3
Section 1.2.	Construction	21
Section 1.3.	Knowledge	23

ARTICLE II

THE MERGER; CLOSING

Section 2.1.	The Merger	23
Section 2.2.	Effects of the Merger	23
Section 2.3.	Closing; Effective Time	24
Section 2.4.	Closing Deliverables	24
Section 2.5.	Governing Documents	26
Section 2.6.	Directors and Officers	26
Section 2.7.	Tax Free Reorganization Matters	26

ARTICLE III

EFFECTS OF THE MERGER ON THE COMPANY CAPITAL STOCK AND EQUITY AWARDS

Section 3.1.	Conversion of Securities	26
Section 3.2.	Exchange Procedures	27
Section 3.3.	Treatment of Company Options	28
Section 3.4.	Earnout	29
Section 3.5.	Withholding	32
Section 3.6.	Dissenting Shares	32

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Section 4.1.	Company Organization	33
Section 4.2.	Subsidiaries	33
Section 4.3.	Due Authorization	33
Section 4.4.	No Conflict	34
Section 4.5.	Governmental Authorities; Consents	34
Section 4.6.	Capitalization of the Company	35
Section 4.7.	[Reserved]	36
Section 4.8.	Financial Statements	36

TABLE OF CONTENTS
(continued)

	Page
Section 4.9. No Undisclosed Liabilities	37
Section 4.10. Litigation and Proceedings	37
Section 4.11. Legal Compliance	37
Section 4.12. Contracts; No Defaults	37
Section 4.13. Company Benefit Plans	40
Section 4.14. Labor Relations; Employees	42
Section 4.15. Taxes	44
Section 4.16. Brokers' Fees	46
Section 4.17. Insurance	46
Section 4.18. Licenses	46
Section 4.19. Equipment and Other Tangible Property	47
Section 4.20. Real Property	47
Section 4.21. Intellectual Property	48
Section 4.22. Privacy and Cybersecurity	50
Section 4.23. Environmental Matters	51
Section 4.24. Absence of Changes	51
Section 4.25. Anti-Corruption Compliance	52
Section 4.26. Anti-Money Laundering; Sanctions and International Trade Compliance	52
Section 4.27. Information Supplied	52
Section 4.28. Customers and Vendors	53
Section 4.29. Products	53
Section 4.30. Accounts and Notes Receivable; Accounts Payable	54
Section 4.31. No Outside Reliance	54
Section 4.32. No Additional Representation or Warranties	54

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF ACQUIROR AND MERGER SUB

Section 5.1. Organization	55
Section 5.2. Due Authorization	55
Section 5.3. No Conflict	56
Section 5.4. Litigation and Proceedings	57
Section 5.5. SEC Filings	57
Section 5.6. Internal Controls; Listing; Financial Statements	57
Section 5.7. Governmental Authorities; Consents	58
Section 5.8. Trust Account	59
Section 5.9. Investment Company Act; JOBS Act	59
Section 5.10. Absence of Changes	59
Section 5.11. No Undisclosed Liabilities	60
Section 5.12. Capitalization of Acquiror	60
Section 5.13. PIPE Investment	61

TABLE OF CONTENTS
(continued)

	Page
Section 5.14. Brokers' Fees	61
Section 5.15. Indebtedness	61
Section 5.16. Taxes	61
Section 5.17. Business Activities	63
Section 5.18. Stock Market Quotation	64
Section 5.19. Registration Statement, Proxy Statement and Proxy Statement/Registration Statement	65
Section 5.20. No Outside Reliance	65
Section 5.21. No Additional Representation or Warranties	66

ARTICLE VI

COVENANTS OF THE COMPANY

Section 6.1. Conduct of Business	66
Section 6.2. Inspection	70
Section 6.3. Preparation and Delivery of Additional Company Financial Statements	70
Section 6.4. Affiliate Agreements	71
Section 6.5. Acquisition Proposals	71
Section 6.6. Payoff	72

ARTICLE VII

COVENANTS OF ACQUIROR

Section 7.1. Employee Matters	72
Section 7.2. Trust Account Proceeds and Related Available Equity	73
Section 7.3. Listing	73
Section 7.4. No Solicitation by Acquiror	74
Section 7.5. Acquiror Conduct of Business	75
Section 7.6. Post-Closing Directors and Officers of Acquiror	76
Section 7.7. Indemnification and Insurance	77
Section 7.8. Acquiror Public Filings	78
Section 7.9. PIPE Subscription	79
Section 7.10. Stockholder Litigation	79
Section 7.11. [Reserved]	79
Section 7.12. Transaction Bonuses	79
Section 7.13. Acquiror Closing Extension	79

TABLE OF CONTENTS
(continued)

	Page
ARTICLE VIII	
JOINT COVENANTS	
Section 8.1. HSR Act; Other Filings	80
Section 8.2. Preparation of Proxy Statement/Registration Statement; Stockholders' Meeting and Approvals	81
Section 8.3. Support of Transaction	85
Section 8.4. Cooperation; Consultation	85
Section 8.5. Section 16 Matters	86
Section 8.6. Additional Equity Financing	86
ARTICLE IX	
CONDITIONS TO OBLIGATIONS	
Section 9.1. Conditions to Obligations of Acquiror, Merger Sub and the Company	87
Section 9.2. Conditions to Obligations of Acquiror and Merger Sub	87
Section 9.3. Conditions to the Obligations of the Company	88
ARTICLE X	
TERMINATION/EFFECTIVENESS	
Section 10.1. Termination	89
Section 10.2. Effect of Termination	90
ARTICLE XI	
MISCELLANEOUS	
Section 11.1. Trust Account Waiver	90
Section 11.2. Waiver	91
Section 11.3. Notices	91
Section 11.4. Assignment	92
Section 11.5. Rights of Third Parties	92
Section 11.6. Expenses	92
Section 11.7. Governing Law	92
Section 11.8. Headings; Counterparts; Effectiveness	92
Section 11.9. Company and Acquiror Disclosure Letters	93
Section 11.10. Entire Agreement	93
Section 11.11. Amendments	93
Section 11.12. Publicity	93

TABLE OF CONTENTS
(continued)

	Page
Section 11.13. Severability	94
Section 11.14. Jurisdiction; Waiver of Jury Trial	94
Section 11.15. Enforcement	95
Section 11.16. Non-Recourse	95
Section 11.17. Non-Survival of Representations, Warranties and Covenants	95
Section 11.18. Conflicts and Privilege	96

Exhibits

Exhibit A	Form of Amended and Restated Certificate of Incorporation of Acquiror
Exhibit B	Form of Amended and Restated Bylaws of Acquiror
Exhibit C	Form of Registration Rights Agreement
Exhibit D	Form of Equity Incentive Plan
Exhibit E	Forms of Incentive Option Award Agreement, Nonqualified Option Award Agreement, and Restricted Stock Unit Agreement
Exhibit F	Form of Employee Stock Purchase Plan

Annexes

Annex A	Schedule of Transaction Bonuses
---------	---------------------------------

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger, dated as of May 15, 2022 (this “Agreement”), is made and entered into by and among Chardan NexTech Acquisition 2 Corp., a Delaware corporation (“Acquiror”), Bronco Merger Sub, Inc., a Nevada corporation and a direct wholly owned subsidiary of Acquiror (“Merger Sub”), and Dragonfly Energy Corp., a Nevada corporation (the “Company”).

RECITALS

WHEREAS, Acquiror is a blank check company incorporated as a Delaware corporation and incorporated for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses;

WHEREAS, Merger Sub is a newly formed, wholly owned, direct subsidiary of Acquiror and was formed for the sole purpose of the Merger (as defined below);

WHEREAS, upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the applicable provisions of the Nevada Revised Statutes (“NRS”), (a) Merger Sub will merge with and into the Company, the separate corporate existence of Merger Sub will cease and the Company will be the surviving corporation and a wholly owned subsidiary of Acquiror (the “Merger”) and (b) Acquiror will change its name to “Dragonfly Energy Holdings Corp.”;

WHEREAS, upon the Effective Time (as defined below), each Company Option (as defined below) that is then outstanding will be converted into the right to receive an Acquiror Option (as defined below), subject to certain exceptions and conditions as set forth in this Agreement;

WHEREAS, each of the parties intends that, for United States federal income tax purposes, the Merger will qualify as a “reorganization” within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “Code”) and the Treasury Regulations (as defined below), with respect to which each of Acquiror, Merger Sub and the Company are a “party to a reorganization” under Section 368(b) of the Code, and this Agreement is intended to constitute a “plan of reorganization” for purposes of Sections 354, 361 and 368 of the Code and within the meaning of Section 368 of the Code and Treasury Regulations Section 1.368-2(g) (the “Intended Tax Treatment”);

WHEREAS, the Board of Directors of the Company has (a) determined that it is in the best interests of the Company and its stockholders, and declared it advisable, to adopt and enter into this Agreement and the other documents to which the Company is a party contemplated hereby, (b) adopted this Agreement and approved the execution, delivery and performance by the Company of this Agreement and the other documents to which the Company is a party contemplated hereby and the transactions contemplated hereby and thereby, and (c) recommended the approval of this Agreement and the other documents to which the Company is a party contemplated hereby and the transactions contemplated hereby and thereby by the Company’s stockholders;

WHEREAS, each of the Boards of Directors of Acquiror and Merger Sub has (a) determined that it is in the best interests of Acquiror and Merger Sub, and their respective stockholders, as applicable, and declared it advisable, to adopt and enter into this Agreement and the other documents to which Acquiror or Merger Sub is a party contemplated hereby, (b) adopted this Agreement and approved the execution, delivery and performance by Acquiror or Merger Sub, as applicable, of this Agreement and the other documents to which Acquiror or Merger Sub is a party contemplated hereby and the transactions contemplated hereby and thereby, and (c) recommended the adoption and approval of this Agreement and the other documents to which Acquiror or Merger Sub is a party contemplated hereby and the transactions contemplated hereby and thereby by the Acquiror Stockholders and the sole stockholder of Merger Sub, as applicable;

WHEREAS, Acquiror, as the sole stockholder of Merger Sub, has approved this Agreement and the documents contemplated hereby and the transactions contemplated hereby and thereby;

WHEREAS, as a condition and inducement to Acquiror's willingness to enter into this Agreement, the Company has requested that the Requisite Company Stockholders (as defined below) execute and deliver to the Company and Acquiror, prior to the Company Stockholder Approval Deadline (as defined below), their fully executed counterparts to the Written Consent (as defined below);

WHEREAS, in furtherance of the Merger and in accordance with the terms hereof and Acquiror's Governing Documents, Acquiror shall provide an opportunity to its stockholders for an Acquiror Share Redemption (as defined below);

WHEREAS, as a condition and inducement to the Company's willingness to enter into this Agreement, simultaneously with the execution and delivery of this Agreement, the Sponsor has executed and delivered to the Company the Sponsor Support Agreement (as defined below) pursuant to which the Sponsor has agreed to, among other things, vote to adopt and approve this Agreement and the other documents contemplated hereby and the transactions contemplated hereby and thereby;

WHEREAS, on or prior to the date hereof, Acquiror entered into a subscription agreement (as amended or modified from time to time, the "Subscription Agreement") with Chardan Capital Markets, LLC (the "Initial PIPE Investor") pursuant to which, and on the terms and subject to the conditions of which, the PIPE Investor agreed to purchase from Acquiror shares of Acquiror Common Stock as described in the Subscription Agreement, with the aggregate purchase price under the Subscription Agreement being at least the Committed PIPE Investment Amount (as defined below), such purchase to be consummated prior to or substantially concurrently with the Closing;

WHEREAS, at the Closing, Acquiror, the Sponsor, the Initial PIPE Investor, the Equity Facility Investor (as defined below), the Major Company Stockholders (as defined below), and certain of their respective Affiliates, as applicable, shall enter into a Registration Rights Agreement (the "Registration Rights Agreement") in substantially the form attached hereto as Exhibit C (with such changes as may be agreed to in writing by Acquiror and the Company), which shall be effective as of the Closing;

WHEREAS, simultaneously with the execution and delivery of this Agreement, and as a material inducement to the willingness of Acquiror to enter into this Agreement, each of the employees set forth on Section 1.1(a) of the Company Disclosure Letter (the “Key Employees”) has entered into an amendment (the “Amendments”) with the Company agreeing to certain amendments to their existing employment agreements with the Company (the “Key Employment Agreements”), which are conditioned upon the Closing and to be effective on or prior to the Closing Date;

WHEREAS, as a condition and inducement to the Company’s willingness to enter into this Agreement, prior to the Effective Time, each share of Company Preferred Stock shall have been converted into one share of Company Common Stock pursuant to the Company’s Governing Documents, and all provisions of the Company’s Governing Documents related to the Company Preferred Stock shall be ineffective or waived (collectively, the “Company Preferred Conversion”);

WHEREAS, prior to the Effective Time, Acquiror shall, subject to obtaining the Acquiror Stockholder Approval, adopt the amended and restated certificate of incorporation in the form set forth on Exhibit A to provide for, among other things, an increase to the number of Acquiror’s authorized shares of Acquiror Common Stock in connection with the Merger; and

WHEREAS, prior to the consummation of the Merger, Acquiror will adopt the amended and restated bylaws in the form set forth on Exhibit B.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement and intending to be legally bound hereby, Acquiror, Merger Sub and the Company agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

Section 1.1. Definitions. As used herein, the following terms shall have the meanings set forth or referred to below:

“Acquiror” has the meaning specified in the Preamble hereto.

“Acquiror Board Recommendation” has the meaning specified in Section 8.2(b)(ii).

“Acquiror Common Share” means a share of Acquiror Common Stock.

“Acquiror Common Stock” means Common Stock, par value \$0.0001 per share, of Acquiror.

“Acquiror Cure Period” has the meaning specified in Section 10.1(g).

“Acquiror Disclosure Letter” has the meaning specified in the introduction to Article V.

“Acquiror ESPP Proposal” has the meaning specified in Section 8.2(b)(ii).

“Acquiror Financial Statements” has the meaning specified in Section 5.6(d).

“Acquiror Incentive Plan Proposal” has the meaning specified in Section 8.2(b)(ii).

“Acquiror Option” has the meaning specified in Section 3.3(a).

“Acquiror Private Placement Warrant” means a warrant to purchase one (1) share of Acquiror Common Stock at an exercise price of eleven Dollars fifty cents (\$11.50) issued to Chardan NexTech 2 Warrant Holdings LLC, an affiliate of Sponsor.

“Acquiror Public Warrant” means a warrant to purchase one (1) share of Acquiror Common Stock at an exercise price of eleven Dollars fifty cents (\$11.50) that was included in the units sold as part of Acquiror’s initial public offering.

“Acquiror SEC Filings” has the meaning specified in Section 5.5.

“Acquiror Securities” has the meaning specified in Section 5.12(a).

“Acquiror Share Redemption” means the election of an eligible (as determined in accordance with Acquiror’s Governing Documents) holder of Acquiror Common Stock to redeem all or a portion of the shares of Acquiror Common Stock held by such holder at a per-share price, payable in cash, equal to a pro rata share of the aggregate amount on deposit in the Trust Account (including any interest earned on the funds held in the Trust Account) (as determined in accordance with Acquiror’s Governing Documents) in connection with the Transaction Proposals.

“Acquiror Stockholder Approval” means the approval of those Transaction Proposals (other than the Unbundling Precatory Proposals) identified in Section 8.2(b)(ii), at an Acquiror Stockholders’ Meeting duly called by the Acquiror Board of Directors and held for such purpose.

“Acquiror Stockholders” means the stockholders of Acquiror.

“Acquiror Stockholders’ Meeting” has the meaning specified in Section 8.2(b)(i).

“Acquiror Transaction Expenses” means the following out-of-pocket fees and expenses paid or payable by Acquiror or its Affiliates (whether or not billed or accrued for) as a result of or in connection with the negotiation, documentation and consummation of the transactions contemplated hereby or Acquiror’s initial public offering: (a) all documented fees, costs, expenses, brokerage fees, commissions, finders’ fees and disbursements of financial advisors, investment banks, data room administrators, attorneys, accountants and other advisors and service providers (including any deferred underwriting commissions), (b) fifty percent (50%) of the filing fees incurred in connection with making any filings under Section 8.1, (c) fifty percent (50%) of the filing fees incurred in connection with filing the Registration Statement, the Proxy Statement or the Proxy Statement/Registration Statement under Section 8.2 and the application fees incurred in connection with obtaining approval of the Nasdaq under Section 7.3, (d) repayment of any Working Capital Loans and (e) any other fees and expenses as a result of or in connection with the negotiation, documentation and consummation of the transactions contemplated hereby, in each case of clauses (a) through (e), solely to the extent such fees and expenses are incurred and unpaid as of the Closing. Acquiror Transaction Expenses shall not include any fees and expenses of Acquiror Stockholders (other than Working Capital Loans).

“Acquiror Warrant Agreement” means the Warrant Agreement, dated as of August 10, 2021, between Acquiror and the Trustee, as warrant agent.

“Acquiror Warrants” means the Acquiror Public Warrants and the Acquiror Private Placement Warrants.

“Acquisition Proposal” means, with respect to the Company, other than the transactions contemplated hereby and other than the acquisition or disposition of equipment or other tangible personal property in the ordinary course of business, any offer or proposal relating to: (a) any acquisition or purchase, direct or indirect, of (i) 15% (fifteen percent) or more of the consolidated assets of the Company or (ii) 15% (fifteen percent) or more of any class of equity or voting securities of (x) the Company or (y) one or more Subsidiaries of the Company holding assets constituting, individually or in the aggregate, 15% or more of the consolidated assets of the Company, (b) any tender offer (including a self-tender offer) or exchange offer that, if consummated, would result in any Person beneficially owning 15% (fifteen percent) or more of any class of equity or voting securities of (i) the Company or (ii) one or more Subsidiaries of the Company holding assets constituting, individually or in the aggregate, 15% (fifteen percent) or more of the consolidated assets of the Company, or (c) a merger, consolidation, share exchange, business combination, sale of a material portion of the assets, reorganization, recapitalization, liquidation, dissolution or other similar transaction involving the sale or disposition of (i) the Company or (ii) one or more Subsidiaries of the Company holding assets constituting, individually or in the aggregate, 15% (fifteen percent) or more of the consolidated assets of the Company.

“Action” means any claim, action, suit, audit, examination, assessment, arbitration, mediation, inquiry, proceeding or investigation, by or before any Governmental Authority.

“Additional Subscription Agreement” means a subscription or other agreement in respect of the purchase or sale of shares of Acquiror Common Stock and/or other securities, or the providing of other financing in compliance with Section 6.1(n) and Section 7.5(a)(vii).

“Affiliate” means, with respect to any specified Person, any Person that, directly or indirectly, controls, is controlled by, or is under common control with, such specified Person, whether through one or more intermediaries or otherwise. The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, directly or indirectly, 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.

“Affiliate Agreements” has the meaning specified in Section 4.12(a)(vi).

“Aggregate Fully Diluted Company Common Shares” means, without duplication, (a) the aggregate number of shares of Company Common Stock that are (i) Company Conversion Shares, or (iii) issuable upon, or subject to, the exercise of Company Options (whether or not then vested or exercisable) that are outstanding immediately prior to the Effective Time, *minus* (b) a number of shares of Company Common Stock equal to (A) the aggregate exercise price of such Company Options *divided by* (B) the Per Share Merger Consideration.

“Aggregate Merger Consideration” means a number of Acquiror Common Shares equal to the quotient obtained by *dividing* (i) the Base Purchase Price by (ii) \$10.00.

“Agreement” has the meaning specified in the Preamble hereto.

“Agreement End Date” has the meaning specified in Section 10.1(e).

“Alternative Business Combination Proposal” has the meaning specified in Section 7.4.

“Alternative Financing” has the meaning specified in Section 8.4(a).

“Amendment Proposal” has the meaning specified in Section 8.2(b)(ii).

“Amendments” has the meaning specified in the Recitals hereto.

“Ancillary Agreements” means the Written Consent, the Sponsor Support Agreement, the Registration Rights Agreement, the Key Employment Agreements, including the Amendments thereto, the Confidentiality Agreement and the other documents delivered pursuant to this Agreement.

“Anti-Bribery Laws” means the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977, as amended, and all other applicable anti-corruption and bribery Laws (including the U.K. Bribery Act 2010, and any rules or regulations promulgated thereunder or other Laws of other countries implementing the OECD Convention on Combating Bribery of Foreign Officials).

“Anti-Money Laundering Laws” means all applicable laws, regulations, administrative orders, and decrees concerning or relating to the prevention of money laundering or countering the financing of terrorism, including, without limitation, the Currency and Financial Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of 2001, which legislative framework is commonly referred to as the “Bank Secrecy Act,” and the rules and regulations thereunder.

“Antitrust Authorities” means the Antitrust Division of the United States Department of Justice, the United States Federal Trade Commission or the antitrust or competition Law authorities of any other jurisdiction (whether United States, foreign or multinational).

“Antitrust Information” or “Document Request” means any request or demand for the production, delivery or disclosure of documents or other evidence, or any request or demand for the production of witnesses for interviews or depositions or other oral or written testimony, by any Antitrust Authorities relating to the transactions contemplated hereby or by any third party challenging the transactions contemplated hereby, including any so called “second request” for additional information or documentary material or any civil investigative demand made or issued by any Antitrust Authority or any subpoena, interrogatory or deposition.

“Articles of Merger” has the meaning specified in Section 2.1(a).

“Audited Financial Statements” has the meaning specified in Section 4.8(a)(i).

“Base Purchase Price” means \$400,000,000 (four hundred million dollars).

“BCA Proposal” has the meaning specified in Section 8.2(b)(ii).

“Brownstein” has the meaning specified in Section 11.18(a).

“Business Combination” has the meaning set forth in Article Fifth of Acquiror’s Governing Documents as in effect on the date hereof.

“Business Combination Proposal” means any offer, inquiry, proposal or indication of interest (whether written or oral, binding or non-binding, and other than an offer, inquiry, proposal or indication of interest with respect to the transactions contemplated hereby), relating to a Business Combination.

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Law to close.

“CARES Act” has the meaning specified in Section 4.15(n).

“Change of Control” means any transaction or series of transactions (a) following which a Person or “group” (within the meaning of Section 13(d) of the Exchange Act) of Persons (other than Acquiror, the Surviving Corporation or any of their respective Subsidiaries), has direct or indirect beneficial ownership of securities (or rights convertible or exchangeable into securities) representing fifty percent (50%) or more of the voting power of or economic rights or interests in Acquiror, the Surviving Corporation or any of their respective Subsidiaries, (b) constituting a merger, consolidation, reorganization or other business combination, however effected, following which either (i) the members of the Acquiror Board of Directors or the Surviving Corporation immediately prior to such merger, consolidation, reorganization or other business combination do not constitute at least a majority of the Board of Directors of the company surviving the combination or, if the surviving company is a Subsidiary, the ultimate parent thereof or (ii) the voting securities of Acquiror, the Surviving Corporation or any of their respective Subsidiaries immediately prior to such merger, consolidation, reorganization or other business combination do not continue to represent or are not converted into fifty percent (50%) or more of the combined voting power of the then outstanding voting securities of the Person resulting from such combination or, if the surviving company is a Subsidiary, the ultimate parent thereof, or (c) the result of which is a sale of all or substantially all of the assets of Acquiror or the Surviving Corporation to any Person.

“Closing” has the meaning specified in Section 2.3(a).

“Closing Date” has the meaning specified in Section 2.3(a).

“CNTQ Nominees” has the meaning specified in Section 7.6(a)(i).

“CNTQ Parties” has the meaning specified in Section 11.18(a).

“Code” has the meaning specified in the Recitals hereto.

“Collective Bargaining Agreement” means any collective bargaining agreement or any other labor-related agreement or arrangement with any labor or trade union, employee representative body, works council or labor organization, in each case to which the Company is party or by which it is bound.

“Committed PIPE Investment Amount” has the meaning specified in Section 5.13.

“Company” has the meaning specified in the Preamble hereto.

“Company Benefit Plan” has the meaning specified in Section 4.13(a).

“Company Capital Stock” means the Company Common Stock and the Company Preferred Stock.

“Company Common Stock” means the common stock, par value \$0.001 per share, of the Company.

“Company Conversion Shares” means the shares of Company Capital Stock that are issued and outstanding immediately prior to the Effective Time or issuable upon the conversion of the Company Preferred Stock immediately prior to the Effective Time in accordance with the Governing Documents of the Company.

“Company Cure Period” has the meaning specified in Section 10.1(e).

“Company Disclosure Letter” has the meaning specified in the introduction to Article IV.

“Company Fundamental Representations” means the representations and warranties made pursuant to the first and second sentences of Section 4.1 (*Company Organization*), the first and second sentences of Section 4.2 (*Subsidiaries*), Section 4.3 (*Due Authorization*), Section 4.6 (*Capitalization of the Company*), Section 4.7 (*Capitalization of Subsidiaries*) and Section 4.16 (*Brokers’ Fees*).

“Company Incentive Plan” means either or both of the Company’s 2019 Equity Incentive Plan, as amended, and/or the Company’s 2021 Equity Incentive Plan, as amended, as the context requires.

“Company Indemnified Parties” has the meaning specified in Section 7.7(a).

“Company IT Systems” means any computer hardware, servers, networks, platforms, peripherals, data communication lines, and other information technology equipment and related systems and services (including so-called SaaS/PaaS/IaaS services), that are owned or controlled by, or relied upon in the conduct of the business of, the Company.

“Company Material Adverse Effect” means any event, state of facts, development, circumstance, occurrence or effect (each, an “Event”) that (a) has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, assets, results of operations or financial condition of the Company, taken as a whole or (b) does or would reasonably be expected to, individually or in the aggregate, prevent the ability of the Company to consummate the Merger; provided, however, that in no event would any of the following, alone or in combination, be deemed to constitute, or be taken into account in determining whether there has been or will be, a “Company Material Adverse Effect”: (i) any change in applicable Laws or GAAP or any authoritative interpretation thereof following the date of this Agreement, (ii) any change in interest rates or economic, political, business or financial market conditions generally, (iii) the taking of any action required by this Agreement or with the prior written consent of Acquiror, (iv) any natural disaster (including hurricanes, storms, tornados, flooding, earthquakes, volcanic eruptions, wild fires, or similar occurrences) or change in climate, (v) pandemic (including COVID-19), epidemic, other outbreaks of illness or public health events, or any Law issued by a Governmental Authority providing for any COVID-19 Measures or any change in such Law after the date hereof, (vi) any acts of terrorism or war, the outbreak or escalation of hostilities, geopolitical conditions, local, national or international political conditions, (vii) any failure of the Company to meet any projections or forecasts (provided that this clause (vii) shall not prevent a determination that any Event not otherwise excluded from this definition of Company Material Adverse Effect underlying such failure to meet projections or forecasts has resulted in a Company Material Adverse Effect), (viii) any Events generally applicable to the industries or markets in which the Company operate (including increases in the cost of products, supplies, materials or other goods purchased from third party suppliers), (ix) the announcement of this Agreement and pendency and consummation of the transactions contemplated hereby (it being understood that this clause (ix) shall be disregarded for purposes of the representation and warranty set forth in Section 4.4 and any representation or warranty which by its terms is intended to address the consequences of the announcement of this Agreement and consummation of the transactions contemplated hereby and the condition to Closing with respect thereto), or (x) any action taken by the Company or its Subsidiaries at the written request of, Acquiror or Merger Sub; provided, further, that any Event referred to in clauses (i), (ii), (iv), (v), (vi) or (viii) above may be taken into account in determining if a Company Material Adverse Effect has occurred to the extent it has a disproportionate and adverse effect on the business, assets, results of operations or financial condition of the Company, taken as a whole, relative to similarly situated companies in the industries in which the Company conduct their respective operations, but only to the extent of the incremental disproportionate effect on the Company and its Subsidiaries, taken as a whole, relative to similarly situated companies in the industries in which the Company conduct their respective operations.

“Company Option” means an option to purchase shares of Company Common Stock granted under either Company Incentive Plan.

“Company Owned IP” means the Intellectual Property owned or purported to be owned by the Company.

“Company Owned Software” means the Software included in the Company Owned IP.

“Company Preferred Conversion” has the meaning specified in the Recitals hereto.

“Company Preferred Stock” means the Series A Preferred Stock of the Company.

“Company Registered Intellectual Property” has the meaning specified in Section 4.21(a).

“Company Stockholder Approval” means the approval of this Agreement and the Ancillary Agreements and transactions contemplated hereby and thereby sufficient for all purposes under the NRS, any other applicable law, and the Governing Documents of the Company, constituting the affirmative vote or written consent of the holders of at least (i) a majority of the voting power of the outstanding shares of Company Capital Stock entitled to vote and (ii) a majority of the voting power of the outstanding shares of Company Preferred Stock, voting together as a single class on an as-converted basis.

“Company Stockholder Approval Deadline” means 5:00 p.m. Eastern Time on the first (1st) Business Day after the date of this Agreement.

“Company Transaction Expenses” means the following out-of-pocket fees and expenses paid or payable by the Company (whether or not billed or accrued for) as a result of or in connection with the negotiation, documentation and consummation of the transactions contemplated hereby: (a) all documented fees, costs, expenses, brokerage fees, commissions, finders’ fees and disbursements of financial advisors, investment banks, data room administrators, attorneys, accountants and other advisors and service providers, (b) fifty percent (50%) of the filing fees incurred in connection with making any filings under Section 8.1, (c) fifty percent (50%) of the filing fees incurred in connection with filing the Registration Statement, the Proxy Statement or the Proxy Statement/Registration Statement under Section 8.2 and the application fees incurred in connection with obtaining approval of the Nasdaq under Section 7.3, (d) change-in-control payments, transaction bonuses, retention payments, severance or similar compensatory payments payable by the Company to any current or former employee (including any amounts due under any consulting agreement with any such former employee), independent contractor, officer, or director of the Company as a result of the transactions contemplated hereby (and not tied to any subsequent event or condition, such as a termination of employment), including the employer portion of payroll Taxes arising therefrom, (e) amounts owing or that may become owed, payable or otherwise due, directly or indirectly, by the Company to any Affiliate of the Company in connection with the consummation of the transactions contemplated hereby, including fees, costs and expenses related to the termination of any Affiliate Agreement, and (f) any fees and expenses as a result of or in connection with the negotiation, documentation and consummation of the transactions contemplated hereby, in each case of clauses (a) through (f), solely to the extent such fees and expenses are incurred and unpaid as of the Closing. Company Transaction Expenses shall not include any fees and expenses of the Company’s stockholders.

“Confidentiality Agreement” means the Non-Disclosure Agreement entered into by Acquiror and the Company on October 1, 2021.

“Constituent Corporations” has the meaning specified in Section 2.1(a).

“Contracts” means any legally binding contracts, agreements, subcontracts, leases, and purchase orders.

“Copyleft Terms” means use, modification and/or distribution of any Open Source Materials in a manner that, pursuant to the applicable Open Source License, requires that such Open Source Materials, or other Software incorporated into, derived from, linked to, or used or distributed with such Open Source Materials (i) be made available or distributed in a form other than binary (e.g., source code form), (ii) be licensed for the purpose of preparing derivative works, (iii) be licensed under terms that allow the Company’s products or portions thereof or interfaces therefor to be reverse engineered, reverse assembled or disassembled (other than by operation of Law) or (iv) be redistributable at no license fee. Open Source Licenses that incorporate Copyleft Terms include the GNU General Public License, the GNU Lesser General Public License, the Mozilla Public License, the Common Development and Distribution License, the Eclipse Public License and all Creative Commons “share alike” licenses.

“COVID-19” means SARS-CoV-2 or COVID-19, and any evolutions or mutations thereof or related or associated epidemics, pandemic or disease outbreaks.

“COVID-19 Measures” means any legally binding quarantine, “shelter in place,” “stay at home,” workforce reduction, social distancing, shut down, closure, sequester or any similar Law by any Governmental Authority in response to COVID-19.

“D&O Indemnified Parties” has the meaning specified in Section 7.7(a).

“Debt Commitment Letter” means that certain commitment letter, dated May 15, 2022, issued by EICF Agent LLC and CCM Investments 5 LLC to the Company and Acquiror.

“Debt Financing” means the debt financing contemplated by the Debt Commitment Letter.

“DGCL” means the General Corporation Law of the State of Delaware.

“Director Proposal” has the meaning specified in Section 8.2(b)(ii).

“Disclosure Letter” means, as applicable, the Company Disclosure Letter or the Acquiror Disclosure Letter.

“Dissenter’s Rights Statutes” means NRS 92A.300 through 92A.500, inclusive, including as amended pursuant to Senate Bill No. 95, enrolled as 2021 Statutes of Nevada, Page 1494 *et seq.*

“Dissenting Share” means each share of Company Capital Stock (other than any (i) shares of Company Common Stock subject to Company Options and (ii) Treasury Shares) outstanding immediately prior to the Effective Time held by a Dissenting Stockholder.

“Dissenting Stockholder” means, as of any particular time, a Person which is then entitled to, to the extent required by the NRS, has theretofore duly demanded and perfected, and has not theretofore withdrawn or otherwise waived or lost, dissenter’s rights pursuant to the Dissenter’s Rights Statutes.

“Dollars” or “\$” means lawful money of the United States.

“Dragonfly Group” has the meaning specified in Section 11.18(b).

“Earnout Fully Diluted Shares” means the number of shares of Acquiror Common Stock issued to holders of Company Conversion Shares at the Effective Time.

“Earnout Shares” means the shares of Acquiror Common Stock, if any, issued pursuant to Section 3.4.

“Effective Time” has the meaning specified in Section 2.3(b).

“Environmental Laws” means any and all applicable Laws relating to Hazardous Materials, pollution, or the protection or management of the environment or natural resources, or protection of human health (with respect to exposure to Hazardous Materials).

“Equity Facility” means a committed equity facility that shall be established pursuant to the Equity Facility Letter Agreement and the Equity Facility Definitive Documentation.

“Equity Facility Definitive Documentation” has the meaning specified in the Equity Facility Letter Agreement.

“Equity Facility Investor” means Chardan Capital Markets, LLC or any of its Affiliates, or any designee, delegate or assignee thereof.

“Equity Facility Letter Agreement” means the letter agreement, together with the Summary of Indicative Terms attached as an exhibit thereto, entered into among Acquiror, the Company and the Equity Facility Investor on May 15, 2022 pursuant to which Acquiror and the Company agreed to enter into the Equity Facility Definitive Documentation to establish the Equity Facility prior to the Closing Date.

“Equity Incentive Plan” has the meaning specified in Section 7.1(a).

“Equity Securities” means any share, share capital, capital stock, partnership, membership, joint venture or similar interest in any Person (including any stock appreciation, phantom stock, profit participation or similar rights) and any option, warrant, right or security (including debt securities) convertible, exchangeable or exercisable therefor.

“ERISA” has the meaning specified in Section 4.13(a).

“ERISA Affiliate” means any Affiliate or business, whether or not incorporated, that together with the Company would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“ESPP” has the meaning specified in Section 7.1(a).

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Exchange Agent” has the meaning specified in Section 3.2(a).

“Exchange Ratio” means the quotient obtained by *dividing* the number of (a) Acquiror Common Shares constituting the Aggregate Merger Consideration, by (b) Aggregate Fully Diluted Company Common Shares.

“Export Approvals” has the meaning specified in Section 4.26(a).

“Extended Termination Date” has the meaning specified in Section 7.13.

“Financial Statements” has the meaning specified in Section 4.8(a)(ii).

“First Earnout Achievement Date” has the meaning specified in Section 3.4(a).

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time.

“Governing Documents” means the legal document(s) by which any Person (other than an individual) establishes its legal existence or which govern its internal affairs. For example, the “Governing Documents” of a corporation are its certificate or articles of incorporation and bylaws (and stockholder agreements, if any), the “Governing Documents” of a limited partnership are its limited partnership agreement and certificate of limited partnership, the “Governing Documents” of a limited liability company are its operating agreement and certificate of formation or articles of organization and the “Governing Documents” of an exempted company are its memorandum and articles of association.

“Governmental Authority” means any federal, regional, state, provincial, municipal, local or foreign government, governmental authority, regulatory or administrative agency, governmental commission, department, board, bureau, agency or instrumentality, or court, tribunal or other arbitral body.

“Governmental Authorization” has the meaning specified in Section 4.5.

“Governmental Order” means any order, judgment, injunction, decree, writ, stipulation, determination or award, in each case, entered by or with any Governmental Authority.

“Hazardous Material” means any (a) pollutant or contaminant, (b) toxic or hazardous substance, material or waste, (c) petroleum or any fraction or product thereof, (d) asbestos or asbestos-containing material, (e) polychlorinated biphenyl, (f) chlorofluorocarbons, (g) per- and polyfluoroalkyl substances (including PFAs, PFOA, PFOS, Gen X, and PFBs) and (h) other substance, material or waste, in each case, which are regulated under any Environmental Law or as to which liability may be imposed pursuant to Environmental Law.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Indebtedness” means with respect to any Person, without duplication, any obligations, contingent or otherwise, in respect of (a) the principal of and premium (if any) in respect of all indebtedness for borrowed money, including accrued interest and any per diem interest accruals, (b) the principal and interest components of capitalized lease obligations under GAAP, (c) amounts drawn (including any accrued and unpaid interest) on letters of credit, bank guarantees, bankers’ acceptances and other similar instruments (solely to the extent such amounts have actually been drawn), (d) the principal of and premium (if any) in respect of obligations evidenced by bonds, debentures, notes and similar instruments, (e) the termination value of interest rate protection agreements and currency obligation swaps, hedges or similar arrangements (without duplication of other indebtedness supported or guaranteed thereby), (f) the principal component of all obligations to pay the deferred and unpaid purchase price of property and equipment which have been delivered, including “earn outs” and “seller notes,” (g) breakage costs, prepayment or early termination premiums, penalties, or other fees or expenses payable as a result of the consummation of the transactions contemplated hereby in respect of any of the items in the foregoing clauses (a) through (f), and (h) all Indebtedness of another Person referred to in clauses (a) through (g) above guaranteed directly or indirectly, jointly or severally.

“Initial PIPE Investor” has the meaning specified in the Recitals hereto.

“Intellectual Property” means all intellectual property and industrial property rights of every kind and description throughout the world, including U.S. and foreign: (a) patents, patent applications, invention disclosures, and all related continuations, continuations-in-part, divisionals, reissues, re-examinations, substitutions, and extensions thereof, (b) trademarks, logos, service marks, trade dress, trade names, slogans, internet domain names, and other similar designations of source or origin, together with the goodwill of the Company or its businesses symbolized by or associated with any of the foregoing, (c) copyrights and copyrightable subject matter, including such corresponding rights in Software and other works of authorship, (d) rights in algorithms, databases, compilations and data, (e) trade secrets and all other confidential and proprietary information, know-how, proprietary processes, formulae, models, and methodologies, (f) rights of publicity, privacy, and rights to personal information, (g) moral rights and rights of attribution and integrity, (h) social media addresses and accounts and usernames, account names and identifiers and (i) all applications and registrations, and any renewals, extensions and reversions, for the foregoing.

“Intended Tax Treatment” has the meaning specified in the Recitals hereto.

“Interim Period” has the meaning specified in Section 6.1.

“International Trade Laws” means all applicable export, import, customs and trade, and anti-boycott Laws or programs administered, enacted or enforced by any Governmental Authorities, including the Export Administration Regulations administered by the United States Department of Commerce, the International Traffic in Arms Regulations administered by the United States Department of State, customs and import Laws administered by United States Customs and Border Protection, any other export or import controls administered by an agency of the United States government, the anti-boycott regulations administered by the United States Department of Commerce and the United States Department of the Treasury, and other Laws adopted by Governmental Authorities of other countries relating to the same subject matter as the United States Laws described above.

“Intervening Event” means an Event following the date hereof that was not known and was not reasonably foreseeable by the Acquiror Board of Directors as of the date hereof, and that becomes known to the Acquiror Board of Directors after the date of this Agreement, but prior to the Acquiror Stockholder Approval, other than (i) changes in the market price or trading volume of Acquiror Common Stock or (ii) the timing of any approval of any Governmental Authority required for the consummation of the transactions contemplated hereby.

“Intervening Event Notice Period” has the meaning specified in Section 8.2(b)(iii).

“Investment Company Act” means the Investment Company Act of 1940, as amended.

“IRS” means the Internal Revenue Service.

“JOBS Act” has the meaning specified in Section 5.6(a).

“Key Employees” has the meaning specified in the Recitals hereto.

“Key Employment Agreements” has the meaning specified in the Recitals hereto.

“Labor Organization” has the meaning specified in Section 4.14(a).

“Law” means any statute, law, ordinance, rule, regulation or Governmental Order, in each case, of any Governmental Authority.

“Leased Real Property” means all real property leased, licensed, subleased or otherwise used or occupied by the Company.

“Legal Proceedings” has the meaning specified in Section 4.10.

“Letter of Intent” has the meaning specified in Section 1.2(g).

“Letter of Transmittal” has the meaning specified in Section 3.2(b).

“Licenses” means any approvals, authorizations, consents, licenses, registrations, permits or certificates of a Governmental Authority.

“Lien” means all liens, mortgages, deeds of trust, pledges, hypothecations, encumbrances, security interests, options, claims or other liens of any kind whether consensual, statutory or otherwise.

“Major Company Stockholder” means each of the holders of Company Capital Stock set forth on Section 1.1(b) of the Company Disclosure Letter.

“Merger” has the meaning specified in the Recitals hereto.

“Merger Sub” has the meaning specified in the Preamble hereto.

“Merger Sub Capital Stock” means the shares of the common stock, par value \$0.001 per share, of Merger Sub.

“Modification in Recommendation” means the Acquiror Board of Directors (i) (A) fails to make, changes, withdraws, withholds, amends, modifies or qualifies, or publicly proposes to make, change, withdraw, withhold, amend, modify or qualify, in a manner adverse to the Company, the Acquiror Board Recommendation or (B) adopts, approves, endorses or recommends, or publicly proposes to adopt, approve, endorse or recommend to Acquiror Stockholders, any Alternative Business Combination Proposal, (ii) makes any public statement materially inconsistent with the Acquiror Board Recommendation, or (iii) resolves or agrees to take any of the foregoing actions.

“Multiemployer Plan” has the meaning specified in Section 4.13(c).

“Nasdaq” has the meaning specified in Section 5.6(c).

“Nasdaq Listing Application” has the meaning specified in Section 7.3(b).

“Nasdaq Proposal” has the meaning specified in Section 8.2(b)(ii).

“NRS” has the meaning specified in the Recitals hereto.

“Offer Documents” has the meaning specified in Section 8.2(a)(i).

“O’Melveny” has the meaning specified in Section 11.18(b).

“O’Melveny Privileged Communications” has the meaning specified in Section 11.18(b).

“Open Source License” means any license meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation), or any substantially similar license, including any license approved by the Open Source Initiative or any Creative Commons License.

“Open Source Materials” means any software subject to an Open Source License.

“Owned Real Property” means all real property owned in fee simple by the Company, together with all buildings and other structures, facilities or improvements located thereon and all easements, licenses, rights and appurtenances of the Company relating to the foregoing.

“Payoff Consent” has the meaning specified in Section 6.6.

“Payoff Letter” has the meaning specified in Section 6.6.

“PCAOB Financial Statements” has the meaning specified in Section 6.3(a).

“Per Share Merger Consideration” means the product obtained by *multiplying* (i) the Exchange Ratio by (ii) \$10.00.

“Permitted Liens” means (i) mechanic’s, materialmen’s and similar Liens arising in the ordinary course of business with respect to any amounts (A) not yet due and payable or which are being contested in good faith through appropriate proceedings (B) for which adequate accruals or reserves have been established in accordance with GAAP and (C) that relate to obligations as to which there is no default on the part of the Company, (ii) Liens for Taxes (A) not yet due and payable or (B) which are being contested in good faith through appropriate proceedings and for which adequate accruals or reserves have been established in accordance with GAAP, (iii) with respect to the Real Property, minor title defects or irregularities that do not, individually or in the aggregate, materially impair the value or use of such property, the consummation of this Agreement or the operations of the Company, (iv) with respect to any Leased Real Property, any Lien affecting solely the interest of the landlord thereunder and not the interest of the tenant thereunder, which do not materially impair the value or use of such Real Property Lease, (v) zoning, building, entitlement and other land use and environmental regulations promulgated by any Governmental Authority that do not, in the aggregate, materially interfere with the current use of, or materially impair the value of, the Leased Real Property, in each case, to the extent that the Company’s current use is not in violation thereof, (vi) non-exclusive licenses of Intellectual Property entered into in the ordinary course of business, (vii) ordinary course purchase money Liens and Liens securing rental payments under operating or capital lease arrangements for amounts not yet due or payable, (viii) other Liens arising in the ordinary course of business and not incurred in connection with the borrowing of money in connection with workers’ compensation, unemployment insurance or other types of social security, and (ix) Liens that do not, individually or in the aggregate, materially and adversely affect, or materially disrupt, the ordinary course operation of the businesses of the Company, taken as a whole.

“Person” means any individual, firm, corporation, partnership, limited liability company, incorporated or unincorporated association, joint venture, joint stock company, Governmental Authority or instrumentality or other entity of any kind.

“PIPE Investment” means the purchase of shares of Acquiror Common Stock and/or other securities, or the providing of other financing, pursuant to the Subscription Agreement, and any Additional Subscription Agreements.

“PIPE Investment Amount” means the aggregate gross purchase price and aggregate financing amount received or deemed received by Acquiror prior to or substantially concurrently with the Closing in the PIPE Investment.

“PIPE Investor” means the Initial PIPE Investor and any investors and other financing sources that are party to any Additional Subscription Agreements.

“PIUS Debt” means the Indebtedness and other obligations incurred and outstanding in connection with the issuance and disbursement of proceeds of the PIUS Notes.

“PIUS Notes” means the Company’s Fixed Rate Senior Notes, Series 2021-6 issued pursuant to that Trust Indenture dated as of November 24, 2021, between the Company and UMB Bank.

“Privacy and Cybersecurity Requirements” has the meaning specified in Section 4.22(a).

“Prospectus” has the meaning specified in Section 11.1.

“Proxy Statement” has the meaning specified in Section 8.2(a)(i).

“Proxy Statement/Registration Statement” has the meaning specified in Section 8.2(a)(i).

“Q1 Financials” shall have the meaning specified in Section 6.3(c).

“Q2 Financials” shall have the meaning specified in Section 6.3(c).

“Real Property” means the Leased Real Property and the Owned Real Property.

“Real Property Leases” has the meaning specified in Section 4.20(a)(iii).

“Registration Rights Agreement” has the meaning specified in the Recitals hereto.

“Registration Statement” means the Registration Statement on Form S-4, or other appropriate form, including any pre-effective or post-effective amendments or supplements thereto, to be filed with the SEC by Acquiror under the Securities Act with respect to the Registration Statement Securities.

“Registration Statement Securities” has the meaning specified in Section 8.2(a)(i).

“Requisite Company Stockholders” means each of the holders of Company Capital Stock set forth on Section 1.1(c) of the Company Disclosure Letter.

“Resale Registration Statement” has the meaning specified in Section 8.2(a)(i).

“Restricted Person” means any person or entity identified on the U.S. Department of Commerce’s Denied Persons List, Unverified List or Entity List or the U.S. Department of State’s Debarred List.

“Sanctioned Country” means at any time, a country or territory which is itself the subject or target of any country-wide or territory-wide Sanctions Laws (at the time of this Agreement, Cuba, Iran, North Korea, Syria, and the Crimea, so-called Donetsk People's Republic, and so-called Luhansk People's Republic regions of Ukraine).

“Sanctioned Person” means (a) any Person identified in any sanctions-related list of designated Persons maintained by (i) the United States Department of the Treasury’s Office of Foreign Assets Control, or the United States Department of State, (ii) Her Majesty’s Treasury of the United Kingdom, (iii) any committee of the United Nations Security Council or (iv) the European Union, (b) any Person located, organized, or resident in, organized in, or a Governmental Authority or government instrumentality of, any Sanctioned Country and (c) any Person directly or indirectly 50% or more owned or controlled by, or acting on behalf of or for the benefit of, a Person described in clause (a) or (b), either individually or in the aggregate.

“Sanctions Laws” means those trade, economic and financial sanctions Laws administered, enacted or enforced from time to time by (i) the United States (including the Department of the Treasury’s Office of Foreign Assets Control), (ii) the European Union and enforced by its member states, (iii) the United Nations, or (iv) Her Majesty’s Treasury of the United Kingdom.

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002.

“SEC” means the United States Securities and Exchange Commission.

“SEC Statements” has the meaning specified in Section 1.2(j).

“Second Earnout Achievement Date” has the meaning specified in Section 3.4(b).

“Securities Act” means the Securities Act of 1933, as amended.

“Series A Preferred Stock” has the meaning specified in Section 4.6(a).

“Skadden” has the meaning specified in Section 11.18(a).

“Skadden / Brownstein Privileged Communications” has the meaning specified in Section 11.18(a).

“Software” means any and all (i) computer programs, applications and software, including any and all software implementations of algorithms, databases, models and methodologies (whether in source code, object code or other form) and (ii) work product used to design, plan and develop any of the foregoing.

“SPACs” has the meaning specified in Section 1.2(j).

“Sponsor” means Chardan NexTech Investments 2 LLC, a Delaware limited liability company.

“Sponsor Support Agreement” means that certain Support Agreement, dated as of the date hereof, by and among the Sponsor, Acquiror and the Company, as amended or modified from time to time.

“Stockholder Notice” has the meaning specified in Section 8.2(c)(ii).

“Subscription Agreement” has the meaning specified in the Recitals hereto.

“Subsidiary” means, with respect to a Person, a corporation or other entity of which more than fifty percent (50%) of the voting power of the Equity Securities is owned, directly or indirectly, by such Person.

“Surviving Corporation” has the meaning specified in Section 2.1(b).

“Takeover Statute” means any “fair price,” “moratorium,” “interested stockholder,” “control share acquisition,” “business combination” or other anti-takeover Law or similar Law enacted under state or federal Law, including NRS 78.378 through 78.3793, inclusive, and NRS 78.411 through 78.444, inclusive.

“Tax Return” means any return, declaration, report, statement, information statement or other document filed or required to be filed with any Governmental Authority with respect to Taxes, including any claims for refunds of Taxes, any information returns and any schedules, attachments, amendments or supplements of any of the foregoing.

“Taxes” means any and all federal, state, local, foreign or other taxes imposed by any Governmental Authority, including all income, gross receipts, license, payroll, recapture, net worth, employment, escheat and unclaimed property obligations, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, ad valorem, value added, inventory, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, governmental charges, duties, levies and other similar charges imposed by a Governmental Authority in the nature of a tax, alternative or add-on minimum, or estimated taxes, and, in each case, including any interest, penalty, or addition thereto.

“Terminating Acquiror Breach” has the meaning specified in Section 10.1(g).

“Terminating Company Breach” has the meaning specified in Section 10.1(e).

“Third Earnout Achievement Date” has the meaning specified in Section 3.4(c).

“Title IV Plan” has the meaning specified in Section 4.13(c).

“Top Customers” has the meaning specified in Section 4.28(a).

“Top Vendors” has the meaning specified in Section 4.28(a).

“Trading Day” means any day on which shares of Acquiror Common Stock are actually traded on the principal securities exchange or securities market on which shares of Acquiror Common Stock are then traded.

“Transaction Proposals” has the meaning specified in Section 8.2(b)(ii).

“Treasury Regulations” means the regulations promulgated under the Code by the United States Department of the Treasury.

“Treasury Share” has the meaning specified in Section 3.1(a).

“Trust Account” has the meaning specified in Section 11.1.

“Trust Agreement” has the meaning specified in Section 5.8.

“Trustee” has the meaning specified in Section 5.8.

“Unaudited Financial Statements” has the meaning specified in Section 4.8(a)(ii).

“Unbundling Precatory Proposals” has the meaning specified in Section 8.2(b)(ii).

“VWAP” means, for any security as of any day or multi-day period, the dollar volume-weighted average price for such security on the principal securities exchange or securities market on which such security is then traded during the period beginning at 9:30:01 a.m., New York time on such day or the first day of such multi-day period (as applicable), and ending at 4:00:00 p.m., New York time on such day or the last day of such multi-day period (as applicable), as reported by Bloomberg through its “HP” function (set to weighted average) or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time on such day or the first day of such multi-day period (as applicable), and ending at 4:00:00 p.m., New York time on such day or the last day of such multi-day period (as applicable), as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported by OTC Markets Group Inc. during such day or multi-day period (as applicable). If the VWAP cannot be calculated for such security for such day or multi-day period (as applicable) on any of the foregoing bases, the VWAP of such security shall be the fair market value per share at the end of such day or multi-day period (as applicable) as reasonably determined by the Acquiror Board of Directors.

“Working Capital Loans” means any loan made to Acquiror by any of the Sponsor, an Affiliate of the Sponsor, or any of Acquiror’s officers or directors, and evidenced by a promissory note, for the purpose of financing costs incurred in connection with a Business Combination.

“Written Consent” means an irrevocable written consent of the stockholders of the Company collectively holding the voting power sufficient to provide the Company Stockholder Approval.

Section 1.2. Construction.

(a) Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender, (ii) words using the singular or plural number also include the plural or singular number, respectively, (iii) the terms “hereof,” “herein,” “hereby,” “hereto” and derivative or similar words refer to this entire Agreement, (iv) the terms “Article,” “Exhibit” or “Section” refer to the specified Article, Exhibit or Section of this Agreement, (v) the word “including” shall mean “including, without limitation” and (vi) the word “or” shall be disjunctive but not exclusive.

(b) Unless the context of this Agreement otherwise requires, references to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

(c) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. If any action is to be taken or given on or by a particular calendar day, and such calendar day is not a Business Day, then such action may be deferred until the next Business Day.

(d) All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

(e) The term “in the ordinary course” means “in the ordinary course consistent with past practice.”

(f) The term “actual fraud” means, with respect to a party to this Agreement, an actual and intentional fraud with respect to the making of the representations and warranties pursuant to Article IV or Article V (as applicable); provided that such actual and intentional fraud of such Person shall only be deemed to exist if any of the individuals included on Section 1.3 of the Company Disclosure Letter (in the case of the Company) or Section 1.3 of the Acquiror Disclosure Letter (in the case of Acquiror) had actual knowledge that a representation or warranty made by such Person pursuant to, in the case of the Company, Article IV as qualified by the Company Disclosure Letter, or, in the case of Acquiror, Article V as qualified by the Acquiror Disclosure Letter, were false when made, with the intention that the other such party to this Agreement rely thereon, and the other party did rely thereon to its detriment.

(g) For avoidance of doubt, the Tail Fee (as defined in that certain Letter of Intent, by and between the Company and Acquiror, dated as of October 15, 2021 (the “Letter of Intent”)), was intended to constitute liquidated damages in the event of a breach of the Letter of Intent, and the parties hereby acknowledge and agree that it is not a measure of damages under this Agreement and shall not be considered to measure damages hereunder.

(h) Except as otherwise specifically provided herein, to the extent this Agreement refers to information or documents having been “made available” (or words of similar import) by or on behalf of one or more parties to another party, such obligation shall be deemed satisfied if (i) such one or more parties or a Person acting on its behalf made such information or document available (or delivered or provided such information or document) in the electronic data room hosted by Datasite and labeled “Project Bronco” prior to 9:00 a.m. Eastern time on the date that is two (2) full Business Days prior to the date of this Agreement or (ii) such information or document is publicly available prior to 9:00 a.m. Eastern time on the date that is two (2) full Business Days prior to the date of this Agreement in the Electronic Data Gathering, Analysis and Retrieval (EDGAR) database of the SEC and not subject to any redactions or omissions.

(i) The parties to this Agreement agree and acknowledge that they have been represented by counsel during, and have participated jointly in, the negotiation, drafting and execution of this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties to this Agreement, and the parties to this Agreement irrevocably waive the application of any Law, holding or rule of construction favoring or disfavoring any party to this Agreement by virtue of the authorship of any provision of this Agreement.

(j) Notwithstanding anything to the contrary herein, no representation or warranty by Acquiror in this Agreement shall apply to any statement or information in the Acquiror SEC Filings that relates to the topics referenced in the SEC’s “Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies” issued on April 12, 2021, the rules proposed by the SEC on March 30, 2022, intended to enhance investor protections in initial public offerings by special purpose acquisition companies (“SPACs”) and in subsequent business combination transactions between SPACs and private operating companies, or to other accounting matters related to initial public offering securities or expenses as to which the SEC or Acquiror’s audit firm has issued, adopted, recommended in writing (with such recommendation being directed to Acquiror, in the case of Acquiror’s audit firm) or implemented (with such implementation relating to Acquiror, in the case of Acquiror’s audit firm) a statement, guidance, interpretation or change in presentation after the date of Acquiror’s initial public offering (collectively, the “SEC Statements”), nor shall any correction, amendment or restatement of Acquiror Financial Statements due wholly or in part to the SEC Statements, nor any other effects that relate to or arise out of, or are in connection with or in response to, the SEC Statements or any changes in accounting or disclosure related thereto, be deemed to be a breach of any representation or warranty by Acquiror. The Company acknowledges and agrees that Acquiror continues to review the SEC Statements and their implications, including on the financial statements and other information included in the Acquiror SEC Filings, and any restatement, revision or other modification of the Acquiror SEC Filings relating to or arising from such SEC Statements, shall be deemed not material and not to have or reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Acquiror to consummate the transactions contemplated by this Agreement, for purposes of this Agreement.

(k) References to any agreement or Contract are to that agreement or Contract as amended, modified or supplemented (including by waiver or consent) from time to time in accordance with the terms hereof and thereof and all schedules and exhibits thereto.

Section 1.3. Knowledge. As used herein, (i) the phrase “to the knowledge” of the Company shall mean the actual knowledge of the individuals identified on Section 1.3 of the Company Disclosure Letter and (ii) the phrase “to the knowledge” of Acquiror shall mean the actual knowledge of the individuals identified on Section 1.3 of the Acquiror Disclosure Letter, in each case, as such individuals would have acquired in the exercise of a reasonable inquiry of direct reports.

ARTICLE II

THE MERGER; CLOSING

Section 2.1. The Merger.

(a) Upon the terms and subject to the conditions set forth in this Agreement, Acquiror, Merger Sub and the Company (Merger Sub and the Company sometimes being referred to herein as the “Constituent Corporations”) shall cause Merger Sub to be merged with and into the Company, with the Company being the surviving corporation in the Merger. The Merger shall be consummated in accordance with this Agreement and shall be evidenced by an articles of merger with respect to the Merger (as so filed, the “Articles of Merger”), executed by the Constituent Corporations in accordance with the relevant provisions of the NRS, such Merger to be effective as of the Effective Time.

(b) Upon consummation of the Merger, the separate corporate existence of Merger Sub shall cease and the Company, as the surviving corporation of the Merger (hereinafter referred to for the periods at and after the Effective Time as the “Surviving Corporation”), shall continue its corporate existence under the NRS, as a wholly owned subsidiary of Acquiror.

Section 2.2. Effects of the Merger. At and after the Effective Time, the Surviving Corporation shall thereupon and thereafter possess all of the rights, privileges, powers and franchises, of a public as well as a private nature, of the Constituent Corporations, and shall become subject to all the restrictions, disabilities and duties of each of the Constituent Corporations; and all rights, privileges, powers and franchises of each Constituent Corporation, and all property, real, personal and mixed, and all debts due to each such Constituent Corporation, on whatever account, shall become vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall become thereafter the property of the Surviving Corporation as they are of the Constituent Corporations; and the title to any real property vested by deed or otherwise or any other interest in real estate vested by any instrument or otherwise in either of such Constituent Corporations shall not revert or become in any way impaired by reason of the Merger; but all Liens upon any property of a Constituent Corporation shall thereafter attach to the Surviving Corporation and shall be enforceable against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it; all of the foregoing in accordance with the applicable provisions of the NRS.

Section 2.3. Closing; Effective Time.

(a) In accordance with the terms and subject to the conditions of this Agreement, the closing of the Merger (the “Closing”) shall be effected by the exchange of signatures by electronic transmission, or, if such exchange is not practicable, shall take place at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York 10001, at 10:00 a.m. (New York time) on the date which is two (2) Business Days after the first date on which all conditions set forth in Article IX shall have been satisfied or waived (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver thereof) or such other time and place as Acquiror and the Company may mutually agree in writing. The date on which the Closing actually occurs is referred to in this Agreement as the “Closing Date.”

(b) Subject to the satisfaction or waiver of all of the conditions set forth in Article IX of this Agreement, and provided this Agreement has not theretofore been terminated pursuant to its terms, Acquiror, Merger Sub, and the Company shall cause the Articles of Merger to be executed and duly submitted for filing with the Secretary of State of the State of Nevada in accordance with the applicable provisions of the NRS. The Merger shall become effective at the time when the Articles of Merger have been accepted for filing by the Secretary of State of the State of Nevada, or at such later date and time as may be agreed by Acquiror and the Company in writing and specified in the Articles of Merger in accordance with the NRS (the “Effective Time”). For the avoidance of doubt, the effectiveness of the Company Preferred Conversion must not be later than immediately prior to the Effective Time.

Section 2.4. Closing Deliverables.

(a) At the Closing, the Company will deliver or cause to be delivered to Acquiror:

(i) a certificate signed by an officer of the Company, dated as of the Closing Date, certifying that the conditions specified in Section 9.2(a), Section 9.2(b) and Section 9.2(f) have been satisfied;

(ii) the written resignations of all of the directors and officers of the Company (other than any such Persons identified to be the directors and officers of the Surviving Corporation at the Effective Time, in accordance with the provisions of Section 2.6), effective as of the Effective Time;

(iii) the Registration Rights Agreement, duly executed by the Major Company Stockholders and Dragonfly Energy Holdings Corp.;

(iv) evidence that all Affiliate Agreements (other than those set forth on Section 6.4 of the Company Disclosure Letter) have been terminated or settled at or prior to the Closing without further liability to Acquiror, the Company; and

(v) a certificate on behalf of the Company, prepared in a manner consistent and in accordance with the requirements of Treasury Regulations Sections 1.897-2(h) and 1.1445-2(c)(3), certifying that no interest in the Company is, or has been during the relevant period specified in Section 897(c)(1)(A)(ii) of the Code, a “U.S. real property interest” within the meaning of Section 897(c) of the Code, and notice to the IRS prepared in accordance with the provisions of Treasury Regulations Section 1.897-2(h)(2).

(b) At the Closing, Acquiror will deliver or cause to be delivered:

(i) to the Exchange Agent, the Aggregate Merger Consideration for further distribution to the Company’s equityholders pursuant to Section 3.2;

(ii) to the Company, a certificate signed by an officer of Acquiror, dated the Closing Date, certifying that, the conditions specified in Section 9.3(a) and Section 9.3(b) have been satisfied;

(iii) to the Company, the Registration Rights Agreement, duly executed by certain Acquiror Stockholders; and

(iv) to the Company, the written resignations of all of the directors and officers of Acquiror and Merger Sub (other than those Persons identified to be the directors and officers, respectively, of Acquiror at the Effective Time, in accordance with the provisions of Section 2.6 and Section 7.6), effective as of the Effective Time.

(c) On the Closing Date, substantially concurrently with the Effective Time, Acquiror shall pay or cause to be paid by wire transfer of immediately available funds, (i) all Acquiror Transaction Expenses as set forth on a written statement to be delivered to the Company not less than two (2) Business Days prior to the Closing Date and (ii) all Company Transaction Expenses as set forth on a written statement to be delivered to Acquiror by or on behalf of the Company not less than two (2) Business Days prior to the Closing Date, in each case of clauses (i) and (ii), which shall include the respective amounts and wire transfer instructions for the payment thereof, together with corresponding invoices for the foregoing; provided that any Company Transaction Expenses due to current or former employees, independent contractors, officers, or directors of the Company shall be paid to the Company for further payment to such employee, independent contractor, officer or director through the Company’s payroll.

Section 2.5. Governing Documents.

(a) At the Effective Time, by virtue of the Merger, the certificate of incorporation and bylaws of the Company, as in effect immediately prior to the Effective Time, shall be amended and restated in their entirety to read substantially identical to the certificate of incorporation and bylaws of Merger Sub, respectively, as in effect immediately prior to the Effective Time, until thereafter supplemented or amended in accordance with their respective terms and the DGCL.

(b) The certificate of incorporation and bylaws of Acquiror as in effect immediately prior to the Effective Time (which shall be in the form attached as Exhibits A and B hereto (with such changes as may be agreed in writing by Acquiror and the Company)), shall be the certificate of incorporation and bylaws of Acquiror from and after the Effective Time, until thereafter amended as provided therein and under the DGCL.

Section 2.6. Directors and Officers.

(a) The officers of the Company as of immediately prior to the Effective Time, shall be the officers of the Surviving Corporation at the Effective Time, each such individual to hold such office in accordance with the Governing Documents of the Surviving Corporation.

(b) The parties shall take all actions necessary to ensure that, effective at the Effective Time, the Persons identified as the initial post-Closing directors and officers of Acquiror in accordance with the provisions of Section 7.6 shall be the directors and officers (and in the case of such officers, holding such positions as are set forth on Section 2.6(b) of the Company Disclosure Letter), respectively, of Acquiror, each to hold office in accordance with the Governing Documents of Acquiror.

Section 2.7. Tax Free Reorganization Matters. The parties intend that, for United States federal income tax purposes, the Merger will qualify for the Intended Tax Treatment. No party knows of any fact or circumstance (without conducting independent inquiry or diligence of any other relevant party), and no party has taken or will take any action (or will knowingly fail to take any action), which action (or failure to act) could be reasonably expected to prevent the Merger from qualifying for the Intended Tax Treatment. The Merger shall be reported by the parties for all Tax purposes in accordance with the foregoing, unless otherwise required by a Governmental Authority as a result of a “determination” within the meaning of Section 1313(a) of the Code. The parties shall reasonably cooperate with each other and their respective counsel to document and support the Intended Tax Treatment, including by taking the actions described on Section 2.7 of the Company Disclosure Letter.

ARTICLE III

EFFECTS OF THE MERGER ON THE COMPANY CAPITAL STOCK AND EQUITY AWARDS

Section 3.1. Conversion of Securities.

(a) At the Effective Time (and for the avoidance of doubt, after giving effect to the Company Preferred Conversion), by virtue of the Merger and without any action on the part of any holder of Company Capital Stock, each share of Company Capital Stock that is issued and outstanding immediately prior to the Effective Time (other than any (i) shares of Company Common Stock subject to Company Options (which shall be subject to Section 3.3), (ii) shares of Company Capital Stock held in the treasury of the Company, which treasury shares shall be cancelled as part of the Merger for no consideration and which shall not constitute “Company Capital Stock” hereunder (each such share, a “Treasury Share”), and (iii) Dissenting Shares, which shall be subject to Section 3.6), shall be cancelled and converted into the right to receive (A) the applicable portion of the Aggregate Merger Consideration as determined pursuant to Section 3.1(c) and (B) the right to receive Earnout Shares to the extent due and issuable pursuant to Section 3.4.

(b) At the Effective Time, by virtue of the Merger and without any action on the part of Acquiror or Merger Sub, each share of Merger Sub Capital Stock, shall be converted into a share of common stock, par value \$0.001, of the Surviving Corporation.

(c) Each holder of shares of Company Capital Stock as of immediately prior to the Effective Time (other than in respect of (i) any shares of Company Common Stock subject to Company Options (which shall be subject to Section 3.3) (ii) Treasury Shares and (iii) Dissenting Shares (which shall be subject to Section 3.6)) shall be entitled to receive (A) a portion of the Aggregate Merger Consideration equal to (1) the Exchange Ratio, *multiplied by* (2) the number of Company Conversion Shares held by such holder as of immediately prior to the Effective Time, with fractional shares rounded to the nearest whole share as to each such separate holder of Company Capital Stock and (B) the right to receive Earnout Shares to the extent due and issuable pursuant to Section 3.4, with fractional shares rounded to the nearest whole share as to each such separate holder of Company Capital Stock.

(d) Notwithstanding anything in this Agreement to the contrary, no fractional shares of Acquiror Common Stock shall be issued in the Merger.

Section 3.2. Exchange Procedures

(a) Prior to the Closing, and in any event no later than five (5) Business Days prior to the Closing Date, Acquiror shall appoint an exchange agent (the “Exchange Agent”) to act as the agent for the purpose of paying the Aggregate Merger Consideration to the Company’s equityholders. At or before the Effective Time, Acquiror shall deposit with the Exchange Agent the number of shares of Acquiror Common Stock equal to the portion of the Aggregate Merger Consideration to be paid in shares of Acquiror Common Stock.

(b) Reasonably promptly after the Effective Time, Acquiror shall send or shall cause the Exchange Agent to send, to each record holder of shares of Company Capital Stock as of immediately prior to the Effective Time, whose shares of Company Capital Stock were converted pursuant to Section 3.1(a) into the right to receive a portion of the Aggregate Merger Consideration, a letter of transmittal and instructions (which shall specify that the delivery shall be effected, and the risk of loss and title shall pass, only upon proper transfer of each share to the Exchange Agent, and which letter of transmittal will be in customary form and have such other provisions as Acquiror may reasonably specify) for use in such exchange (each, a “Letter of Transmittal”).

(c) Each holder of shares of Company Capital Stock that have been converted into the right to receive a portion of the Aggregate Merger Consideration, pursuant to Section 3.1(a), shall be entitled to receive such portion of the Aggregate Merger Consideration upon receipt by the Exchange Agent of an “agent’s message” (or such other evidence, if any, of transfer as the Exchange Agent may reasonably request) or a duly completed and validly executed Letter of Transmittal, as applicable, and such other documents as may reasonably be requested by the Exchange Agent. No interest shall be paid or accrued upon the transfer of any share.

(d) Promptly following the date that is one (1) year after the Effective Time, Acquiror shall instruct the Exchange Agent to deliver to Acquiror all documents in its possession relating to the transactions contemplated hereby, and the Exchange Agent’s duties shall terminate. Thereafter, any portion of the Aggregate Merger Consideration that remains unclaimed shall be returned to Acquiror, and any Person that was a holder of shares of Company Capital Stock as of immediately prior to the Effective Time that has not exchanged such shares of Company Capital Stock for an applicable portion of the Aggregate Merger Consideration in accordance with this Section 3.2 prior to the date that is one (1) year after the Effective Time, may transfer such shares of Company Capital Stock to Acquiror and (subject to applicable abandoned property, escheat and similar Laws) receive in consideration therefor, and Acquiror shall promptly deliver, such applicable portion of the Aggregate Merger Consideration without any interest thereupon. None of Acquiror, Merger Sub, the Company, the Surviving Corporation or the Exchange Agent shall be liable to any Person in respect of any of the Aggregate Merger Consideration delivered to a public official pursuant to and in accordance with any applicable abandoned property, escheat or similar Laws. If any such shares shall not have been transferred immediately prior to such date on which any amounts payable pursuant to this Article III would otherwise escheat to or become the property of any Governmental Authority, any such amounts shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation, free and clear of all claims or interest of any Person previously entitled thereto.

Section 3.3. Treatment of Company Options.

(a) As of the Effective Time, by virtue of the Merger and without any action on the part of any holder of a Company Option, each Company Option that is then outstanding shall be converted into an option to purchase shares of Acquiror Common Stock upon substantially the same terms and conditions as are in effect with respect to such option immediately prior to the Effective Time, including with respect to vesting and termination-related provisions (each, an “Acquiror Option”) except that (i) such Acquiror Option shall provide the right to purchase that whole number of shares of Acquiror Common Stock (rounded down to the nearest whole share) equal to the number of shares of Company Common Stock subject to such Company Option, *multiplied by* the Exchange Ratio, and (ii) the exercise price per share for each such Acquiror Option shall be equal to the exercise price per share of such Company Option in effect immediately prior to the Effective Time, *divided by* the Exchange Ratio (the exercise price per share, as so determined, being rounded up to the nearest full cent); provided, however, that the conversion of any such Company Options that are “incentive stock options” (within the meaning of Section 422 of the Code) will be made in a manner that is intended to be consistent with Treasury Regulations Section 1.424-1, and the conversion of all Company Options will be made in a manner, such that such conversion will not constitute a “modification” of such Company Options for purposes of Section 409A or Section 424 of the Code, as applicable.

(b) The Company shall take all necessary actions to effect the treatment of Company Options pursuant to this Section 3.3 in accordance with the Company Incentive Plans and the applicable award agreements and to ensure that no Acquiror Option may be exercised prior to the effective date of an applicable Form S-8 (or other applicable form, including Form S-1 or Form S-3) of Acquiror. The Board of Directors of the Company shall amend the Company Incentive Plans and take all other necessary actions, effective as of immediately prior to the Closing, in order to provide that no new Company Options will be granted under the Company Incentive Plans.

Section 3.4. Earnout.

(a) If, as disclosed in the Annual Report on Form 10-K for the fiscal year ending December 31, 2023 for Acquiror filed with the SEC, Acquiror's (x) total audited revenue for the year ended December 31, 2023 is equal to or greater than \$250,000,000 (two hundred and fifty million dollars) and (y) audited operating income for the year ended December 31, 2023 is equal to or greater than \$35,000,000 (thirty-five million dollars) (the date the foregoing is satisfied, the "First Earnout Achievement Date"):

(i) Acquiror shall promptly issue to each holder of Company Conversion Shares outstanding immediately prior to the Effective Time, a number of shares of Acquiror Common Stock equal to the product of (1) the quotient of (A) the number of shares of Acquiror Common Stock issuable with respect to the Company Conversion Shares held by such holder as of immediately prior to the Effective Time, *divided by* (B) the Earnout Fully Diluted Shares, *multiplied by* (2) 15,000,000 (fifteen million).

(b) If, at any time following the Closing Date until December 31, 2026, the VWAP of Acquiror Common Stock is greater than or equal to \$22.50 for any twenty (20) Trading Days within a period of thirty (30) consecutive Trading Days (the date when the foregoing is first satisfied, the "Second Earnout Achievement Date"):

(i) Acquiror shall promptly issue to each holder of Company Conversion Shares outstanding immediately prior to the Effective Time, a number of shares of Acquiror Common Stock equal to the product of (1) the quotient of (A) the number of shares of Acquiror Common Stock issuable with respect to the Company Conversion Shares held by such holder as of immediately prior to the Effective Time, *divided by* (B) the Earnout Fully Diluted Shares, *multiplied by* (2) 12,500,000 (twelve million five hundred thousand).

(c) If, at any time following the Closing Date until December 31, 2028, the VWAP of Acquiror Common Stock is greater than or equal to \$32.50 for any twenty (20) Trading Days within a period of thirty (30) consecutive Trading Days (the date when the foregoing is first satisfied, the "Third Earnout Achievement Date"):

(i) Acquiror shall promptly issue to each holder of Company Conversion Shares outstanding immediately prior to the Effective Time, a number of shares of Acquiror Common Stock equal to the product of (1) the quotient of (A) the number of shares of Acquiror Common Stock issuable with respect to the Company Conversion Shares held by such holder as of immediately prior to the Effective Time, *divided by* (B) the Earnout Fully Diluted Shares, *multiplied by* (2) 12,500,000 (twelve million five hundred thousand).

(d) For the avoidance of doubt, the holders of Company Conversion Shares immediately prior to the Closing shall be entitled to receive the shares of Acquiror Common Stock described in Section 3.4(a), Section 3.4(b) and Section 3.4(c) only upon the occurrence of the First Earnout Achievement Date, the Second Earnout Achievement Date and the Third Earnout Achievement Date, respectively; provided that upon the occurrence of the Third Earnout Achievement Date, if the Second Earnout Achievement Date has yet to occur, the Second Earnout Achievement Date will be deemed to have occurred simultaneously with the Third Earnout Achievement Date and the holders of Company Conversion Shares outstanding immediately prior to the Effective Time shall be entitled to receive Earnout Shares pursuant to Section 3.4(b) as if the Second Earnout Achievement Date occurred on or prior to December 31, 2026; provided, however, that such date shall only occur once, if at all, and in no event shall such holders be collectively entitled to receive more than an aggregate of 40,000,000 (forty million) shares of Acquiror Common Stock pursuant to this Section 3.4.

(e) In the event that there is a Change of Control after the Closing,

(i) and prior to December 31, 2026:

(1) to the extent the Second Earnout Achievement Date has not already occurred, the Second Earnout Achievement Date shall be deemed to occur immediately prior to the closing of such Change of Control if the price paid per Acquiror Common Share in such Change of Control is greater than or equal to \$22.50, and in such event (A) Acquiror shall issue the shares of Acquiror Common Stock issuable pursuant to Section 3.4(b), immediately prior to the closing of such Change of Control (to the extent such shares of Acquiror Common Stock have not previously been issued), and (B) thereafter, the obligations in Section 3.4(b) shall terminate and no longer apply; and

(2) in the event the price paid per Acquiror Common Share in such Change of Control is less than \$22.50, the obligations in Section 3.4(b) shall no longer apply from and after the closing of such Change of Control; provided that upon the occurrence of the Third Earnout Achievement Date, if the Second Earnout Achievement Date has yet to occur, the Second Earnout Achievement Date will be deemed to have occurred simultaneously with the Third Earnout Achievement Date;

(ii) and prior to December 31, 2028:

(1) to the extent the Third Earnout Achievement Date has not already occurred, the Second Earnout Achievement Date (if it has not already occurred) and the Third Earnout Achievement Date shall be deemed to occur immediately prior to the closing of such Change of Control if the price paid per Acquiror Common Share in such Change of Control is greater than or equal to \$32.50, and in such event (A) Acquiror shall issue the shares of Acquiror Common Stock issuable pursuant to Section 3.4(b) (if the Second Earnout Achievement Date has not already occurred) and Section 3.4(c), immediately prior to the closing of such Change of Control (to the extent such shares of Acquiror Common Stock have not previously been issued), and (B) thereafter, the obligations in Section 3.4(c) shall terminate and no longer apply; and

(2) in the event the price paid per Acquiror Common Share in such Change of Control is less than \$32.50, the obligations in Section 3.4(c) shall no longer apply from and after the closing of such Change of Control;

provided that (A) in each of the foregoing clauses (i) through (ii), to the extent the price paid per Acquiror Common Share includes equity consideration, contingent consideration or property other than cash, the Acquiror Board of Directors shall determine the price paid per Acquiror Common Share in respect of such Change of Control in good faith (valuing any such consideration payable in publicly traded securities of the acquiror, on a per-security basis, at the VWAP of such security over the twenty (20) consecutive Trading Day period ending on (and including) the second Business Day prior to the date of the entry into the binding definitive agreement providing for the consummation of such Change of Control) and (B) any determination by the Acquiror Board of Directors with respect to any matters contemplated by, or related to, this Section 3.4(e), including the price paid per Acquiror Common Share in any Change of Control, the determination of whether any Acquiror Common Shares are issuable under this Section 3.4(e), shall be made in good faith and shall be final and binding on the parties.

(f) The Acquiror Common Stock price targets set forth in Section 3.4(b), Section 3.4(c) and Section 3.4(e) shall be equitably adjusted for stock splits, reverse stock splits, stock dividends, reorganizations, recapitalizations, reclassifications, combinations, exchanges of shares or other like changes or transactions with respect to the Acquiror Common Stock occurring on or after the Closing (other than the transactions contemplated by this Agreement).

(g) If the Second Earnout Achievement Date or Change of Control has not occurred after the Closing and prior to December 31, 2026, subject to Section 3.4(d) and Section 3.4(e)(ii), the obligations in Section 3.4(b) and Section 3.4(e)(i) shall terminate and no longer apply. If the Third Earnout Achievement Date or Change of Control has not occurred after the Closing and prior to December 31, 2028, the obligations in Section 3.4(c), Section 3.4(d) and Section 3.4(e)(ii) shall terminate and no longer apply.

(h) Any issuance of Earnout Shares in respect of Company Capital Stock to holders of such shares of Company Capital Stock hereunder shall be treated as comprised of two components, respectively, a principal component and an interest component, the amounts of which shall be determined as provided in Treasury Regulations Section 1.483-4(b) example (2) using the 3-month test rate of interest provided for in Treasury Regulations Section 1.1274-4(a)(1)(ii) employing the semi-annual compounding period. As to each such issuance of Earnout Shares hereunder in respect of Company Capital Stock to each holder of such shares of Company Capital Stock outstanding immediately prior to the Effective Time, Earnout Shares representing the principal component (with a value equal to the principal component) and Earnout Shares representing the interest component (with a value equal to the interest component) shall be represented by separate share certificates.

Section 3.5. Withholding. Notwithstanding any other provision of this Agreement, Acquiror, the Company and the Exchange Agent, as applicable, shall be entitled to deduct and withhold from any amount payable pursuant to this Agreement such Taxes as are required to be deducted and withheld from such amount under the Code or any other applicable Law (as reasonably determined by Acquiror, the Company, or the Exchange Agent, respectively); provided that Acquiror (including on behalf of the Exchange Agent) shall use commercially reasonable efforts to provide the Company with at least ten (10) days prior written notice of any amounts that it intends to withhold in connection with the payment of the Aggregate Merger Consideration and will reasonably cooperate with the Company to reduce or eliminate any applicable withholding. To the extent that any amounts are so deducted and withheld and timely remitted to the appropriate Governmental Authority, then such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

Section 3.6. Dissenting Shares. No holder of shares of Company Capital Stock will have or be entitled to assert dissenter's rights or any other rights of appraisal, pursuant to the NRS or otherwise, as a result of or in connection with this Agreement and the transactions contemplated hereby, except as and only to the extent mandated by the Dissenter's Rights Statutes. At the Effective Time, by virtue of the Merger and without any action on the part of any holder of shares of Company Capital Stock, each Dissenting Share shall cease to be outstanding, shall be cancelled and shall cease to exist, and shall be subject to the provisions of this Section 3.6. No Dissenting Stockholder shall be entitled to receive any portion of the Aggregate Merger Consideration or any Earnout Shares with respect to the Dissenting Shares formerly owned by such Dissenting Stockholder. Each Dissenting Stockholder shall be entitled to receive only the payment of the fair value (as defined in NRS 92A.320) of the Dissenting Shares formerly owned by such Dissenting Stockholder, as determined in accordance with the NRS, but only if and to the extent such Dissenting Stockholder has duly perfected and not withdrawn or otherwise lost, and is otherwise entitled to, dissenter's rights in accordance with the Dissenter's Rights Statutes. The Company shall give Acquiror (i) prompt notice and copies of any written demands for dissenter's rights, attempted or purported withdrawals of such demands and any other instruments received by the Company relating to any Person's assertion of or demand for dissenter's rights and (ii) the opportunity to participate in and, if Acquiror elects, direct all negotiations and Legal Proceedings (as defined below) with respect to any such assertions and demands. The Company shall not, except with the prior written consent of Acquiror, make any payment with respect to any demands for dissenter's rights, offer to settle or settle any such demands or approve any withdrawal of any such demands, or agree, authorize or commit to do any of the foregoing. If any Dissenting Stockholder withdraws its assertion or demand for dissenter's rights or otherwise waives or loses its dissenter's rights under the Dissenter's Rights Statutes with respect to any Dissenting Shares, such Dissenting Shares shall be deemed to have been converted at the Effective Time into the right to receive, without any interest thereon, (A) the applicable portion of the Aggregate Merger Consideration as determined pursuant to Section 3.1(c) and (B) the right to receive Earnout Shares to the extent due and issuable pursuant to Section 3.4.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the disclosure letter delivered to Acquiror and Merger Sub by the Company on the date of this Agreement (the “Company Disclosure Letter”) (each section of which, subject to Section 11.9, qualifies the correspondingly numbered and lettered representations in this Article IV), the Company represents and warrants to Acquiror and Merger Sub as follows:

Section 4.1. Company Organization. The Company has been duly formed or organized and is validly existing as a corporation in good standing under the Laws of the State of Nevada, and has the requisite company or corporate power, as applicable, and authority to own, lease or operate all of its properties and assets and to conduct its business as it is now being conducted. The Governing Documents of the Company, as amended to the date of this Agreement and as previously made available by or on behalf of the Company to Acquiror, are true, correct and complete. The Company is duly licensed or qualified and in good standing as a foreign or extra-provincial corporation (or other entity, if applicable) in each jurisdiction in which its ownership of property or the character of its activities is such as to require it to be so licensed or qualified or in good standing, as applicable, except where the failure to be so licensed or qualified or in good standing would not be material to the business of the Company, taken as a whole.

Section 4.2. Subsidiaries. The Company does not have any Subsidiaries.

Section 4.3. Due Authorization.

(a) Other than the Company Stockholder Approval, the Company has all requisite company or corporate power, as applicable, and authority to (i) execute and deliver this Agreement and the other documents to which it is a party contemplated hereby, and (ii) (subject to the approvals described in Section 4.5) to consummate the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and thereunder. The execution and delivery of this Agreement and the other documents to which the Company is a party contemplated hereby and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized and approved by the Board of Directors of the Company, and no other company or corporate proceeding on the part of the Company is necessary to authorize this Agreement and the other documents to which the Company is a party contemplated hereby. This Agreement has been, and on or prior to the Closing, the other documents to which the Company is a party contemplated hereby will be, duly and validly executed and delivered by the Company and this Agreement constitutes, and at or prior to the Closing, the other documents to which the Company is a party contemplated hereby will constitute, a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors’ rights generally and subject, as to enforceability, to general principles of equity.

(b) On or prior to the date of this Agreement, the Board of Directors of the Company has duly adopted resolutions (i) determining that it is in the best interests of the Company and its stockholders, and declaring advisable, to enter into this Agreement and the other documents to which the Company is a party contemplated hereby, (ii) approving the execution, delivery and performance by the Company of this Agreement and the other documents to which the Company is a party contemplated hereby and the transactions contemplated hereby and thereby and the consummation of such transactions and (iii) recommending the adoption and approval of this Agreement and the other documents to which the Company is a party as contemplated hereby and the transactions contemplated hereby and thereby by the Company's stockholders. No other corporate action is required on the part of the Company or any of its stockholders to enter into this Agreement or the documents to which the Company is a party contemplated hereby or to approve the Merger other than the Company Stockholder Approval. The Company Stockholder Approval will be duly and validly obtained in accordance with applicable Law (including the NRS) and the Governing Documents of the Company upon the execution and delivery of the Written Consent pursuant to the terms of this Agreement, and, when delivered, the Written Consent will constitute the irrevocable Company Stockholder Approval. The Board of Directors of the Company has taken all action necessary to render inapplicable any and all relevant Takeover Statutes, as they may relate to the execution, delivery and performance of this Agreement and the consummation of the Merger and the other transactions contemplated by this Agreement, and no Takeover Statute, any takeover-related provision in the Governing Documents of the Company, nor any stockholder rights plan or similar agreement is applicable to Acquiror, Merger Sub, Sponsor, this Agreement or the transactions contemplated hereby (including the Merger) that would prohibit or restrict the ability of the Company to enter into this Agreement or its ability to consummate transactions contemplated hereby (including the Merger). No provision of the Governing Documents of the Company or any resolution or other action of the Company Board of Directors has provided or will provide for any right of dissent or appraisal for any holder of shares of Company Capital Stock independent of any rights of dissent that may be available solely by way of the applicable provisions of the Dissenter's Rights Statutes.

Section 4.4. No Conflict. The execution and delivery by the Company of this Agreement and the documents to which the Company is a party contemplated hereby and the consummation of the transactions contemplated hereby and thereby do not and will not (a) violate or conflict with any provision of, or result in the breach of, or default under, the Governing Documents of the Company, (b) violate or conflict with any provision of, or result in the breach of, or default under, any Law or Governmental Order applicable to the Company, (c) violate or conflict with any provision of, or result in the breach of, result in the loss of any right or benefit, or cause acceleration, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under any Contract of the type described in Section 4.12(a) to which the Company is a party or by which the Company may be bound, or terminate or result in the termination of any such foregoing Contract or (d) result in the creation of any Lien (other than Permitted Liens) upon any of the properties or assets of the Company, except, in the case of clauses (b) through (d), to the extent that the occurrence of the foregoing would not (i) have, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of the Company to enter into and perform its obligations under this Agreement or (ii) be, and would not reasonably be expected to be, material to the business of the Company, taken as a whole.

Section 4.5. Governmental Authorities; Consents. Assuming the truth and completeness of the representations and warranties of Acquiror contained in this Agreement, no consent, waiver, approval or authorization of, or designation, declaration or filing with, or notification to, any Governmental Authority (each, a "Governmental Authorization") is required on the part of the Company with respect to the Company's execution or delivery of this Agreement or the consummation by the Company of the transactions contemplated hereby, except for (a) applicable requirements of the HSR Act, (b) any Governmental Authorizations, the absence of which has not had, and would not reasonably be expected to have, a material adverse effect on the ability of the Company to enter into and perform its obligations under this Agreement or the Ancillary Agreements or is not, and would not reasonably be expected to be, material to the business of the Company, taken as a whole, and (c) the filing of the Articles of Merger in accordance with the NRS.

Section 4.6. Capitalization of the Company.

(a) As of the date of this Agreement, the authorized Equity Securities of the Company consist of (i) 40,000,000 shares of Company Common Stock, 20,968,742 of which are issued and outstanding, and (ii) 10,000,000 shares of Series A Preferred Stock (the "Series A Preferred Stock"), all of which are issued and outstanding, and there are no other authorized Equity Securities of the Company that are issued and outstanding. All of the issued and outstanding shares of Company Capital Stock (i) have been duly authorized and validly issued and are fully paid and non-assessable; (ii) have been offered, sold and issued in compliance with applicable Law, including federal and state securities Laws, and all requirements set forth in (1) the Governing Documents of the Company and (2) any other applicable Contracts governing the issuance of such securities; (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, the Governing Documents of the Company or any Contract to which the Company is a party or otherwise bound; and (iv) are free and clear of any Liens.

(b) As of the date of this Agreement, Company Options to purchase 3,434,856 shares of Company Common Stock are outstanding. The Company has provided to Acquiror, prior to the date of this Agreement, a true and complete list of each current or former employee, consultant or director of the Company who, as of the date of this Agreement, holds a Company Option, number of shares of Company Common Stock subject thereto, vesting schedule, and the exercise price (if applicable) thereof. All Company Options are evidenced by award agreements in substantially the forms previously made available to Acquiror, and no Company Option is subject to terms that are materially different from those set forth in such forms. Each Company Option was validly issued and properly approved by the Board of Directors of the Company (or appropriate committee thereof).

(c) Except as otherwise set forth on Section 4.6(c) of the Company Disclosure Letter, the Company does not own or hold (of record, beneficially, legally or otherwise), directly or indirectly, any Equity Securities in any other Person or the right to acquire any such Equity Security, and, without limiting the foregoing, the Company is not a partner or member of any partnership, limited liability company or joint venture.

(d) Except as otherwise set forth on Section 4.6(d) of the Company Disclosure Letter, the Company has not granted any outstanding subscriptions, options, stock appreciation rights, warrants, rights or other securities (including debt securities) convertible into or exchangeable or exercisable for shares of Company Capital Stock, any other commitments, calls, conversion rights, rights of exchange or privilege (whether pre-emptive, contractual or by matter of Law), plans or other agreements of any character providing for the issuance of additional Equity Securities, the sale of Equity Securities, or for the repurchase or redemption of Equity Securities of the Company or the value of which is determined by reference to shares of Company Capital Stock or other Equity Securities of the Company, and there are no voting trusts, proxies or agreements of any kind which may obligate the Company to issue, purchase, register for sale, redeem or otherwise acquire any shares of Company Capital Stock or other Equity Securities of the Company.

Section 4.7. [Reserved].

Section 4.8. Financial Statements.

(a) Attached as Section 4.8(a) of the Company Disclosure Letter are copies of the:

(i) audited consolidated balance sheets and statements of income, statements of shareholders' equity and cash flows of the Company as of and for the twelve-month periods ending December 31, 2020, and December 31, 2021, together with the auditor's reports thereon (collectively, the "Audited Financial Statements"); and

(ii) the Q1 Financials and the Q2 Financials (if delivered pursuant to Section 6.3(c); it being understood that this Section 4.8(a)(ii) shall only apply with respect to the Q1 Financials and the Q2 Financials, respectively as of the date such financial statements are delivered pursuant to Section 6.3(c) and the Company shall have the right to attach such financial statements to Section 4.8(a) of the Company Disclosure Letter as of such time) (the "Unaudited Financial Statements" and, together with the Audited Financial Statements, the PCAOB Financial Statements, the "Financial Statements").

(b) Except as set forth on Section 4.8(b) of the Company Disclosure Letter, the Financial Statements (i) fairly present in all material respects the consolidated financial position of the Company, as at the respective dates thereof, and the consolidated results of their operations, their consolidated incomes, their consolidated changes in stockholders' equity and their consolidated cash flows for the respective periods then ended (subject, in the case of the Unaudited Financial Statements, to normal year-end adjustments and the absence of footnotes), (ii) were prepared in conformity with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto and, in the case of the Unaudited Financial Statements, the absence of footnotes or the inclusion of limited footnotes), (iii) were prepared from, and are in accordance in all material respects with, the books and records of the Company and (iv) solely with respect to the PCAOB Financial Statements, when delivered by the Company for inclusion in the Registration Statement for filing with the SEC following the date of this Agreement in accordance with Section 6.3, will comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act applicable to a registrant, in effect as of the respective dates thereof.

(c) Neither the Company (including, to the knowledge of the Company, any employee thereof) nor any independent auditor of the Company has identified or been made aware of (i) any significant deficiency or material weakness in the system of internal accounting controls utilized by the Company, (ii) any fraud, whether or not material, that involves the Company's management or other employees who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company or (iii) any claim or allegation regarding any of the foregoing.

Section 4.9. No Undisclosed Liabilities. Except as set forth on Section 4.9 of the Company Disclosure Letter, there is no other liability, debt (including Indebtedness) or obligation of, or claim or judgment against, the Company (whether direct or indirect, absolute or contingent, accrued or unaccrued, known or unknown, liquidated or unliquidated, or due or to become due) required to be disclosed on the most recent balance sheet in accordance with GAAP, except for liabilities, debts, obligations, claims or judgments (a) reflected or reserved for on the Financial Statements or disclosed in the notes thereto, (b) that have arisen since the date of the most recent balance sheet included in the Financial Statements in the ordinary course of business of the Company or (c) that will be discharged or paid off prior to or at the Closing.

Section 4.10. Litigation and Proceedings. Except as set forth on Section 4.10 of the Company Disclosure Letter, as of the date hereof (a) there are no pending or, to the knowledge of the Company, threatened, lawsuits, actions, suits, judgments, claims, proceedings or any other Actions (including any investigations or inquiries initiated, pending or threatened by any Governmental Authority), or other proceedings at law or in equity (collectively, “Legal Proceedings”), against the Company or its properties or assets, directors, managers, officers or employees (in their capacity as such); and (b) there is no outstanding Governmental Order imposed upon the Company; nor are any properties or assets of the Company’s respective businesses bound or subject to any Governmental Order, except, in each case, as would not be, or would not reasonably be expected to be, material to the business of the Company, taken as a whole.

Section 4.11. Legal Compliance.

(a) The Company is, and for the prior three (3) years has been, in compliance with all applicable Laws in all material respects.

(b) The Company maintains a program of policies, procedures and internal controls reasonably designed and implemented to (i) prevent the use of the products and services of the Company in a manner that violates applicable Law (including money laundering or fraud) and (ii) otherwise provide reasonable assurance that violation of applicable Law by any of the Company’s directors, officers, employees or its or their respective agents, representatives or other Persons, acting on behalf of the Company, will be prevented, detected and deterred.

(c) For the past three (3) years, none of the Company or any of the officers, directors or employees thereof acting in such capacity has received any written notice of, or been charged with, the violation of any Laws, except where such violation has not been material to the business of the Company, taken as a whole.

Section 4.12. Contracts; No Defaults.

(a) Section 4.12(a) of the Company Disclosure Letter contains a listing of all Contracts described in clauses (i) through (xvi) below to which, as of the date of this Agreement, the Company is a party or by which they are bound, other than a Company Benefit Plan. True, correct and complete copies of the Contracts listed on Section 4.12(a) of the Company Disclosure Letter have previously been delivered to or made available to Acquiror or its agents or representatives, together with all amendments thereto.

(i) Any primary or master supply or master services Contract or similar Contract with any of the Top Customers and Top Vendors, but excluding any non-disclosure agreements, purchase orders, sales acknowledgements or similar Contracts entered into with such counter-parties in connection with, relating to or resulting from such primary or master supply or master services Contracts;

(ii) Each note, debenture, other evidence of Indebtedness, guarantee, loan, credit or financing agreement or instrument or other Contract for money borrowed by the Company, including any agreement or commitment for future loans, credit or financing and any agreement pursuant to which the Company granted a Lien on its assets, whether tangible or intangible, to secure any Indebtedness, in each case, in excess of \$500,000 (five hundred thousand dollars);

(iii) Each Contract for the acquisition of any Person or any business unit thereof or the disposition of any material assets of the Company in the last five (5) years involving payments in excess of \$500,000 (five hundred thousand dollars), in each case, other than Contracts (A) in which the applicable acquisition or disposition has been consummated and there are no material obligations ongoing or (B) between the Company;

(iv) Each (A) Real Property Lease and (B) lease, rental or occupancy agreement, installment and conditional sale agreement, and other Contract that provides for the ownership of, leasing of, title to, use of, or any leasehold or other interest in any real or personal property that involves aggregate payments in excess of \$250,000 (two hundred and fifty thousand dollars) in any calendar year;

(v) Each Contract involving the formation of a (A) joint venture, (B) partnership, or (C) limited liability company);

(vi) Contracts (other than employment agreements, employee offer letters, employee confidentiality and invention assignment agreements, equity or incentive equity documents and Governing Documents) between the Company, on the one hand, and Affiliates of the Company, the officers and managers (or equivalents) of the Company, the members or stockholders of the Company, any employee of the Company or a member of the immediate family of the foregoing Persons, on the other hand (collectively, "Affiliate Agreements");

(vii) Employment agreements or offer letters (or forms thereof) with each current executive officer (as defined in Rule 3b-7 under the Exchange Act) of the Company, and service agreements with each director of the Company;

(viii) Contracts with any employees, independent contractors or consultants of the Company that provide for change in control, retention or similar payments or benefits contingent upon, accelerated by or triggered by the consummation of the transactions contemplated hereby;

(ix) Contracts containing covenants of the Company (A) prohibiting or limiting the right of the Company to engage in or compete with any Person in any line of business in any material respect or (B) prohibiting or restricting the Company's ability to conduct their business with any Person in any geographic area;

(x) Any Collective Bargaining Agreement;

(xi) Each Contract (including license agreements, coexistence agreements, settlement agreements, and agreements with applicable covenants not to sue) pursuant to which the Company (A) grants to a third Person any material rights, or materially restricts any third Person, with respect to any Company Owned IP (other than non-exclusive licenses granted in the ordinary course of business on the Company's standard form terms provided to Acquiror for review prior to the date of this Agreement) or (B) is granted by a third Person any material rights, or is materially restricted, with respect to Intellectual Property, other than, in respect of this subclause (B), (w) Contracts granting nonexclusive rights to use commercially available off-the-shelf Software having a replacement cost or annual license fee of less than \$150,000 (one hundred and fifty thousand dollars), (x) Open Source Licenses, (y) non-disclosure agreements entered into in the ordinary course of business, and (z) Contracts with employees, independent contractors and consultants assigning inventions developed in the provision of services for the Company that are entered into in the ordinary course of business substantially on the Company's form proprietary information and inventions agreements provided to Acquiror for review prior to the date of this Agreement;

(xii) Each Contract requiring capital expenditures by the Company after the date of this Agreement in an amount in excess of \$200,000 (two hundred thousand dollars) in any calendar year;

(xiii) Any Contract that (A) grants to any third Person any "most favored nation rights" or (B) grants to any third Person price guarantees for a period greater than one (1) year from the date of this Agreement and requires aggregate future payments to the Company in excess of \$200,000 (two hundred thousand dollars) in any calendar year;

(xiv) Contracts granting to any Person (other than the Company) a right of first refusal, first offer or similar preferential right to purchase or acquire Equity Securities in the Company;

(xv) Contracts, other than any Contracts of the type described in clauses (i) through (xiv) above, which involves payments from or to the Company in excess of \$250,000 (two hundred and fifty thousand dollars) during the trailing twelve months for the period ending December 31, 2021; and

(xvi) Any outstanding written commitment to enter into any Contract of the type described in clauses (i) through (xv) of this Section 4.12(a).

(b) Except for any Contract that will terminate upon the expiration of the stated term thereof prior to the Closing Date, all of the Contracts listed pursuant to Section 4.12(a) in the Company Disclosure Letter are (i) in full force and effect and (ii) represent the legal, valid and binding obligations of the Company party thereto and, to the knowledge of the Company, represent the legal, valid and binding obligations of the counterparties thereto. Except, in each case, where the occurrence of such breach or default or failure to perform would not be material to the Company, taken as a whole, (x) the Company has performed in all respects all respective obligations required to be performed by them to date under such Contracts listed pursuant to Section 4.12(a), and neither the Company, nor, to the knowledge of the Company, any other party thereto is in breach of or default under any such Contract, (y) during the last twelve (12) months, the Company has not received any written claim or written notice of termination or breach of or default under any such Contract, and (z) to the knowledge of the Company, no Event has occurred which individually or together with other Events, would reasonably be expected to result in a breach of or a default under any such Contract by the Company or, to the knowledge of the Company, any other party thereto (in each case, with or without notice or lapse of time or both).

Section 4.13. Company Benefit Plans.

(a) Section 4.13(a) of the Company Disclosure Letter sets forth a complete list, as of the date hereof, of each Company Benefit Plan (other than any individual employment agreements, offer letters, equity award agreements or similar agreements that do not deviate in any material or substantial respect from the forms set forth on Section 4.13(a) of the Company Disclosure Letter). For purposes of this Agreement, a “Company Benefit Plan” means an “employee benefit plan” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, (“ERISA”) or any other plan, policy, program or agreement (including any employment, bonus, incentive or deferred compensation, employee loan, note or pledge agreement, equity or equity-based compensation, severance, retention, supplemental retirement, change in control or similar plan, policy, program or agreement) providing compensation or other benefits to any current or former director, officer, individual consultant, worker or employee, which are maintained, sponsored or contributed to (or required to be contributed to) by the Company, or to which the Company is a party or has or may have any liability, and in each case whether or not (i) subject to the Laws of the United States, (ii) in writing or (iii) funded, but excluding in each case any statutory plan, program or arrangement that is required under applicable law and maintained by any Governmental Authority. With respect to each Company Benefit Plan, the Company has made available to Acquiror true, complete and correct copies of each of the following, as applicable: (A) such Company Benefit Plan’s plan document and all amendments thereto (or, if such Company Benefit Plan has not been reduced to writing, a written summary of its material terms) and all trust agreements or other funding arrangements, insurance policies and Contracts, administration and service provider agreements, investment management agreements, investment advisory agreements, and side letters, (B) the current summary plan description, including any summary of material modifications, (C) the two most recent annual reports (Form 5500 series) filed with the IRS with respect to such Company Benefit Plan (with schedules and financial statements attached), (D) the actuarial reports or other financial statements relating to such Company Benefit Plan for each of the two most recently completed plan years, (E) the most recent discrimination and top-heavy tests required under the Code for each Company Benefit Plan intended to be qualified under Section 401(a) of the Code, (F) the most recent determination or opinion letter, if any, issued by the IRS with respect to any Company Benefit Plan and any pending request for such a determination letter, (G) a copy of all material correspondence (other than correspondence in the ordinary course) with any Governmental Authority relating to a Company Benefit Plan received or sent within the last three years, (H) copies of current and prior IRS or U.S. Department of Labor audits or inquiries, (I) any fidelity bond and fiduciary liability insurance policies, and (J) any filings under any amnesty, voluntary compliance, self-correction, or similar program sponsored by any Governmental Authority, including the Employee Plans Compliance Resolution System, Voluntary Fiduciary Correction Program, or Delinquent Filer Voluntary Correction Program.

(b) Except as set forth on Section 4.13(b) of the Company Disclosure Letter, (i) each Company Benefit Plan has been operated and administered in compliance with its terms and all applicable Laws, including ERISA and the Code, in all material respects; and (ii) all contributions required to be made with respect to any Company Benefit Plan on or before the date hereof have been timely made and all obligations in respect of each Company Benefit Plan as of the date hereof have been accrued and reflected in the Company's financial statements to the extent required by GAAP. Each Company Benefit Plan which is intended to be qualified within the meaning of Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS as to its qualification or may rely upon an opinion letter for a prototype plan and no fact or event has occurred that would reasonably be expected to adversely affect the qualified status of any such Company Benefit Plan.

(c) No Company Benefit Plan is a multiemployer pension plan (as defined in Section 3(37) of ERISA) (a "Multiemployer Plan") or other pension plan that is subject to Title IV of ERISA ("Title IV Plan"), and neither the Company nor any of its ERISA Affiliates has sponsored or contributed to, been required to contribute to, or had any actual or contingent liability under or with respect to, a Multiemployer Plan or Title IV Plan at any time within the previous six (6) years. Neither the Company nor any of its ERISA Affiliates has incurred any withdrawal liability under Section 4201 of ERISA that has not been fully satisfied. No Company Benefit Plan is a "multiple employer plan" within the meaning of Section 413(c) of the Code.

(d) With respect to each Company Benefit Plan, no Legal Proceedings (other than routine claims for benefits in the ordinary course) are pending or, to the knowledge of the Company, threatened, and to the knowledge of the Company, no facts or circumstances exist that would reasonably be expected to give rise to any such actions, suits or claims.

(e) No Company Benefit Plan provides medical, surgical, hospitalization, death or similar benefits (whether or not insured) for employees or former employees of the Company for periods extending beyond their retirement or other termination of service, other than (i) coverage mandated by applicable Law, (ii) death benefits under any "pension plan," (iii) benefits the full cost of which is borne by the current or former employee (or his or her beneficiary) or (iv) coverage through the end of the month in which such retirement or termination of service occurs.

(f) Except as set forth on Section 4.13(f) of the Company Disclosure Letter, the consummation of the transactions contemplated hereby will not, either alone or in combination with another event (such as termination following the consummation of the transactions contemplated hereby) that would not in and of itself trigger such payment or benefit, (i) entitle any current or former employee, officer or other service provider of the Company to any severance pay or any other compensation or benefits payable or to be provided by the Company (other than statutory severance or termination payments that are required solely by reason of applicable Law), (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation or benefits due any such employee, officer or other individual service provider by the Company, (iii) accelerate the vesting and/or settlement of any Company Option, or (iv) result in any "excess parachute payment" under Section 280G of the Code. No Company Benefit Plan provides for a Tax gross-up, make whole or similar payment with respect to the Taxes imposed under Sections 409A or 4999 of the Code.

(g) Each Company Option has been granted in accordance with the terms of the Company Incentive Plan applicable to such Company Options. Each Company Option has been granted with an exercise price that is no less than the fair market value of the underlying Company Common Stock on the date of grant, as determined in accordance with Section 409A of the Code, as well as Section 422 of the Code if applicable. Each Company Option is intended to be exempt from Section 409A of the Code and has been maintained in a manner consistent with that intent. The Company has made available to Acquiror, accurate and complete copies of (i) the Company Incentive Plans, (ii) the forms of standard award agreement under the Company Incentive Plans, (iii) copies of any award agreements that materially deviate from such forms and (iv) a list of all outstanding equity and equity-based awards granted under the Company Incentive Plans, together with the material terms thereof (including grant date, exercise price, vesting terms, expiration date, and number of shares underlying such award). The treatment of Company Options under this Agreement does not violate the terms of the Company Incentive Plan applicable to such Company Options or any Contract governing the terms of such awards.

(h) Each “nonqualified deferred compensation plan” subject to Section 409A of the Code, if any, has been administered in documentary and operational compliance with its terms and with Section 409A of the Code, and the applicable Treasury Regulations and IRS guidance thereunder.

(i) There are no outstanding loans or other extensions of credit made by the Company to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Company.

Section 4.14. Labor Relations; Employees.

(a) (i) The Company is not a party to or bound by any Collective Bargaining Agreement with any labor or trade union, works council, employee representative body or labor organization or association (collectively, a “Labor Organization”), (ii) no such Collective Bargaining Agreement is being negotiated by the Company, (iii) no employees of the Company are represented by any Labor Organization with respect to their employment with the Company or its Subsidiaries, (iv) no Labor Organization or group of employees of the Company has requested or made a pending demand for recognition or certification and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened to be brought or filed with the National Labor Relations Board or any other labor relations tribunal or authority, and (v) to the knowledge of the Company, there have been no labor union organizing activities with respect to any employees of the Company with respect to their employment with the Company.

(b) Since January 1, 2018, there has been no actual or, to the knowledge of the Company, threatened unfair labor practice charge, grievance, arbitration, strike, slowdown, work stoppage, lockout, picketing, hand billing, or other labor dispute against or affecting the Company ..

(c) The execution of this Agreement and the consummation of the transactions contemplated by this Agreement will not result in any breach or other violation of any Collective Bargaining Agreement. There is no Labor Organization or other representative of any employees of the Company, which, pursuant to applicable Law or any Collective Bargaining Agreement or other contract, must be notified, consulted or with which negotiations need to be conducted in connection with the transactions contemplated by this Agreement.

(d) The Company is, and has been for the past three (3) years, in compliance with all applicable Laws respecting labor and employment, including all Laws respecting terms and conditions of employment, health and safety, wages and hours, holiday pay and the calculation of holiday pay, working time, employee classification (with respect to both exempt versus non-exempt status and employee versus independent contractor and worker status), child labor, immigration, employment discrimination, disability rights or benefits, equal opportunity and equal pay, plant closures and layoffs, affirmative action, workers' compensation, labor relations, employee leave issues and unemployment insurance.

(e) Except as set forth on Section 4.14(e) of the Company Disclosure Letter, in the past three (3) years, the Company has not received (i) notice of any unfair labor practice charge or complaint pending or threatened before the National Labor Relations Board or any other Governmental Authority against them, (ii) notice of any complaints, grievances or arbitrations arising out of any Collective Bargaining Agreement or any other complaints, grievances or arbitration procedures against them, (iii) notice of any charge or complaint with respect to or relating to them pending before the Equal Employment Opportunity Commission or any other Governmental Authority responsible for the prevention of unlawful employment practices, (iv) notice of the intent of any Governmental Authority responsible for the enforcement of labor, employment, wages and hours of work, child labor, immigration, or occupational safety and health Laws to conduct an investigation with respect to or relating to them or notice that such investigation is in progress, or (v) notice of any complaint, lawsuit or other proceeding pending or threatened in any forum by or on behalf of any present or former employee of such entities, any applicant for employment or classes of the foregoing alleging breach of any express or implied Contract of employment, any applicable Law governing employment or the termination thereof or other discriminatory, wrongful or tortious conduct in connection with the employment relationship.

(f) The Company is not and has not been: (i) a "contractor" or "subcontractor" (as defined by Executive Order 11246), (ii) required to comply with Executive Order 11246 or any other applicable Law requiring affirmative action or other employment related actions for government contractors or subcontractors, or (iii) otherwise required to maintain an affirmative action plan.

(g) No employee of the Company is in any respect in violation of term of any employment agreement, nondisclosure agreement, restrictive covenant, common law nondisclosure obligation, fiduciary duty or similar obligation: (i) to the Company or (ii) to a former employer of any such employee relating to (A) the right of any such employee to be employed by the Company or (B) the knowledge or use of trade secrets or proprietary information.

(h) The Company is not delinquent in payments to any employees or former employees for any services or amounts required to be reimbursed or otherwise paid.

(i) To the knowledge of the Company, no current employee of the Company, who is at the level of Vice President or higher, intends to terminate his or her employment.

(j) The Company is not party to a settlement agreement with a current or former officer, employee or independent contractor of the Company that involves allegations relating to discrimination, sexual harassment or sexual misconduct, or other alleged inappropriate conduct by any (i) officer of the Company or (ii) employee of the Company at the level of Vice President or above. In the last five (5) years, no allegations of discrimination, sexual harassment or sexual misconduct, or other alleged inappropriate conduct have been made against any (i) officer of the Company in his or her capacity as such or (ii) employee of the Company at the level of Vice President or above.

(k) The Company is, and since January 1, 2018 has been, in compliance with all notice and other requirements under the Worker Adjustment and Retraining Notification Act of 1988 and any similar foreign, state or local law relating to plant closings and layoffs. Except as set forth on Section 4.14(k) of the Company Disclosure Letter, the Company has not engaged in broad-based layoffs, furloughs, employment terminations (other than for cause) or effected any broad-based salary or other compensation or benefits reductions, in each case, whether temporary or permanent, since January 1, 2020 through the date hereof. The Company, taken as a whole, has sufficient employees to operate the business of the Company as currently conducted.

Section 4.15. Taxes.

(a) All income and other material Tax Returns required to be filed by or with respect to the Company have been timely filed (taking into account any applicable extensions), all such Tax Returns (taking into account all amendments thereto) are true, complete and accurate in all material respects and all material Taxes due and payable (whether or not shown on any Tax Return) have been paid, other than Taxes being contested in good faith and for which adequate reserves have been established in accordance with GAAP.

(b) The Company has withheld from amounts owing to any employee, creditor or other Person all material Taxes required by Law to be withheld, paid over to the proper Governmental Authority in a timely manner all such withheld amounts required to have been so paid over, and complied, in all material respects, with all applicable reporting requirements with respect to such Taxes.

(c) There are no Liens for any Taxes (other than Permitted Liens) upon the property or assets of the Company.

(d) No claim, assessment, deficiency or proposed adjustment for any material amount of Tax has been asserted or assessed in writing (and, to the knowledge of the Company, no such claim assessment, deficiency or proposed adjustment has been asserted or assessed) by any Governmental Authority against the Company that remains unresolved or unpaid except for claims, assessments, deficiencies or proposed adjustments being contested in good faith and for which adequate reserves have been established in accordance with GAAP.

(e) There are no ongoing or pending Legal Proceedings with respect to any material Taxes of the Company, and there are no waivers, extensions or requests for any waivers or extensions of any statute of limitations currently in effect with respect to any material Taxes of the Company.

(f) No written claim has been made by any Governmental Authority within the last three (3) years in a jurisdiction where the Company does not file Tax Returns that it is or may be subject to taxation in that jurisdiction.

(g) The Company is not a party to any Tax indemnification or Tax sharing or similar agreement (other than any Contract solely between the Company or any customary commercial Contract (or Contract entered into in the ordinary course of business) not primarily related to Taxes).

(h) The Company has not been a party to any transaction treated by the parties as a distribution of stock qualifying under Section 355 of the Code in the two (2) years prior to the date of this Agreement.

(i) The Company (i) is not liable for Taxes of any other Person (other than the Company and its Subsidiaries) under Treasury Regulations Section 1.1502-6 or any similar provision of state, local or foreign Tax Law or as a transferee or successor or by Contract (other than any Contract solely between the Company and its existing Subsidiaries or any customary commercial Contract (or Contract entered into in the ordinary course of business) not primarily related to Taxes) and (ii) has never been a member of an affiliated, consolidated, combined or unitary group filing for United States federal, state or local income Tax purposes, other than a group the common parent of which was or is the Company or any of its Subsidiaries.

(j) To the knowledge of the Company, the Company has not, and has never had, a permanent establishment in any country other than the country of its organization, or is, or has ever been, subject to income Tax in a jurisdiction outside the country of its organization.

(k) The Company has not participated in a “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4(b)(2).

(l) The Company has not made a request for an advance tax ruling, request for technical advice, request for change of any method of accounting or any similar request that is in progress or pending with any Governmental Authority with respect to any Taxes that would reasonably be expected to be material to the Company, taken as a whole.

(m) The Company will not be required to include any material amount in taxable income, exclude any material item of deduction or loss from taxable income, or make any adjustment under Section 481 of the Code (or any similar provision of state, local or foreign Law) for any taxable period (or portion thereof) ending after the Closing Date as a result of (i) any installment sale, excess loss account or deferred intercompany transaction described in the Treasury Regulations under Section 1502 of the Code (or any similar provision of state, local or foreign Law), or open transaction disposition made prior to the Closing outside the ordinary course of business, (ii) any prepaid amount received or deferred revenue recognized prior to the Closing outside the ordinary course of business, (iii) any change in method of accounting for a taxable period ending on or prior to the Closing Date, (iv) any “closing agreement” described in Section 7121 of the Code (or any similar provision of state, local or foreign Law) executed prior to the Closing, or (v) by reason of an election pursuant to Section 965(h) of the Code (or any similar provision of state, local or foreign Law).

(n) The Company has not deferred the employer’s share of any “applicable employment taxes” under Section 2302 of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (the “CARES Act”), failed in any material respect to properly comply with and duly account for all credits received under Sections 7001 through 7005 of the Families First Coronavirus Response Act and Section 2301 of the CARES Act, or sought, or intends to seek, a covered loan under paragraph (36) of Section 7(a) of the Small Business Act (15 U.S.C. § 636(a)).

(o) The Company has not taken any action or knowingly failed to take any action, nor to the knowledge of the Company, are there any facts or circumstances, which action, inaction, facts, or circumstances could reasonably be expected to prevent the Merger from qualifying for the Intended Tax Treatment.

Section 4.16. Brokers’ Fees. No broker, finder, investment banker or other Person (except the Person(s) set forth on Section 4.16 of the Company Disclosure Letter) is entitled to any brokerage fee, finders’ fee or other commission in connection with the transactions contemplated hereby based upon arrangements made by the Company, or any of its Affiliates for which Acquiror or the Company has any obligation.

Section 4.17. Insurance. The Company is insured against such risks and in such amounts as the management of the Company reasonably has determined to be prudent and consistent with industry practice. Section 4.17 of the Company Disclosure Letter contains a list of, as of the date hereof, all material policies or binders of property, fire and casualty, product liability, workers’ compensation, and other forms of insurance held by, or for the benefit of, the Company as of the date of this Agreement. True, correct and complete copies of such insurance policies as in effect as of the date hereof have previously been made available to Acquiror. All such insurance policies are in full force and effect, all premiums due thereunder have been paid, and no notice of cancellation or termination has been received by the Company with respect to any such policy. Except as disclosed on Section 4.17 of the Company Disclosure Letter, no insurer has denied or disputed coverage of any material claim under an insurance policy during the last twelve (12) months.

Section 4.18. Licenses. The Company has obtained, and maintain, all of the material Licenses required to permit the Company to acquire, originate, own, operate, use and maintain their assets in the manner in which they are now operated and maintained and to conduct the business of the Company as currently conducted. Each material License held by the Company is and has been for the past three (3) years valid, binding and in full force and effect, and the Company is and has been during the past three (3) years in compliance with all such Licenses. The Company (a) is not and has not been during the past three (3) years in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a material default or violation) in any material respect of any term, condition or provision of any material License which it holds, (b) is not and has not been during the past three (3) years the subject of any pending or threatened Action by a Governmental Authority seeking the cancellation, revocation, suspension, termination, limitation, suspension, modification, or impairment of any material License or (c) has not received any notice that any Governmental Authority that has issued any material License intends to cancel, terminate, revoke, limit, suspend, condition, modify or not renew any such material License, except to the extent such material License may be amended, replaced, or reissued as a result of and as necessary to reflect the transactions contemplated hereby, or as otherwise disclosed in Section 4.18 of the Company Disclosure Letter; provided such amendment, replacement, or reissuance does not materially adversely affect the continuous conduct of the business of the Company as currently conducted from and after Closing.

Section 4.19. Equipment and Other Tangible Property. The Company owns and has good title to, and has the legal and beneficial ownership of or a valid leasehold interest in or right to use by license or otherwise, all material machinery, equipment and other tangible property reflected on the books of the Company as owned by the Company, free and clear of all Liens other than Permitted Liens. All material personal property and leased personal property assets of the Company are structurally sound and in good operating condition and repair (ordinary wear and tear expected) and are suitable for their present use.

Section 4.20. Real Property.

(a) Section 4.20(a) of the Company Disclosure Letter sets forth a true, correct and complete list as of the date of this Agreement of all Leased Real Property and all Real Property Leases (as hereinafter defined) pertaining to such Leased Real Property. With respect to each parcel of Leased Real Property:

(i) The Company holds a good and valid leasehold estate in such Leased Real Property, free and clear of all Liens, except for Permitted Liens. Each of the Real Property Leases is a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

(ii) The Company's possession and quiet enjoyment of the Leased Real Property under such Real Property Leases has not been materially disturbed.

(iii) The Company has delivered to Acquiror true, correct and complete copies of all leases, licenses, lease guaranties, subleases, agreements for the leasing, use or occupancy of, or otherwise granting a right in and to the Leased Real Property by or to the Company, including all amendments, extensions, renewals, terminations and modifications thereof (collectively, the "Real Property Leases"), and none of such Real Property Leases have been amended or modified in any material respect, except to the extent that such amendments or modifications have been disclosed by the copies delivered to Acquiror.

(iv) The Company is in material compliance with all Liens, encumbrances, easements, restrictions, and other matters of record affecting the Leased Real Property, and the Company has not received any notice alleging any default or breach under any of such Liens, encumbrances, easements, restrictions, or other matters and, to the knowledge of the Company, no default or breach, nor any Event that with notice or the passage of time would result in a default or breach, by any other contracting parties has occurred thereunder.

(v) (A) To the knowledge of the Company, there are no material disputes with respect to each Real Property Lease; and (B) neither the Company, nor, to the knowledge of the Company, any other party to each Real Property Lease is in breach or default under such Real Property Lease, and no event has occurred or failed to occur or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a breach or default, or permit the termination, modification or acceleration of rent under such Real Property Lease;

(vi) As of the date of this Agreement, no party, other than the Company, has any right to use or occupy the Leased Real Property or any portion thereof.

(vii) The Company has not given any notice to any landlord under any of the Real Property Leases indicating that it will not be exercising any extension or renewal options under the Real Property Leases.

(viii) All security deposits required under the Real Property Leases have been paid to and, to the best knowledge of the Company, are being held by the applicable landlord under the Real Property Leases and have not been applied in respect of a breach or a default under such Real Property Lease which has not been re-deposited in full.

(ix) The Company has not received written notice of any current condemnation proceeding or proposed similar Action or agreement for taking in lieu of condemnation with respect to any portion of the Leased Real Property.

(b) The Company does not own any Owned Real Property. The Company has never owned any Owned Real Property.

(c) Other than as set forth on Section 4.20(c) of the Company Disclosure Letter, no consent by the landlord under any Real Property Lease is required in connection with the consummation of the transactions contemplated hereby.

Section 4.21. Intellectual Property.

(a) Section 4.21(a) of the Company Disclosure Letter lists each item of Company Owned IP as of the date of this Agreement that is registered or applied-for with a Governmental Authority or other applicable registrar, whether applied for or registered in the United States or internationally as of the date of this Agreement ("Company Registered Intellectual Property"). The Company is the sole and exclusive beneficial owner, and with respect to Company Registered Intellectual Property, record owner of all Company Owned IP. All Company Registered Intellectual Property is subsisting and, to the knowledge of the Company (excluding any pending applications included in the Company Registered Intellectual Property), is valid and enforceable.

(b) Except as would not be expected to be material to the Company, taken as a whole, the Company owns, free and clear of all Liens (other than Permitted Liens), or has a valid right to use, all Intellectual Property necessary for the conduct of the business of the Company in substantially the same manner as such business has been operated during the last twelve (12) months.

(c) The Company has not, within the past three (3) years, infringed, misappropriated or otherwise violated and, as of the date of this Agreement, are not infringing upon, misappropriating or otherwise violating any Intellectual Property of any third Person in any material respect. There is no Action pending to which the Company is a named party, or threatened in writing, alleging the Company's infringement, misappropriation or other violation of any Intellectual Property of any third Person in any material respect, or challenging the scope, validity, or enforceability of any Company Owned IP (other than responses or correspondence from Governmental Authorities in the ordinary course of prosecution of Company Registered Intellectual Property), and there has not been, within the past three (3) years, any such Action brought or threatened in writing.

(d) To the knowledge of the Company, no Person is infringing, misappropriating or otherwise violating any Company Owned IP in any material respect. The Company has not initiated any Action or sent to any Person, within the past three (3) years, any written notice, charge, complaint, claim or other written assertion against such third Person alleging infringement, misappropriation, or other violation by such third Person of any material Company Owned IP, or challenging the scope, validity, or enforceability of any Intellectual Property of such third Person.

(e) The Company takes commercially reasonable measures to protect the confidentiality of trade secrets included in the Company Owned IP and all other confidential information that is material to the conduct of the business of the Company. To the knowledge of the Company, there has not been any unauthorized disclosure of or unauthorized access to any such trade secrets or confidential information to or by any Person in a manner that has resulted or may result in the loss of trade secret protection or other rights in and to such information.

(f) No government funding, nor any facilities of a university, college, other educational institution or research center, was used in the development of the Company Owned IP, except as disclosed in Section 4.21(f) of the Company Disclosure Letter.

(g) No Company Owned Software and, to the knowledge of the Company, no Software used or held for use in the business of the Company that is owned by any third Person, contains any undisclosed or hidden device or feature designed to disrupt, disable, or otherwise impair the functioning of any software or any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," or other malicious code or routines that permit unauthorized access or the unauthorized disablement or erasure of such or other Software or information or data (or any parts thereof) of the Company.

(h) The Company's use and distribution of (i) Company Owned Software, and (ii) Open Source Materials, is in material compliance with all Open Source Licenses applicable thereto. The Company has not used any Open Source Materials in a manner that requires any Company Owned Software to be subject to Copyleft Terms. The Company has not delivered, licensed or made available, and the Company has no duty or obligation (whether present, contingent, or otherwise) to deliver, license or make available, the source code for any Company Owned Software to any escrow agent or other Person who is not, as of the date of this Agreement, an employee of the Company (or a contractor of the Company whose license thereto and use thereof is limited to use of such source code on the Company's behalf), except as disclosed in Section 4.21(h) of the Company Disclosure Letter.

Section 4.22. Privacy and Cybersecurity.

(a) The Company is in compliance with, and during the past three (3) years has been in compliance with, (i) all applicable Laws relating to the privacy and/or security of personal data and information, (ii) the Company's publicly facing privacy policies, and (iii) the Company's contractual obligations concerning cybersecurity, data security and the security of the information technology systems used by the Company (the foregoing clauses (i) through (iii), "Privacy and Cybersecurity Requirements"), other than any non-compliance that, individually or in the aggregate, has not been and would not reasonably be expected to be material to the Company. There are not, and have not been in the past three (3) years, any Actions by any Person, or any investigations by any Governmental Authority, pending to which the Company is a named party or, to the knowledge of the Company, threatened in writing against the Company alleging a violation of any Privacy and Cybersecurity Requirements.

(b) During the past three (3) years, to the knowledge of the Company, (i) there have been no material breaches of the security of, and (ii) there have been no failure, breakdown, performance reduction, disruption, or other adverse event that materially adversely affected the Company's business or operations with respect to, any Company IT Systems owned or controlled by the Company, or to the knowledge of the Company, those controlled by any third Person. The Company has implemented commercially reasonable cybersecurity practices (including by carrying out penetration tests and vulnerability assessments of the Company IT Systems controlled by the Company and its business environment) and have remediated any and all material vulnerabilities disclosed in such tests and assessments to Company.

(c) The Company has established and at all times maintained, and use all commercially reasonable efforts to ensure that all third Persons controlling Company IT Systems or processing personal information in connection with a product or service of the Company has established and maintained, commercially reasonable and legally compliant measures to protect the Company IT Systems and all trade secrets, material confidential information, and sensitive or personally identifiable information in their possession or control against unauthorized access, use, modification, disclosure or other misuse, including through written internal and external policies and procedures, and organizational, administrative, technical and physical safeguards. To the knowledge of Company, neither the Company nor any third Person controlling any Company IT System or processing personal information on its behalf, has (i) experienced any material incident in which such information was stolen or improperly accessed, including in connection with a breach of security, or (ii) received any written notice or complaint from any Person with respect to any of the foregoing, nor has any such notice or complaint been threatened in writing against the Company.

(d) To the knowledge of the Company, the consummation of the transactions contemplated hereby shall not breach or otherwise cause any violation in any material respect of any Privacy and Cybersecurity Requirements, or result in the Company being prohibited in a material manner from receiving or using any personal information in the manner currently received or used.

Section 4.23. Environmental Matters.

(a) The Company is and, except for matters which have been fully resolved, has been in material compliance with all Environmental Laws.

(b) There has been no material release of any Hazardous Materials (i) at, in, on or under any Leased Real Property or in connection with the Company's operations off-site of the Leased Real Property or (ii) to the knowledge of the Company, at, in, on or under any formerly owned or Leased Real Property or at any other location where Hazardous Materials generated by the Company have been transported to, sent, placed or disposed of.

(c) The Company is not subject to any current Governmental Order relating to any material non-compliance with Environmental Laws by the Company or the investigation, sampling, monitoring, treatment, remediation, removal or cleanup of Hazardous Materials.

(d) No material Legal Proceeding is pending or, to the knowledge of the Company, threatened with respect to the Company's compliance with or liability under Environmental Laws and there are no facts, conditions or circumstances that would be reasonably expected to form the basis of such a Legal Proceeding.

(e) The Company has made available to Acquiror all material environmental reports, assessments, audits and inspections and any material communications or notices from or to any Governmental Authority concerning any material non-compliance of the Company with, or liability of the Company under, Environmental Law.

Section 4.24. Absence of Changes.

(a) From the date of the most recent balance sheet included in the Financial Statements, there has not been any Company Material Adverse Effect.

(b) (i) the Company has conducted its business in all material respects in the ordinary course of business, (ii) the Company has not entered into any material transactions outside of the ordinary course of business and (iii) no action has been taken by the Company that would require consent under Section 6.1 if such action were taken after signing of this Agreement and prior to the Closing.

Section 4.25. Anti-Corruption Compliance.

(a) For the past three (3) years, the Company, nor, to the knowledge of the Company, any director, officer, employee or agent acting on behalf of the Company, has offered or given anything of value to: (i) any official or employee of a Governmental Authority, any political party or official thereof, or any candidate for political office or (ii) any other Person, in any such case while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any official or employee of a Governmental Authority or candidate for political office, in each case, in violation of the Anti-Bribery Laws.

(b) To the knowledge of the Company, as of the date hereof, there are no current or pending internal investigations, third-party investigations (including by any Governmental Authority), or internal or external audits that address any material allegations or information concerning possible material violations of the Anti-Bribery Laws related to the Company.

Section 4.26. Anti-Money Laundering; Sanctions and International Trade Compliance.

(a) The Company, and all of its respective directors and officers, and to the knowledge of the Company, employees or agents, representatives or other Persons acting on behalf of the Company, (i) are, and have been for the past five (5) years, in compliance in all material respects with all Anti-Money Laundering Laws, International Trade Laws and Sanctions Laws and (ii) have obtained all required Licenses, consents, notices, waivers, approvals, orders, registrations, declarations, or other authorizations from, and have made any required filings with, any applicable Governmental Authority for the import, export, re-export, deemed export, deemed re-export, or transfer required under the International Trade Laws and Sanctions Laws (the "Export Approvals"). There are no, and have been no, pending or, to the knowledge of the Company, threatened claims, complaints, charges, investigations, voluntary disclosures or Legal Proceedings against the Company related to any Anti-Money Laundering Laws, International Trade Laws or Sanctions Laws or any Export Approvals.

(b) The Company nor any of its respective directors or officers, or to the knowledge of the Company, employees or agents, representatives or other Persons acting on behalf of the Company, (i) is, or has during the past five (5) years, been a Sanctioned Person or (ii) has transacted business directly or knowingly indirectly with any Sanctioned Person, Restricted Person, or in any Sanctioned Country in violation of Sanctions Laws.

(c) The Company is not a TID U.S. business as that term is defined in 31 C.F.R. § 800.248 because the Company does not (i) produce, design, test, manufacture, fabricate, or develop one or more critical technologies, (ii) perform the functions as set forth in column 2 of appendix A to Part 800 of the C.F.R. with respect to covered investment critical infrastructure, or (iii) maintain or collect, directly or indirectly, sensitive personal data of U.S. citizens.

Section 4.27. Information Supplied. None of the information supplied or to be supplied by the Company specifically in writing for inclusion in the Registration Statement will, at the date on which the Proxy Statement/Registration Statement is first mailed to the Acquiror Stockholders or at the time of the Acquiror Stockholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

Section 4.28. Customers and Vendors.

(a) Section 4.28(a) of the Company Disclosure Letter sets forth, as of the date of this Agreement, (i) the top twenty (20) customers and (ii) the top fifteen (15) vendors, each based on the aggregate Dollar value of the Company's transaction volume with such counterparty during the trailing twelve months for the period ending September 30, 2021 (each group of persons, respectively, the "Top Customers" and "Top Vendors").

(b) Except as set forth on Section 4.28(b)(i) of the Company Disclosure Letter, none of the Top Customers or Top Vendors has, as of the date of this Agreement, informed in writing any of the Company that it will, or, to the knowledge of the Company, has threatened to, terminate, cancel, or materially limit or materially and adversely modify any of its existing business with the Company (other than due to the expiration of an existing contractual arrangement), and to the knowledge of the Company, none of the Top Customers or Top Vendors is, as of the date of this Agreement, otherwise involved in or threatening a material dispute against the Company or its respective businesses. Except as set forth on Section 4.28(b)(ii) of the Company Disclosure Letter, all of the Top Customers and Top Vendors have executed Contracts with the Company.

Section 4.29. Products.

(a) Except as is not, and would not reasonably be expected to be, material to the business of the Company, taken as a whole, the Company has no outstanding product warranty claims with respect to its products and no outstanding product warranty obligations outside of any customer Contracts or end-user warranty protections entered into in the ordinary course of business, in each case other than those arising by operation of Law or in the ordinary course of business. The warranty expense of the Company has not exceeded \$3,000,000 (three million Dollars) in any of the last three (3) fiscal years prior to the date hereof.

(b) Except as is not, and would not reasonably be expected to be, material to the business of the Company, taken as a whole, no Person has asserted or threatened in writing, or to the knowledge of the Company, otherwise threatened to assert, any Action with respect to product safety, defect, negligence or liability with respect to any products of the Company.

(c) Each of the products of the Company are, and since January 1, 2018 have been, in material compliance with all applicable Laws and contractual specifications applicable to such products, except where the failure to be so in compliance, individually or in the aggregate, is not, and would not reasonably be expected to be, material to the business of the Company, taken as a whole.

(d) Since January 1, 2018, (i) there have been no material defects in the design, construction, manufacturing, production, packaging, or advertising of any of the products of the Company, (ii) the products of the Company have been designed, manufactured and distributed, in each case in compliance in all material respects with applicable Laws, and there are no statements, citations or decisions by any Governmental Authority received by or in the possession of the Company that indicate that any product of the Company is unsafe or fails to meet any standards promulgated by such Governmental Authority or any other body and (iii) the Company has not recalled any product of the Company (whether voluntary or required by applicable Laws), issued any post-sale warning with respect to any product of the Company, or, received notice of any defect in any product of the Company, any claim of personal injury, death or property or economic damages in connection with any product of the Company, or any claim for injunctive relief in connection with any product of the Company, except for any notice or claim that would not reasonably be expected to be material to the business of the Company, taken as a whole.

Section 4.30. Accounts and Notes Receivable; Accounts Payable. All accounts and notes, and other receivables of the Company are reflected on their books and records, and are receivables arising from bona fide transactions entered into by the Company involving the sale of goods or the rendering of services in the ordinary course of business. The accounts payable and accruals of the Company have arisen in bona fide arm's-length transactions in the ordinary course of business, and each of the Company has been paying its accounts payable as and when due in all material respects.

Section 4.31. No Outside Reliance. Notwithstanding anything contained in this Article IV or any other provision hereof, the Company and any of its respective directors, officers, employees, equityholders, or representatives, acknowledge and agree that the Company has made its own investigation of Acquiror and that neither Acquiror nor any of its Affiliates, agents or representatives is making any representation or warranty whatsoever, express or implied, beyond those expressly given by Acquiror in Article V, including any implied warranty or representation as to condition, merchantability, suitability or fitness for a particular purpose or trade as to any of the assets of Acquiror or Merger Sub. Except as otherwise expressly set forth in this Agreement, the Company understands and agrees that any assets, properties and business of Acquiror are furnished "as is," "where is" and subject to and except as otherwise provided in the representations and warranties contained in Article V, with all faults and without any other representation or warranty of any nature whatsoever.

Section 4.32. No Additional Representation or Warranties. Except as provided in this Article IV, neither the Company nor any of its Affiliates, nor any of their respective directors, managers, officers, employees, equityholders, partners, members or representatives has made, or is making, any representation or warranty whatsoever to Acquiror or Merger Sub or their Affiliates and no such party shall be liable in respect of the accuracy or completeness of any other information provided to Acquiror or Merger Sub or their Affiliates. The Company acknowledges and agrees with the representation in the first sentence of Section 5.21 and that the Company and its advisors, have made their own investigation of Acquiror, Merger Sub and their respective Subsidiaries and, except as provided in Article V, are not relying on any representation or warranty whatsoever as to the condition, merchantability, suitability or fitness for a particular purpose or trade as to any of the assets of Acquiror, Merger Sub or any of their respective Subsidiaries, the prospects (financial or otherwise) or the viability or likelihood of success of the business of Acquiror, Merger Sub and their respective Subsidiaries as conducted after the Closing, as contained in any materials provided by Acquiror, Merger Sub or any of their Affiliates or any of their respective directors, officers, employees, stockholders, partners, members or representatives or otherwise.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF ACQUIROR AND MERGER SUB

Except as set forth in (a) in the case of Acquiror, any Acquiror SEC Filings filed or submitted on or prior to the date hereof (excluding any disclosures in any risk factors section that do not constitute statements of fact, disclosures in any forward-looking statements disclaimer and other disclosures that are generally cautionary, predictive or forward-looking in nature and (it being acknowledged that nothing disclosed in such Acquiror SEC Filings will be deemed to modify or qualify the representations and warranties set forth in Section 5.8, Section 5.12 and Section 5.16)), or (b) in the case of Acquiror and Merger Sub, in the disclosure letter delivered by Acquiror and Merger Sub to the Company (the “Acquiror Disclosure Letter”) on the date of this Agreement (each section of which, subject to Section 11.9, qualifies the correspondingly numbered and lettered representations in this Article V), Acquiror and Merger Sub represent and warrant to the Company as follows:

Section 5.1. Organization. Each of Acquiror and Merger Sub has been duly incorporated, organized or formed and is validly existing as a corporation or exempted company in good standing (or equivalent status, to the extent that such concept exists) under the Laws of its jurisdiction of incorporation, organization or formation, and has the requisite company power and authority to own, lease or operate all of its properties and assets and to conduct its business as it is now being conducted. The copies of Acquiror’s Governing Documents and the Governing Documents of Merger Sub, in each case, as amended to the date of this Agreement, previously delivered by Acquiror to the Company, are true, correct and complete. Merger Sub has no assets or operations other than those required to effect the transactions contemplated hereby. All of the Equity Securities of Merger Sub are held directly by Acquiror. Each of Acquiror and Merger Sub is duly licensed or qualified and in good standing as a foreign corporation or company in all jurisdictions in which its ownership of property or the character of its activities is such as to require it to be so licensed or qualified, except where failure to be so licensed or qualified would not reasonably be expected to be, individually or in the aggregate, material to Acquiror.

Section 5.2. Due Authorization.

(a) Each of Acquiror and Merger Sub has all requisite company or corporate power, as applicable, and authority to (i) execute and deliver this Agreement and the other documents to which they are a party contemplated hereby, and (ii) consummate the transactions contemplated hereby and thereby and perform all obligations to be performed by it hereunder and thereunder. The execution and delivery of this Agreement and the other documents to which Acquiror or Merger Sub is a party contemplated hereby and the consummation of the transactions contemplated hereby and thereby have been (A) duly and validly authorized and approved by each of the Boards of Directors of Acquiror and Merger Sub, (B) determined by each of the Boards of Directors of Acquiror and Merger Sub as advisable to Acquiror and the Acquiror Stockholders and the sole stockholder of Merger Sub, as applicable, and recommended for approval by the Acquiror Stockholders and the sole stockholder of Merger Sub, as applicable, and (C) duly and validly authorized and approved by Acquiror as the sole stockholder of Merger Sub. No other company or corporate proceeding on the part of Acquiror or Merger Sub is necessary to authorize this Agreement and the other documents to which Acquiror and Merger Sub are party contemplated hereby (other than the Acquiror Stockholder Approval). This Agreement has been, and at or prior to the Closing, the other documents to which Acquiror and Merger Sub contemplated hereby will be, duly and validly executed and delivered by each of Acquiror and Merger Sub, and this Agreement constitutes, and on or prior to the Closing, the other documents to which Acquiror and Merger Sub are party contemplated hereby will constitute, a legal, valid and binding obligation of each of Acquiror and Merger Sub, enforceable against Acquiror and Merger Sub in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors’ rights generally and subject, as to enforceability, to general principles of equity.

(b) Assuming that a quorum (as determined pursuant to Acquiror's Governing Documents) is present:

(i) the affirmative vote of a majority of the votes cast by holders of outstanding shares of Acquiror Common Stock in person or represented by proxy at the Acquiror Stockholders' Meeting and entitled to vote thereon, shall be required to approve the (A) BCA Proposal, (B) Nasdaq Proposal, (C) Acquiror Incentive Plan Proposal, (D) Acquiror ESPP Proposal, and (E) Director Proposal; and

(ii) the affirmative vote of holders of a majority of the outstanding shares of Acquiror Common Stock shall be required to approve the Amendment Proposal (including the Unbundling Precatory Proposals).

(c) The foregoing votes are the only votes of any of Acquiror's share capital necessary in connection with entry into this Agreement by Acquiror and Merger Sub and the consummation of the transactions contemplated hereby, including the Closing.

(d) At a meeting duly called and held, the Acquiror Board of Directors has unanimously approved the transactions contemplated by this Agreement as a Business Combination.

Section 5.3. No Conflict. Subject to the Acquiror Stockholder Approval and the receipt of the Governmental Authorizations set forth in Section 4.5 of the Company Disclosure Letter, the execution and delivery of this Agreement by Acquiror and Merger Sub and the other documents to which Acquiror or Merger Sub is party contemplated hereby by Acquiror and Merger Sub and the consummation of the transactions contemplated hereby and thereby do not and will not (a) violate or conflict with any provision of, or result in the breach of, or default under, the Governing Documents of Acquiror or Merger Sub, (b) violate or conflict with any provision of, or result in the breach of, or default under, any applicable Law or Governmental Order applicable to Acquiror or Merger Sub, (c) violate or conflict with any provision of, or result in the breach of, result in the loss of any right or benefit, or cause acceleration, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under any Contract to which Acquiror or Merger Sub is a party or by which Acquiror or Merger Sub may be bound, or terminate or result in the termination of any such Contract or (d) result in the creation of any Lien (other than Permitted Liens) upon any of the properties or assets of Acquiror or Merger Sub, except, in the case of clauses (b) through (d), to the extent that the occurrence of the foregoing would not (i) have, or would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Acquiror or Merger Sub to enter into and perform their obligations under this Agreement or (ii) be material to Acquiror.

Section 5.4. Litigation and Proceedings. As of the date hereof, there are no pending or, to the knowledge of Acquiror, threatened Legal Proceedings against Acquiror or Merger Sub, their respective properties or assets, or, to the knowledge of Acquiror, any of their respective directors, managers, officers or employees (in their capacity as such). As of the date hereof, there are no investigations or other inquiries pending or, to the knowledge of Acquiror, threatened by any Governmental Authority, against Acquiror or Merger Sub, their respective properties or assets, or, to the knowledge of Acquiror, any of their respective directors, managers, officers or employees (in their capacity as such). As of the date hereof, there is no outstanding Governmental Order imposed upon Acquiror or Merger Sub, nor are any assets of Acquiror's or Merger Sub's respective businesses bound or subject to any Governmental Order the violation of which would, individually or in the aggregate, reasonably be expected to be material to Acquiror. Each of Acquiror and Merger Sub is in compliance with all applicable Laws in all material respects. For the past three (3) years through the date hereof, Acquiror and Merger Sub have not received any written notice of or been charged with the violation of any Laws, except where such violation has not been, individually or in the aggregate, material to Acquiror.

Section 5.5. SEC Filings. Acquiror has timely filed or furnished all statements, prospectuses, registration statements, forms, reports and documents required to be filed by it with the SEC since August 10, 2021, pursuant to the Exchange Act or the Securities Act (collectively, as they have been amended since the time of their filing through the date hereof, the "Acquiror SEC Filings"). Each of the Acquiror SEC Filings, as of their respective filing dates or, if amended, as of the date of such amendment, which shall be deemed to supersede such original filing, complied in all material respects with the applicable requirements of the Securities Act, the Exchange Act, the Sarbanes-Oxley Act and any rules and regulations promulgated thereunder applicable to the Acquiror SEC Filings. As of the respective date of its filing (or if amended or superseded by a filing prior to the Closing Date, then on the date of such filing), the Acquiror SEC Filings did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. As of the date hereof, there are no outstanding or unresolved comments in comment letters received from the SEC with respect to the Acquiror SEC Filings. To the knowledge of Acquiror, none of the Acquiror SEC Filings filed on or prior to the date hereof is subject to ongoing SEC review or investigation as of the date hereof.

Section 5.6. Internal Controls; Listing; Financial Statements.

(a) Except as not required in reliance on exemptions from various reporting requirements by virtue of Acquiror's status as an "emerging growth company" within the meaning of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012 ("JOBS Act"), Acquiror has established and maintains disclosure controls and procedures (as defined in Rule 13a-15 under the Exchange Act). Such disclosure controls and procedures are designed to ensure that material information relating to Acquiror, including its consolidated Subsidiaries, if any, is made known to Acquiror's principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Exchange Act are being prepared. Such disclosure controls and procedures are effective in timely alerting Acquiror's principal executive officer and principal financial officer to material information required to be included in Acquiror's periodic reports required under the Exchange Act. Since August 10, 2021, Acquiror has established and maintained a system of internal controls over financial reporting (as defined in Rule 13a-15 under the Exchange Act) sufficient to provide reasonable assurance regarding the reliability of Acquiror's financial reporting and the preparation of Acquiror Financial Statements for external purposes in accordance with GAAP.

(b) Each director and executive officer of Acquiror has filed with the SEC on a timely basis all statements required by Section 16(a) of the Exchange Act and the rules and regulations promulgated thereunder. Acquiror has not taken any action prohibited by Section 402 of the Sarbanes-Oxley Act.

(c) Since August 10, 2021, Acquiror has complied in all material respects with the applicable listing and corporate governance rules and regulations of the Nasdaq Capital Market (the “Nasdaq”). The Acquiror Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed for trading on the Nasdaq. There is no Legal Proceeding pending or, to the knowledge of Acquiror, threatened against Acquiror by the Nasdaq or the SEC with respect to any intention by such entity to deregister the Acquiror Common Stock or prohibit or terminate the listing of Acquiror Common Stock on the Nasdaq.

(d) The Acquiror SEC Filings contain true and complete copies of the audited balance sheet of Acquiror as of December 31, 2021, together with the auditor’s reports thereon (the “Acquiror Financial Statements”). Except as disclosed in the Acquiror SEC Filings, the Acquiror Financial Statements (i) fairly present in all material respects the financial position of Acquiror, as of the respective dates thereof, and the results of operations and consolidated cash flows for the respective periods then ended, (ii) were prepared in conformity with GAAP applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto), and (iii) comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act in effect as of the respective dates thereof. The books and records of Acquiror have been, and are being, maintained in all material respects in accordance with GAAP and any other applicable legal and accounting requirements.

(e) There are no outstanding loans or other extensions of credit made by Acquiror to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of Acquiror. Acquiror has not taken any action prohibited by Section 402 of the Sarbanes-Oxley Act.

(f) Neither Acquiror (including any employee thereof) nor Acquiror’s independent auditors has identified or been made aware of (i) any significant deficiency or material weakness in the system of internal accounting controls utilized by Acquiror, (ii) any fraud, whether or not material, that involves Acquiror’s management or other employees who have a role in the preparation of financial statements or the internal accounting controls utilized by Acquiror or (iii) any claim or allegation regarding any of the foregoing.

Section 5.7. Governmental Authorities; Consents. Assuming the truth and completeness of the representations and warranties of the Company contained in this Agreement, no Governmental Authorization is required on the part of Acquiror or Merger Sub with respect to Acquiror’s or Merger Sub’s execution or delivery of this Agreement or the consummation of the transactions contemplated hereby, except for applicable requirements of the HSR Act, securities Laws and the filing of the Articles of Merger in accordance with the NRS.

Section 5.8. Trust Account. As of the date of this Agreement, Acquiror has at least \$128,397,500 in the Trust Account, such monies invested in United States government securities or money market funds meeting certain conditions under Rule 2a-7 promulgated under the Investment Company Act pursuant to the Investment Management Trust Agreement, dated as of August 10, 2021 (the “Trust Agreement”), between Acquiror and Continental Stock Transfer & Trust Company, as trustee (the “Trustee”). There are no separate Contracts, side letters or other arrangements or understandings (whether written or unwritten, express or implied) that would cause the description of the Trust Agreement in the Acquiror SEC Filings to be inaccurate or that would entitle any Person (other than stockholders of Acquiror holding Acquiror Common Shares sold in Acquiror’s initial public offering who shall have elected to redeem their shares of Acquiror Common Stock pursuant to Acquiror’s Governing Documents and the underwriters of Acquiror’s initial public offering with respect to deferred underwriting commissions) to any portion of the proceeds in the Trust Account. Prior to the Closing, none of the funds held in the Trust Account may be released other than to (i) pay Taxes, and (ii) make payments with respect to Acquiror Share Redemptions. There are Legal Proceedings pending or, to the knowledge of Acquiror, threatened with respect to the Trust Account. Acquiror has performed all material obligations required to be performed by it to date under, and is not in default of, breach or delinquent in performance or any other respect (claimed or actual) in connection with, the Trust Agreement, and no event has occurred which, with due notice or lapse of time or both, would constitute such a default or breach thereunder. As of the Effective Time, the obligations of Acquiror to dissolve or liquidate pursuant to Acquiror’s Governing Documents shall terminate, and as of the Effective Time, Acquiror shall have no obligation whatsoever pursuant to Acquiror’s Governing Documents to dissolve and liquidate the assets of Acquiror by reason of the consummation of the transactions contemplated hereby. To Acquiror’s knowledge, as of the date hereof, following the Effective Time, no Acquiror Stockholder shall be entitled to receive any amount from the Trust Account except to the extent such Acquiror Stockholder is exercising an Acquiror Share Redemption. As of the date hereof, assuming the accuracy of the representations and warranties of the Company contained herein and the compliance by the Company with its obligations hereunder, neither Acquiror nor Merger Sub has any reason to believe that any of the conditions to the use of funds in the Trust Account will not be satisfied or funds available in the Trust Account will not be available to Acquiror and Merger Sub on the Closing Date.

Section 5.9. Investment Company Act; JOBS Act. Acquiror is not an “investment company” or a Person directly or indirectly “controlled” by or acting on behalf of an “investment company,” in each case within the meaning of the Investment Company Act. Acquiror constitutes an “emerging growth company” within the meaning of the JOBS Act.

Section 5.10. Absence of Changes. Since August 13, 2021, (a) there has not been any Event or occurrence that has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Acquiror or Merger Sub to enter into and perform their obligations under this Agreement and (b) Acquiror and Merger Sub have, in all material respects, conducted their business and operated their properties in the ordinary course of business.

Section 5.11. No Undisclosed Liabilities. Except for any fees and expenses payable by Acquiror or Merger Sub as a result of or in connection with the consummation of the transactions contemplated hereby, as of the date of this Agreement, there is no liability, debt or obligation of or claim or judgment against Acquiror or Merger Sub (whether direct or indirect, absolute or contingent, accrued or unaccrued, known or unknown, liquidated or unliquidated, or due or to become due) required to be disclosed on the most recent balance sheet in accordance with GAAP, except for liabilities and obligations (a) reflected or reserved for on the financial statements or disclosed in the notes thereto included in Acquiror SEC Filings, (b) that have arisen since the date of the most recent balance sheet included in the Acquiror SEC Filings in the ordinary course of business of Acquiror and Merger Sub, or (c) which would not be, or would not reasonably be expected to be, material to Acquiror. As of the date hereof, there are no amounts outstanding under any Working Capital Loans.

Section 5.12. Capitalization of Acquiror.

(a) As of the date of this Agreement, the authorized share capital of Acquiror consists of (i) 50,000,000 (fifty million) shares of Acquiror Common Stock, of which 15,812,500 shares are issued and outstanding, and (ii) 1,000,000 (one million) preferred shares of par value \$0.0001 each, of which no shares are issued and outstanding (clauses (i) and (ii), collectively, the “Acquiror Securities”). The foregoing represents all of the issued and outstanding Acquiror Securities as of the date of this Agreement. All issued and outstanding Acquiror Securities (i) have been duly authorized and validly issued and are fully paid and non-assessable; (ii) have been offered, sold and issued in compliance with applicable Law, including federal and state securities Laws, and all requirements set forth in (A) Acquiror’s Governing Documents, and (B) any other applicable Contracts governing the issuance of such securities; and (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, Acquiror’s Governing Documents or any Contract to which Acquiror is a party or otherwise bound.

(b) Subject to the terms of conditions of the Acquiror Warrant Agreement, the Acquiror Warrants will be exercisable after giving effect to the Merger for one share of Acquiror Common Stock at an exercise price of eleven Dollars fifty cents (\$11.50) per share. As of the date of this Agreement, 9,487,500 Acquiror Public Warrants and 4,627,858 Acquiror Private Placement Warrants are issued and outstanding. All outstanding Acquiror Warrants (i) have been duly authorized and validly issued and constitute valid and binding obligations of Acquiror, enforceable against Acquiror in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors’ rights generally and subject, as to enforceability, to general principles of equity; (ii) have been offered, sold and issued in compliance with applicable Law, including federal and state securities Laws, and all requirements set forth in (1) Acquiror’s Governing Documents and (2) any other applicable Contracts governing the issuance of such securities; and (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, Acquiror’s Governing Documents or any Contract to which Acquiror is a party or otherwise bound. Except for the Subscription Agreement, any Additional Subscription Agreements, Acquiror’s Governing Documents and this Agreement, there are no outstanding Contracts of Acquiror to repurchase, redeem or otherwise acquire any Acquiror Securities.

(c) Except as set forth in this Section 5.12 or as contemplated by this Agreement or the other documents contemplated hereby, and other than in connection with the PIPE Investment or the Equity Facility, Acquiror has not granted any outstanding options, stock appreciation rights, warrants, rights or other securities convertible into or exchangeable or exercisable for Acquiror Securities, or any other commitments or agreements providing for the issuance of additional shares, the sale of treasury shares, for the repurchase or redemption of any Acquiror Securities or the value of which is determined by reference to the Acquiror Securities, and there are no Contracts of any kind which may obligate Acquiror to issue, purchase, redeem or otherwise acquire any of its Acquiror Securities.

(d) The Aggregate Merger Consideration and the Acquiror Common Shares, when issued in accordance with the terms hereof, shall be duly authorized and validly issued, fully paid and non-assessable and issued in compliance with all applicable state and federal securities Laws and not subject to, and not issued in violation of, any Lien, purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of applicable Law, Acquiror's Governing Documents, or any Contract to which Acquiror is a party or otherwise bound.

(e) Acquiror has no Subsidiaries apart from Merger Sub, and does not own, directly or indirectly, any Equity Securities or other interests or investments (whether equity or debt) in any Person, whether incorporated or unincorporated. Acquiror is not party to any Contract that obligates Acquiror to invest money in, loan money to or make any capital contribution to any other Person.

Section 5.13. PIPE Investment. On or prior to the date of this Agreement, Acquiror has entered into the Subscription Agreement with the Initial PIPE Investor, a true and correct copy of which has been provided to the Company on or prior to the date of this Agreement, pursuant to which, and on the terms and subject to the conditions of which, the Initial PIPE Investor has agreed, in connection with the transactions contemplated hereby, to purchase from Acquiror, securities or to provide to Acquiror other financing representing \$5,000,000 (five million) of the PIPE Investment (such amount the "Committed PIPE Investment Amount"). As of the date hereof, the Subscription Agreement for the Committed PIPE Investment Amount is in full force and effect with respect to, and binding on, Acquiror and, to the knowledge of Acquiror, the Initial PIPE Investor, in accordance with its terms.

Section 5.14. Brokers' Fees. No broker, finder, investment banker or other Person (except the Person(s) set forth on Section 5.14 of the Acquiror Disclosure Letter) is entitled to any brokerage fee, finders' fee or other commission in connection with the transactions contemplated hereby based upon arrangements made by Acquiror or any of its Affiliates.

Section 5.15. Indebtedness. Neither Acquiror nor Merger Sub has any Indebtedness other than Working Capital Loans.

Section 5.16. Taxes.

(a) All income and other material Tax Returns required to be filed by or with respect to Acquiror or Merger Sub have been timely filed (taking into account any applicable extensions), all such Tax Returns (taking into account all amendments thereto) are true, complete and accurate in all material respects and all material Taxes due and payable (whether or not shown on any Tax Return) have been paid, other than Taxes being contested in good faith and for which adequate reserves have been established in accordance with GAAP.

(b) Acquiror and Merger Sub have withheld from amounts owing to any employee, creditor or other Person all material Taxes required by Law to be withheld, paid over to the proper Governmental Authority in a timely manner all such withheld amounts required to have been so paid over, and complied in all material respects with all applicable reporting requirements with respect to such Taxes.

(c) There are no Liens for any Taxes (other than Permitted Liens) upon the property or assets of Acquiror or Merger Sub.

(d) No claim, assessment, deficiency or proposed adjustment for any material amount of Tax has been asserted or assessed in writing (and, to the knowledge of Acquiror, no such claim, assessment, deficiency or proposed adjustment has been asserted or assessed) by any Governmental Authority against Acquiror or Merger Sub that remains unresolved or unpaid except for claims, assessments, deficiencies or proposed adjustments being contested in good faith and for which adequate reserves have been established in accordance with GAAP.

(e) There are no ongoing or pending Legal Proceedings with respect to any material Taxes of Acquiror or Merger Sub, and there are no waivers, extensions or requests for any waivers or extensions of any statute of limitations currently in effect with respect to any material Taxes of Acquiror or Merger Sub.

(f) No written claim has been made by any Governmental Authority where Acquiror or Merger Sub does not file Tax Returns that it is or may be subject to taxation in that jurisdiction.

(g) Neither Acquiror nor Merger Sub is a party to any Tax indemnification or Tax sharing or similar agreement (other than any Contract solely between Acquiror and Merger Sub or any customary commercial Contract (or Contract entered into in the ordinary course of business) not primarily related to Taxes).

(h) Neither Acquiror nor Merger Sub has been a party to any transaction treated by the parties as a distribution of stock qualifying under Section 355 of the Code in the two (2) years prior to the date of this Agreement.

(i) Neither Acquiror nor Merger Sub (i) is liable for Taxes of any other Person (other than Acquiror or Merger Sub) under Treasury Regulation Section 1.1502-6 or any similar provision of state, local or foreign Tax Law or as a transferee or successor or by Contract (other than any Contract solely between Acquiror and Merger Sub or any customary commercial Contract (or Contract entered into in the ordinary course of business) not primarily related to Taxes) or (ii) has ever been a member of an affiliated, consolidated, combined or unitary group filing for U.S. federal, state or local income Tax purposes, other than a group the common parent of which was or is Acquiror or Merger Sub.

(j) To the knowledge of Acquiror, neither Acquiror nor Merger Sub has, or has ever had, a permanent establishment in any country other than the country of its organization, or is, or has ever been, subject to income Tax in a jurisdiction outside the country of its organization.

(k) Neither Acquiror nor Merger Sub has participated in a “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4(b)(2).

(l) Neither Acquiror nor Merger Sub has made a request for an advance tax ruling, request for technical advice, request for change of any method of accounting or any similar request that is in progress or pending with any Governmental Authority with respect to any Taxes that would reasonably be expected to be material to Acquiror or Merger Sub, taken as a whole.

(m) Neither Acquiror nor Merger Sub will be required to include any material amount in taxable income, exclude any material item of deduction or loss from taxable income, or make any adjustment under Section 481 of the Code (or any similar provision of state, local or foreign Law) for any taxable period (or portion thereof) ending after the Closing Date as a result of (i) any installment sale, excess loss account or deferred intercompany transaction described in the Treasury Regulations under Section 1502 of the Code (or any similar provision of state, local or foreign Law), or open transaction disposition made prior to the Closing outside the ordinary course of business, (ii) any prepaid amount received or deferred revenue recognized prior to the Closing outside the ordinary course of business, (iii) any change in method of accounting for a taxable period ending on or prior to the Closing Date, (iv) any “closing agreement” as described in Section 7121 of the Code (or any similar provision of state, local or foreign Law) executed prior to the Closing, or (v) by reason of an election pursuant to Section 965(h) of the Code (or any similar provision of state, local or foreign Law).

(n) Acquiror and Merger Sub have not taken any action or knowingly failed to take any action, nor to the knowledge of Acquiror are there any facts or circumstances, which action, inaction, facts, or circumstances could reasonably be expected to prevent the Merger from qualifying for the Intended Tax Treatment.

Section 5.17. Business Activities.

(a) Since formation, neither Acquiror nor Merger Sub has conducted any business activities other than activities related to Acquiror’s initial public offering or directed toward the accomplishment of a Business Combination. Except as set forth in Acquiror’s Governing Documents or as otherwise contemplated by this Agreement or the Ancillary Agreements and the transactions contemplated hereby and thereby, there is no agreement, commitment, or Governmental Order binding upon Acquiror or Merger Sub or to which Acquiror or Merger Sub is subject or a party which has or would reasonably be expected to have the effect of prohibiting or impairing any business practice of Acquiror or Merger Sub or any acquisition of property by Acquiror or Merger Sub or the conduct of business by Acquiror or Merger Sub as currently conducted or as contemplated to be conducted as of the Closing, other than such effects, individually or in the aggregate, which have not been and would not reasonably be expected to be material to Acquiror or Merger Sub.

(b) Except for Merger Sub and the transactions contemplated by this Agreement and the Ancillary Agreements, Acquiror does not own or have a right to acquire, directly or indirectly, any interest or investment (whether equity or debt) in any corporation, partnership, joint venture, business, trust or other entity. Except for this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby, Acquiror has no material interests, rights, obligations or liabilities with respect to, and is not party to, bound by or has its assets or property subject to, in each case whether directly or indirectly, any Contract or transaction which is, or would reasonably be interpreted as constituting, a Business Combination. Except for the transactions contemplated by this Agreement and the Ancillary Agreements, Merger Sub does not own or have a right to acquire, directly or indirectly, any interest or investment (whether equity or debt) in any corporation, partnership, joint venture, business, trust or other entity.

(c) Merger Sub was formed solely for the purpose of effecting the transactions contemplated by this Agreement and has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated hereby and has no, and at all times prior to the Effective Time, except as expressly contemplated by this Agreement, the Ancillary Agreements and the other documents and transactions contemplated hereby and thereby, will have no, assets, liabilities or obligations of any kind or nature whatsoever other than those incident to its formation.

(d) As of the date hereof and except for this Agreement, the Ancillary Agreements and the other documents and transactions contemplated hereby and thereby (including with respect to expenses and fees incurred in connection therewith), neither Acquiror nor Merger Sub is party to any Contract with any other Person that would require payments by Acquiror or Merger Sub after the date hereof in excess of \$250,000 (two hundred and fifty thousand dollars) in the aggregate with respect to any individual Contract, other than Working Capital Loans.

Section 5.18. Stock Market Quotation. As of the date hereof, the Acquiror Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed for trading on the Nasdaq under the symbol "CNTQ." As of the date hereof, the Acquiror Public Warrants are registered pursuant to Section 12(b) of the Exchange Act and are listed for trading on the Nasdaq under the symbol "CNTQW." As of the Closing, after giving effect to the other transactions contemplated by this Agreement (and by the other agreements contemplated hereby) to occur prior to the Closing, the Acquiror Common Stock and the Acquiror Public Warrants will be registered pursuant to Section 12(b) of the Exchange Act and listed for trading on the Nasdaq. Acquiror is in compliance with the rules of the Nasdaq, and there is no Action or proceeding pending or, to the knowledge of Acquiror, threatened against Acquiror by the Nasdaq or the SEC with respect to any intention by such entity to deregister the Acquiror Common Stock or Acquiror Warrants or terminate the listing of Acquiror Common Stock or Acquiror Warrants on the Nasdaq. None of Acquiror, Merger Sub or their respective Affiliates has taken any action in an attempt to terminate the registration of the Acquiror Common Stock or Acquiror Warrants under the Exchange Act except as contemplated by this Agreement.

Section 5.19. Registration Statement, Proxy Statement and Proxy Statement/Registration Statement. On the effective date of the Registration Statement, the Registration Statement, and when first filed in accordance with Rule 424(b) of the Securities Act and/or filed pursuant to Section 14A of the Exchange Act, the Proxy Statement and the Proxy Statement/Registration Statement (or any amendment or supplement thereto), shall comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act. On the effective date of the Registration Statement, the Registration Statement will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading. On the date of any filing pursuant to Rule 424(b) of the Securities Act and/or Section 14A of the Exchange Act, the date the Proxy Statement/Registration Statement or the Proxy Statement, as applicable, is first mailed to the Acquiror Stockholders and at the time of the Acquiror Stockholders' Meeting, the Proxy Statement/Registration Statement or the Proxy Statement, as applicable (together with any amendments or supplements thereto), will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that Acquiror makes no representations or warranties as to the information contained in or omitted from the Registration Statement, Proxy Statement or the Proxy Statement/Registration Statement in reliance upon and in conformity with information furnished in writing to Acquiror by or on behalf of the Company specifically for inclusion in the Registration Statement, Proxy Statement or the Proxy Statement/Registration Statement.

Section 5.20. No Outside Reliance. Notwithstanding anything contained in this Article V or any other provision hereof, each of Acquiror and Merger Sub, and any of their respective directors, managers, officers, employees, equityholders, partners, members or representatives, acknowledge and agree that Acquiror has made its own investigation of the Company and that neither the Company nor any of its Affiliates, agents or representatives is making any representation or warranty whatsoever, express or implied, beyond those expressly given by the Company in Article IV, including any implied warranty or representation as to condition, merchantability, suitability or fitness for a particular purpose or trade as to any of the assets of the Company. Without limiting the generality of the foregoing, it is understood that any cost estimates, financial or other projections or other predictions that may be contained or referred to in the Company Disclosure Letter or elsewhere, as well as any information, documents or other materials (including any such materials contained in any "data room" (whether or not accessed by Acquiror or its representatives) or reviewed by Acquiror pursuant to the Confidentiality Agreement) or management presentations that have been or shall hereafter be provided to Acquiror or any of its Affiliates, agents or representatives are not and will not be deemed to be representations or warranties of the Company, and no representation or warranty is made as to the accuracy or completeness of any of the foregoing except as may be expressly set forth in Article IV of this Agreement. Except as otherwise expressly set forth in this Agreement, Acquiror understands and agrees that any assets, properties and business of the Company are furnished "as is," "where is" and subject to and except as otherwise provided in the representations and warranties contained in Article IV, with all faults and without any other representation or warranty of any nature whatsoever.

Section 5.21. No Additional Representation or Warranties. Except as provided in this Article V, neither Acquiror nor Merger Sub nor any of their respective Affiliates, nor any of their respective directors, managers, officers, employees, stockholders, partners, members or representatives has made, or is making, any representation or warranty whatsoever to the Company or its Affiliates and no such party shall be liable in respect of the accuracy or completeness of any information provided to the Company or its Affiliates. Acquiror acknowledges and agrees with the representation in the first sentence of Section 4.32 and that Acquiror and its advisors, have made their own investigation of the Company and, except as provided in Article IV, are not relying on any representation or warranty whatsoever as to the condition, merchantability, suitability or fitness for a particular purpose or trade as to any of the assets of the Company, the prospects (financial or otherwise) or the viability or likelihood of success of the business of the Company as conducted after the Closing, as contained in any materials provided by the Company or any of its directors, officers, employees, stockholders, partners, members or representatives or otherwise.

ARTICLE VI

COVENANTS OF THE COMPANY

Section 6.1. Conduct of Business. From the date of this Agreement through the earlier of the Closing or valid termination of this Agreement pursuant to Article X (the “Interim Period”), the Company shall, except as otherwise explicitly contemplated by this Agreement, Section 6.1 of the Company Disclosure Letter or the Ancillary Agreements, required by Law (including any COVID-19 Measures) or as consented to by Acquiror in writing (which consent shall not be unreasonably withheld, delayed or conditioned), to (x) operate the business of the Company in the ordinary course and (y) use commercially reasonable efforts to preserve intact the Company’s present business organization, retain the Company’s current officers, use commercially reasonable efforts to preserve the Company’s relationships with its key suppliers and customers (if applicable). Without limiting the generality of the foregoing, or as consented to by Acquiror in writing (which consent shall not be unreasonably withheld, delayed or conditioned), the Company shall not, and the Company shall cause its Subsidiaries not to, except as otherwise contemplated by this Agreement, Section 6.1 of the Company Disclosure Letter or the Ancillary Agreements or required by Law (including any COVID-19 Measures):

- (a) change or amend the Governing Documents of the Company or form or cause to be formed any new Subsidiary of the Company;
- (b) make or declare any dividend or distribution to the equityholders of the Company or make any other distributions in respect of any shares of the Company Capital Stock or the Equity Securities of the Company;
- (c) split, combine, reclassify, recapitalize or otherwise amend any terms of any shares or series of the Company Capital Stock or Equity Securities, except for any such transaction or action by a wholly owned Subsidiary of the Company that remains a wholly owned Subsidiary of the Company after consummation of such transaction;
- (d) purchase, repurchase, redeem or otherwise acquire any issued and outstanding share capital, outstanding shares of capital stock, membership interests or other Equity Securities of the Company, except for (i) the acquisition by the Company of any shares of capital stock, membership interests or other Equity Securities of the Company or in connection with the forfeiture or cancellation of such interests, or (ii) purchases or redemptions pursuant to exercises of Company Options issued and outstanding as of the date hereof or the withholding of shares to satisfy net settlement or Tax obligations with respect to Company Options outstanding as of the date hereof in accordance with the terms of such Company Options;

(e) enter into, modify in any material respect or terminate (other than expiration in accordance with its terms) any Contract of a type required to be listed on Section 4.12(a) of the Company Disclosure Letter, in each case, other than in the ordinary course of business or as required by Law;

(f) fail to exercise any rights of renewal with respect to any Leased Real Property that by its terms would otherwise expire, or enter into or terminate any Real Property Lease other than in the ordinary course of business or as required by Law;

(g) sell, assign, transfer, convey, lease or otherwise dispose of, or create or incur any Lien (except for a Permitted Lien) on, any material tangible assets or properties of the Company, except for (i) dispositions of obsolete or worthless equipment and (ii) the sale of the Company's inventory or products in the ordinary course of business;

(h) acquire any ownership interest in any real property;

(i) except as otherwise required by Law, the terms of the applicable Company Benefit Plan as in effect on the date hereof, the Contracts listed on Section 4.12(a) of the Company Disclosure Letter as in effect on the date hereof, entry into any of the employment agreements contemplated by this Agreement or the issuance of any Company Options permitted under this Section 6.1, (i) agree to pay any severance, retention, change in control or termination or similar compensation or benefits to any employee, officer, director or other individual service provider of the Company, (ii) hire or terminate any officer, director or employee of the Company receiving annual base compensation equal to or in excess of \$150,000 (one hundred fifty thousand Dollars), other than terminations of employment for cause or due to death or disability, (iii) terminate, adopt, enter into or amend any Company Benefit Plan, (iv) (A) increase the compensation or bonus opportunity of any Key Employee in any respect, or (B) increase the compensation or bonus opportunity of any other employee, officer, director or other individual service provider that exceeds 5% (five percent) of the aggregate compensation or bonus payable to such employees, officers, directors or other individuals, except in the ordinary course of business for employees who are not executive officers, (v) establish any trust or take any other action to secure the payment of any compensation payable by the Company to any employee, officer, director or other individual service provider of the Company, (vi) take any action to amend or waive any performance or vesting criteria or to accelerate the time of payment or vesting of any compensation or benefit payable by the Company except in the ordinary course of business for employees who are not executive officers to the extent that the actions (individually or in the aggregate) do not materially increase costs to the Surviving Corporation, (vii) grant any new equity awards to any employee, officer, director or other individual service provider of the Company (whether under the Company Incentive Plans or otherwise), except for grants of Company Options not to exceed 1,020,127 shares of Company Common Stock, or (viii) amend, waive or modify any of the Key Employment Agreements (or any of the terms thereof including the Amendments), notwithstanding any provision of this Agreement or other transaction documents to the contrary;

(j) (i) acquire by merger or consolidation with, or merge or consolidate with, or purchase substantially all or a material amount of the assets of, any corporation, partnership, association, joint venture or other business organization or division thereof or (ii) launch a joint venture or similar arrangement with any corporation, partnership, association, or other business organization or division thereof;

(k) (i) issue or sell any debt securities or warrants or other rights to acquire any debt securities of the Company or otherwise incur or assume any Indebtedness, or (ii) guarantee any Indebtedness of another Person, except in the ordinary course of business;

(l) (i) make, change, or revoke any material Tax election, (ii) materially amend, modify or otherwise change any filed material Tax Return, (iii) adopt or request permission of any taxing authority to change any accounting method in respect of material Taxes, (iv) enter into any closing agreement in respect of material Taxes or enter into any Tax sharing or similar agreement (other than any customary commercial Contract (or Contract entered into in the ordinary course of business) not primarily related to Taxes), (v) settle any claim or assessment in respect of material Taxes, (vi) surrender or allow to expire any right to claim a refund of material Taxes or (vii) consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of material Taxes;

(m) take any action, or knowingly fail to take any action, where such action or failure to act could reasonably be expected to prevent the Merger from qualifying for the Intended Tax Treatment;

(n) except for Company Options permitted under this Section 6.1, issue any additional shares of Company Capital Stock or securities exercisable for or convertible into shares of Company Capital Stock, other than the issuance of shares of Company Common Stock (i) upon the exercise of Company Options pursuant to their terms in the ordinary course of business under the Company Incentive Plans and the applicable award agreements, in each case, outstanding on the date of this Agreement in accordance with their terms as in effect as of the date of this Agreement, (ii) pursuant to the Company Preferred Conversion and (iii) in respect of the PIPE Investment, including for the avoidance of doubt, the issuance of shares of Acquiror Common Stock and/or other securities, or the providing of other financing, pursuant to the Subscription Agreement or an Additional Subscription Agreement;

(o) adopt a plan of, or otherwise enter into or effect a, complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization of the Company (other than the Merger);

(p) commence, waive, release, settle, compromise or otherwise resolve any inquiry, investigation, claim, Action, litigation or other Legal Proceedings, except where such waivers, releases, settlements or compromises involve only the payment of monetary damages in an amount less than \$250,000 (two hundred and fifty thousand dollars) in the aggregate;

(q) grant to, or agree to grant to, any Person rights to any Intellectual Property that is material to the Company (other than non-exclusive licenses granted in the ordinary course of business), or dispose of, abandon or permit to lapse any rights to any Company Registered Intellectual Property, other than with respect to immaterial Company Registered Intellectual Property whose cost of prosecution or maintenance, in the reasonable exercise of the Company's business judgement, would outweigh any benefit to the Company of prosecution or maintaining such item;

(r) disclose or agree to disclose to any Person (other than Acquiror or any of its representatives) any trade secret of the Company, other than to service providers and development partners on a need-to-know basis in the ordinary course of business and pursuant to obligations to use such information, know-how or process solely for purposes of providing such services or to collaborate on such development projects with the Company (as applicable), and to maintain the confidentiality thereof;

(s) make or commit to make capital expenditures other than in an amount not in excess of the amounts set forth on Section 6.1(s) of the Company Disclosure Letter;

(t) manage the Company's working capital (including paying amounts payable in a timely manner when due and payable and collection of accounts receivable in a timely manner when due) in a manner other than in the ordinary course of business;

(u) enter into any new line of business the Company as of the date hereof do not currently engage in;

(v) enter into, modify, amend, renew or extend any Collective Bargaining Agreement, other than as required by applicable Law, or recognize or certify any Labor Organization, or group of employees of the Company as the bargaining representative for any employees of the Company;

(w) amend in a manner materially detrimental to the Company, terminate without replacement or fail to use commercially reasonable efforts to maintain, any License material to the conduct of the business of the Company, taken as a whole;

(x) waive the restrictive covenant obligations of any current or former director, officer, employee or independent contractor of the Company;

(y) (i) limit the right of the Company to engage in any line of business or in any geographic area, to develop, market or sell products or services, or to compete with any Person or (ii) grant any exclusive or similar rights to any Person, in each case, except where such limitation or grant does not, and would not be reasonably likely to, individually or in the aggregate, materially and adversely affect, or materially disrupt, the ordinary course operation of the businesses of the Company, taken as a whole;

(z) terminate without replacement or amend in a manner materially detrimental to the Company, taken as a whole, any insurance policy insuring the business of the Company; or

(aa) enter into any agreement to do any action prohibited under this Section 6.1.

Section 6.2. Inspection. Subject to confidentiality obligations (whether contractual, imposed by applicable Law or otherwise) that may be applicable to information furnished to the Company by third parties that may be in the Company's possession from time to time, and except for any information that is subject to attorney-client privilege and to the extent permitted by applicable Law (provided that, to the extent possible, the parties shall cooperate in good faith to permit disclosure of such information in a manner that preserves such privilege, compliance with such confidentiality obligation or in compliance with applicable Law), (a) the Company shall afford to Acquiror and its accountants, counsel and other representatives reasonable access during the Interim Period (including for the purpose of coordinating transition planning for employees), during normal business hours and with reasonable advance notice, in such manner as to not materially interfere with the ordinary course of business of the Company, to all of their respective properties, books, Contracts, commitments, Tax Returns, records and appropriate officers and employees of the Company, and shall furnish such accountants and representatives with all financial and operating data and other information concerning the affairs of the Company as such accountants and representatives may reasonably request; provided that such access shall not include any sampling, testing or analysis of environmental media or any unreasonably invasive or intrusive investigations or other testing, sampling or analysis of any properties, facilities or equipment of the Company, and (b) the Company shall provide to Acquiror and, if applicable, its accountants, counsel or other representatives, (x) such information and such other materials and resources relating to any Legal Proceeding initiated, pending or threatened during the Interim Period, or to the compliance and risk management operations and activities of the Company during the Interim Period, in each case, as Acquiror or such representative may reasonably request, (y) prompt written notice of any material status updates in connection with any such Legal Proceedings or otherwise relating to any compliance and risk management matters or decisions of the Company, and (z) copies of any communications sent or received by the Company in connection with such Legal Proceedings, matters and decisions (and, if any such communications occurred orally, the Company shall memorialize such communications in writing to Acquiror). All information obtained by Acquiror, Merger Sub or their respective representatives pursuant to this Section 6.2 shall be subject to the Confidentiality Agreement.

Section 6.3. Preparation and Delivery of Additional Company Financial Statements.

(a) The Company shall use commercially reasonable efforts to deliver to Acquiror, as soon as reasonably practicable following the date of this Agreement, audited consolidated balance sheets and statements of operations, comprehensive loss, stockholders' equity and cash flows of the Company as of and for the years ended December 31, 2021, and December 31, 2020, together with the auditor's reports thereon, which comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act applicable to a registrant (collectively, the "PCAOB Financial Statements"); provided that upon delivery of such PCAOB Financial Statements, such financial statements shall be deemed "Audited Financial Statements" for the purposes of this Agreement and the representation and warranties set forth in Section 4.8 shall be deemed to apply to the such Audited Financial Statements with the same force and effect as if made as of the date of this Agreement.

(b) The Company shall be prepared to deliver the PCAOB Financial Statements to Acquiror as soon as reasonably practicable after the date hereof, but no later than 10 Business Days after the date hereof, subject to Acquiror's and the Company's preparation of the Proxy Statement/Registration Statement as described in Section 8.2(a).

(c) The Company shall use its commercially reasonable efforts to deliver to Acquiror, as soon as reasonably practicable, the unaudited condensed consolidated balance sheets and statements of operations and comprehensive loss, stockholders' deficit and cash flow of the Company as of and for the three-month period ended March 31, 2022 (the "Q1 Financials"), together with the auditor's reports thereon, which comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act applicable to a registrant; provided that upon delivery of such Q1 Financials. If the Effective Time has not occurred on or prior to August 12, 2022, the Company shall use its commercially reasonable efforts to deliver to Acquiror, as soon as reasonably practicable, comparable unaudited financial statements and auditor's report thereon as of and for the six month period ended June 30, 2022 (the "Q2 Financials"), which comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act applicable to a registrant. The representations and warranties set forth in Section 4.8 shall be deemed to apply to the Q1 Financials and the Q2 Financials with the same force and effect as if made as of the date of this Agreement.

(d) The Company shall use its commercially reasonable efforts to deliver to Acquiror, as soon as reasonably practicable following the date hereof, any additional financial or other information reasonably requested by Acquiror to prepare pro forma financial statements required under federal securities Laws to be included in Acquiror's filings with the SEC (including, if applicable, the Proxy Statement/Registration Statement).

(e) The Company shall use its commercially reasonable efforts to cause its independent auditors to provide any necessary consents to the inclusion of the financial statements set forth in Section 4.8 and this Section 6.3 in Acquiror's filings with the SEC in accordance with the applicable requirements of federal securities Laws.

Section 6.4. Affiliate Agreements. At or prior to the Closing, the Company shall terminate or settle, or cause to be terminated or settled, without further liability to Acquiror, the Company, all Affiliate Agreements (other than those set forth on Section 6.4 of the Company Disclosure Letter) and provide Acquiror with evidence of such termination or settlement reasonably satisfactory to Acquiror.

Section 6.5. Acquisition Proposals. From the date hereof until the Closing Date or, if earlier, the termination of this Agreement in accordance with Article X, the Company shall not, and the Company shall instruct (and shall be responsible for non-compliance), and use commercially reasonable efforts to, cause its affiliates and its and their representatives, employees, officers, directors and advisors not to (a) initiate any negotiations with any Person with respect to, or provide any non-public information or data concerning the Company to any Person relating to, an Acquisition Proposal or afford to any Person access to the business, properties, assets or personnel of the Company in connection with an Acquisition Proposal, (b) enter into any acquisition agreement, merger agreement or similar definitive agreement, or any letter of intent, memorandum of understanding or agreement in principle, or any other agreement relating to an Acquisition Proposal, (c) grant any waiver, amendment or release under any confidentiality agreement or the anti-takeover laws of any state, or (d) otherwise knowingly facilitate any such inquiries, proposals, discussions, or negotiations or any effort or attempt by any Person to make an Acquisition Proposal.

Section 6.6. Payoff. If, and only if, the Debt Financing as contemplated by the Debt Commitment Letter is (a) consummated prior to or concurrent with the Closing, the Company shall obtain and deliver to Acquiror at or prior to the Closing Date (x) any necessary consents and/or waivers required in order to permit the prepayment of all outstanding PIUS Debt (the “Payoff Consent”), which consents and/or waivers shall be in form and substance reasonably acceptable to Acquiror and (y) a fully executed customary payoff letter related to all outstanding PIUS Debt (the “Payoff Letter”), which Payoff Letter shall include language (i) providing that, upon receipt of the applicable payoff amount, the PIUS Debt and all related transaction and/or disbursement documents shall be automatically terminated (subject to the survival of provisions which by their express terms survive any such termination), (ii) providing that all Liens and all guarantees in connection therewith shall be released and automatically terminated upon the payment of the applicable payoff amount and (iii) providing for the return of all possessory collateral (if any) in connection with such Indebtedness or (b) not consummated prior to or concurrent with the Closing, the Company shall cooperate with Acquiror in good faith to refinance the PIUS Debt. The Company shall be obligated to make all payments of fees, expenses and other costs due and payable under and in accordance with the Debt Commitment Letter to the lenders thereunder related to the Debt Financing (the “Lender Expenses”), including with respect to any indemnity entered into by the Company in connection therewith, and the Company will promptly reimburse Acquiror and Acquiror’s Affiliates for all such Lender Expenses actually paid by Acquiror and Acquiror’s Affiliates pursuant to the Debt Commitment Letter.

ARTICLE VII

COVENANTS OF ACQUIROR

Section 7.1. Employee Matters.

(a) Equity Plans. Prior to the Closing Date, Acquiror shall approve and adopt (x) an equity incentive plan in the form attached hereto as Exhibit D (with such changes as may be agreed in writing by Acquiror and the Company) (the “Equity Incentive Plan”), (y) the forms of (i) Incentive Option Award Agreement, (ii) Nonqualified Option Award Agreement, and (iii) Restricted Stock Unit Award Agreement attached hereto as Exhibit E (with such changes that may be agreed in writing by Acquiror and the Company), and (z) an employee stock purchase plan in substantially the form attached hereto as Exhibit F (with such changes that may be agreed in writing by Acquiror and the Company) (the “ESPP”). Within two (2) Business Days following the expiration of the sixty (60) day period following the date Acquiror has filed current Form 10 information with the SEC reflecting its status as an entity that is not a shell company, Acquiror shall file an effective registration statement on Form S-8 (or other applicable form, including Form S-3) with respect to the Acquiror Common Stock issuable under the Equity Incentive Plan and the ESPP, and Acquiror shall use commercially reasonable efforts to maintain the effectiveness of such registration statement(s) (and maintain the current status of the prospectus or prospectuses contained therein) for so long as awards granted pursuant to the Equity Incentive Plan or acquired under the ESPP remain outstanding.

(b) No Third-Party Beneficiaries. Notwithstanding anything herein to the contrary, all provisions contained in this Section 7.1 are included for the sole benefit of Acquiror and the Company, and nothing in this Agreement, whether express or implied, (i) shall be construed to establish, amend, or modify any employee benefit plan, policy, program, agreement or arrangement, (ii) shall limit the right of Acquiror, the Company or their respective Affiliates to amend, terminate or otherwise modify any Company Benefit Plan or other employee benefit plan, policy, program, agreement or other arrangement following the Closing Date, or (iii) shall confer upon any Person who is not a party to this Agreement (including any equityholder, any current or former director, manager, officer, employee or independent contractor of the Company, or any participant in any Company Benefit Plan or other employee benefit plan, policy, program, agreement or other arrangement (or any dependent or beneficiary thereof)), any right to continued or resumed employment or recall, any right to compensation or benefits, or any third-party beneficiary or other right of any kind or nature whatsoever.

Section 7.2. Trust Account Proceeds and Related Available Equity.

(a) The parties to this Agreement do not have any intention as of the Effective Time to use, or to cause to be used, any amount of cash available in the Trust Account following the Acquiror Stockholders' Meeting to effect any additional repurchase, redemption or other acquisition of outstanding shares of Acquiror Common Stock within the six (6)-month period after the Closing.

(b) Upon satisfaction or waiver of the conditions set forth in Article IX and provision of notice thereof to the Trustee (which notice Acquiror shall provide to the Trustee in accordance with the terms of the Trust Agreement), (i) in accordance with and pursuant to the Trust Agreement, at the Closing, Acquiror (A) shall cause any documents, opinions and notices required to be delivered to the Trustee pursuant to the Trust Agreement to be so delivered and (B) shall use its commercially reasonable efforts to cause the Trustee to, and the Trustee shall thereupon be obligated to (1) pay as and when due all amounts payable to Acquiror Stockholders pursuant to the Acquiror Share Redemptions, and (2) pay all remaining amounts then available in the Trust Account to Acquiror for immediate use, subject to this Agreement and the Trust Agreement, and (ii) thereafter, the Trust Account shall terminate, except as otherwise provided therein.

Section 7.3. Listing.

(a) From the date hereof through the Effective Time, Acquiror shall ensure Acquiror remains listed as a public company on the Nasdaq.

(b) Prior to the Closing, Acquiror shall use commercially reasonable efforts to cause the shares of Acquiror Common Stock to be issued in connection with the transactions contemplated hereby to be approved for listing on the Nasdaq under a ticker symbol to be mutually agreed upon in writing by the parties, including by submitting prior to the Closing an initial listing application with the Nasdaq (the “Nasdaq Listing Application”) with respect to such shares, subject to official notice of issuance. Each of Acquiror, Merger Sub and the Company shall promptly furnish all information concerning itself and its Affiliates as may be reasonably requested by the other parties and shall otherwise reasonably assist and cooperate with such other parties in connection with the preparation, filing and distribution of the Nasdaq Listing Application. Each of Acquiror and Merger Sub will use their respective commercially reasonable efforts to (i) cause the Nasdaq Listing Application, when filed, to comply in all material respects with all legal requirements applicable thereto, (ii) respond as promptly as reasonably practicable to and resolve all comments received from the Nasdaq or its staff concerning the Nasdaq Listing Application and (iii) have the Nasdaq Listing Application approved by the Nasdaq as promptly as practicable after such filing. No submission of, or amendment or supplement to, the Nasdaq Listing Application, or response to Nasdaq comments with respect thereto, will be made by Acquiror, Merger Sub or the Company, as applicable, without the other parties’ prior consent (which shall not be unreasonably withheld, conditioned or delayed) and without providing such other parties a reasonable opportunity to review and comment thereon. Each of Acquiror, Merger Sub and the Company will promptly notify the other parties upon the receipt of any comments from the Nasdaq or any request from the Nasdaq for amendments or supplements to the Nasdaq Listing Application and will, as promptly as practicable after receipt thereof, provide each other with copies of all material correspondence between it and its representatives, on the one hand, and the Nasdaq, on the other hand, and all written comments with respect to the Nasdaq Listing Application received from the Nasdaq and advise the other on any oral comments with respect to the Nasdaq Listing Application received from the Nasdaq. Acquiror will advise the Company, promptly after Acquiror receives notice thereof, of the time of the approval of the Nasdaq Listing Application and the approval of the shares of Acquiror Common Stock to be issued in connection with the transactions contemplated hereby for listing on the Nasdaq, subject only to official notice of issuance.

Section 7.4. No Solicitation by Acquiror. From the date hereof until the Closing Date or, if earlier, the termination of this Agreement in accordance with Article X, Acquiror shall not, and shall cause its Subsidiaries not to, and Acquiror shall instruct (and shall be responsible for non-compliance), and use commercially reasonable efforts to cause its affiliates and representatives, employees, officers, directors and advisors, not to, (a) make any proposal or offer that constitutes a Business Combination Proposal, (b) initiate, solicit, engage or participate in or knowingly encourage any discussions or negotiations with any Person with respect to a Business Combination Proposal, (c) enter into any acquisition agreement, business combination, merger agreement or similar definitive agreement, or any letter of intent, memorandum of understanding or agreement in principle, or any other agreement relating to a Business Combination Proposal, in each case, other than to or with the Company and its respective representatives or (d) approve, endorse or recommend any of the foregoing or any Business Combination Proposal (other than with the Company) (an “Alternative Business Combination Proposal”).

Section 7.5. Acquiror Conduct of Business.

(a) During the Interim Period, Acquiror shall, and shall cause Merger Sub to, except as contemplated by this Agreement (including as contemplated by the Subscription Agreement or any Additional Subscription Agreements, or as contemplated by and with respect to the PIPE Investment or Equity Facility), the Ancillary Agreements or required by Law or as consented to by the Company in writing (which consent shall not be unreasonably withheld, delayed or conditioned), operate its business in the ordinary course. Without limiting the generality of the foregoing, except as consented to by the Company in writing (which consent shall not be unreasonably withheld, delayed or conditioned), Acquiror shall not, and Acquiror shall cause Merger Sub not to, except as otherwise contemplated by this Agreement (including as contemplated by the Subscription Agreement or any Additional Subscription Agreements, or as contemplated by and with respect to the Equity Facility or the PIPE Investment) or the Ancillary Agreements or as required by Law (including any COVID-19 Measures):

(i) seek any approval from the Acquiror Stockholders to change, modify or amend the Trust Agreement or the Governing Documents of Acquiror or Merger Sub, except as contemplated by the Transaction Proposals;

(ii) except as contemplated by the Transaction Proposals, (A) make or declare any dividend or distribution to the stockholders of Acquiror or make any other distributions in respect of any of Acquiror Common Stock or Merger Sub Capital Stock, share capital or Equity Securities, (B) split, combine, reclassify or otherwise amend any terms of any shares or series of Acquiror Common Stock or Merger Sub Capital Stock or Equity Securities, or (C) purchase, repurchase, redeem or otherwise acquire any issued and outstanding share capital, outstanding shares of capital stock, share capital or membership interests, warrants or other Equity Securities of Acquiror or Merger Sub, other than a redemption of shares of Acquiror Common Stock made as part of the Acquiror Share Redemptions;

(iii) take any action, or knowingly fail to take any action, where such action or failure to act could reasonably be expected to prevent the Merger from qualifying for the Intended Tax Treatment;

(iv) other than as expressly required by the Sponsor Support Agreement, enter into, renew or amend in any material respect, any transaction or Contract with an Affiliate of Acquiror or Merger Sub (including, for the avoidance of doubt, (x) the Sponsor and (y) any Person in which the Sponsor has a direct or indirect legal, contractual or beneficial ownership interest of 5% or greater);

(v) (A) make, change, or revoke any material Tax election, (B) amend, modify or otherwise change any filed material Tax Return, (C) adopt or request permission of any taxing authority to change any accounting method in respect of material Taxes, (D) enter into any closing agreement in respect of material Taxes or enter into any Tax sharing or similar agreement (other than any Contract solely between Acquiror and Merger Sub or any customary commercial Contract (or Contract entered into in the ordinary course of business) not primarily related to Taxes), (E) settle any claim or assessment in respect of material Taxes, (F) surrender or allow to expire any right to claim a refund of material Taxes; or (G) consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of material Taxes;

(vi) other than with respect to the PIPE Investment, including for the avoidance of doubt, issuing any Acquiror Securities or the providing of other financing, pursuant to an Additional Subscription Agreement, or pursuant to Section 8.2(b), issue or sell any debt securities or warrants or other rights to acquire any debt securities of Acquiror or any of Acquiror's Subsidiaries or guaranty any debt securities of another Person, or incur, guarantee or otherwise become liable for (whether directly, contingently or otherwise) any Indebtedness or otherwise knowingly and purposefully incur, guarantee or otherwise become liable for (whether directly, contingently or otherwise) any other material liabilities, debts or obligations, other than (A) fees and expenses incurred in support of the transactions contemplated by this Agreement and the Ancillary Agreements or in support of the ordinary course operations of Acquiror (which the parties agree shall include any Indebtedness in respect of any Working Capital Loan incurred in the ordinary course of business), (B) any Indebtedness for borrowed money or guarantee incurred in the ordinary course of business and in an aggregate amount not to exceed \$250,000 (two hundred and fifty thousand dollars), and (C) any Indebtedness for borrowed money or guarantee incurred between Acquiror and Merger Sub;

(vii) other than with respect to the PIPE Investment, including for the avoidance of doubt, shares of Acquiror Common Stock and/or other securities, or the providing of other financing pursuant to an Additional Subscription Agreement, or the Equity Facility or pursuant to Section 8.2(b), (A) issue any Acquiror Securities or securities exercisable for or convertible into Acquiror Securities, other than the issuance of the Aggregate Merger Consideration, (B) grant any options, warrants or other equity-based awards with respect to Acquiror Securities not outstanding on the date hereof, or (C) amend, modify or waive any of the material terms or rights set forth in any Acquiror Warrant or the Acquiror Warrant Agreement, including any amendment, modification or reduction of the warrant price set forth therein; or

(viii) enter into any agreement to do any action prohibited under this Section 7.5.

(b) During the Interim Period, Acquiror shall, and shall cause its Subsidiaries (including Merger Sub) to materially comply with, and continue materially performing under, as applicable, the Trust Agreement and all other agreements or Contracts to which Acquiror or its Subsidiaries may be a party.

Section 7.6. Post-Closing Directors and Officers of Acquiror. Subject to the terms of the Acquiror's Governing Documents, Acquiror shall take all such actions within its power as may be necessary or appropriate such that immediately following the Effective Time:

(a) the Acquiror Board of Directors shall consist of seven (7) directors, which shall initially include:

(i) the two (2) individuals listed on Section 7.6 of the Acquiror Disclosure Letter (the "CNTQ Nominees"); provided that if any of the individuals set forth on Section 7.6 of the Acquiror Disclosure Letter (x) is unable for any reason to serve on the Acquiror Board of Directors, a replacement individual shall be selected by Acquiror and (y) following the Closing resigns or for any reason is unable to continue serving on the Acquiror Board of Directors for the remainder of the term of the appointment pursuant to Section 7.6(b), a replacement individual shall be selected by the Sponsor to serve the remainder of the term; provided, further, that the Sponsor is a third party beneficiary of this Section 7.6(a)(i);

(ii) five (5) director nominees to be designated by the Company pursuant to written notice to Acquiror as soon as reasonably practicable following the date of this Agreement;

(iii) in each case, who shall serve in such capacity in accordance with the terms of the Acquiror's Governing Documents following the Effective Time;

(b) (i) one (1) CNTQ Nominee will serve as a Class II director of Acquiror for a term expiring at the second annual meeting of stockholders of Acquiror following the Effective Time and will serve on the compensation committee and/or nominating and corporate governance committee and (ii) one (1) CNTQ Nominee will serve as a Class III director of Acquiror for a term expiring at the third annual meeting of stockholders of Acquiror following the Effective Time and will serve on the audit committee, in each case, as listed on Section 7.6 of the Acquiror Disclosure Letter;

(c) the Acquiror Board of Directors shall have a majority of "independent" directors in accordance with the listing requirements of Nasdaq, each of whom shall serve in such capacity in accordance with the terms of the Acquiror's Governing Documents following the Effective Time; and

(d) the officers of Acquiror at the Effective Time shall be as set forth on Section 2.6(b) of the Company Disclosure Letter, and such officers shall serve in such capacity in accordance with the terms of Acquiror's Governing Documents and the DGCL.

Section 7.7. Indemnification and Insurance.

(a) From and after the Effective Time, Acquiror agrees that it shall indemnify and hold harmless each present and former director and officer (in each case acting in their capacity as such) of the (x) Company (the "Company Indemnified Parties") and (y) Acquiror and each of its Subsidiaries (together with the Company Indemnified Parties, the "D&O Indemnified Parties") against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any Legal Proceeding, whether civil, criminal, administrative or investigative, arising out of or pertaining to matters existing or occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, to the fullest extent that the Company, Acquiror or their respective Subsidiaries, as the case may be, would have been permitted under applicable Law and its respective certificate or articles of incorporation, certificate of formation, bylaws, limited liability company agreement or other organizational documents in effect on the date of this Agreement to indemnify such D&O Indemnified Parties (including the advancing of expenses as incurred to the fullest extent permitted under applicable Law). Without limiting the foregoing, Acquiror shall, and shall cause its Subsidiaries to (i) maintain for a period of not less than six (6) years from the Effective Time provisions in their respective Governing Documents and any indemnification agreements concerning the indemnification and exoneration (including provisions relating to expense advancement) of Acquiror's and its Subsidiaries' former and current officers, directors, employees, and agents that, to the greatest extent permissible under the DGCL or other applicable law, are no less favorable to those Persons than the provisions of the Governing Documents and any indemnification agreements of the Company, Acquiror or their respective Subsidiaries, as applicable, in each case, as of the date of this Agreement, and (ii) not amend, repeal or otherwise modify such provisions in any respect that would adversely affect the rights of those Persons thereunder, in each case, except as required by Law. Acquiror shall assume, and be liable for, each of the covenants in this Section 7.7.

(b) For a period of six (6) years from the Effective Time, Acquiror shall maintain in effect directors' and officers' liability insurance covering those Persons who are currently covered by Acquiror's, the Company's or their respective Subsidiaries' directors' and officers' liability insurance policies (true, correct and complete copies of which have been heretofore made available to Acquiror or its agents or representatives) on terms no less favorable than the terms of such current insurance coverage, except that in no event shall Acquiror be required to pay an annual premium for such insurance in excess of three hundred percent (300%) of the aggregate annual premium payable by Acquiror or the Company, as applicable, for such insurance policy for the year ended December 31, 2021; provided, however, that (i) Acquiror may cause coverage to be extended under the current directors' and officers' liability insurance by obtaining a six (6) year "tail" policy containing terms not materially less favorable than the terms of such current insurance coverage with respect to claims existing or occurring at or prior to the Effective Time and (ii) if any claim is asserted or made within such six (6) year period, any insurance required to be maintained under this Section 7.7 shall be continued in respect of such claim until the final disposition thereof.

(c) Notwithstanding anything contained in this Agreement to the contrary, this Section 7.7 shall survive the consummation of the Merger indefinitely and shall be binding, jointly and severally, on Acquiror and all successors and assigns of Acquiror. In the event that Acquiror or any of its successors or assigns consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, Acquiror shall ensure that proper provision shall be made so that the successors and assigns of Acquiror shall succeed to the obligations set forth in this Section 7.7. The D&O Indemnified Parties are intended third-party beneficiaries of this Section 7.7.

(d) As of the Effective Time, Acquiror shall enter into customary indemnification agreements reasonably satisfactory to each of the Company and Acquiror with the post-Closing directors and officers of Acquiror, which indemnification agreements shall continue to be effective following the Closing.

Section 7.8. Acquiror Public Filings. From the date hereof through the Effective Time, Acquiror will use commercially reasonable efforts to keep current and timely file all reports required to be filed or furnished with the SEC and otherwise comply in all material respects with its reporting obligations under applicable Laws.

Section 7.9. PIPE Subscription. Unless otherwise approved in writing by the Company (which approval shall not be unreasonably withheld, delayed or conditioned), and except for any of the following actions that would not increase conditionality or impose any new obligation on the Company or Acquiror, reduce the Committed PIPE Investment Amount or reduce or impair the rights of Acquiror under the Subscription Agreement, Acquiror shall not permit any amendment or modification to any economic term or other material covenant, agreement or condition to be made to, any waiver (in whole or in part) of, or provide consent to modify (including consent to terminate), any provision or remedy under, or any replacements of, the Subscription Agreement, in each case, other than any assignment or transfer contemplated therein or expressly permitted thereby (without any further amendment, modification or waiver to such assignment or transfer provision) or to accommodate additional purchases of shares of Acquiror Common Stock provided that, in the case of any such assignment or transfer, the initial party to the Subscription Agreement remains bound by its obligations with respect thereto in the event that the transferee or assignee, as applicable, does not comply with its obligations to consummate the purchase of shares of Acquiror Common Stock contemplated thereby. Subject to the immediately preceding sentence and in the event that all conditions in the Subscription Agreement have been satisfied or waived (if permissible), Acquiror shall use its commercially reasonable efforts to take, or to cause to be taken, all actions required, necessary or that it otherwise deems to be proper or advisable to consummate the transactions contemplated by the Subscription Agreement on the terms described therein, including using its commercially reasonable efforts to enforce its rights under the Subscription Agreement to cause the applicable Initial PIPE Investor to pay to (or as directed by) Acquiror the applicable purchase price under such PIPE Investor's Subscription Agreement in accordance with its terms.

Section 7.10. Stockholder Litigation. In the event that any litigation related to this Agreement, any Ancillary Agreement or the transactions contemplated hereby or thereby is brought, or, to the knowledge of Acquiror, threatened in writing, against Acquiror or the Acquiror Board of Directors by any Acquiror Stockholder prior to the Closing, Acquiror shall promptly notify the Company of any such litigation and keep the Company reasonably informed with respect to the status thereof. Acquiror shall provide the Company the opportunity to participate in (subject to a customary joint defense agreement), but not control, the defense of any such litigation, shall give due consideration to the Company's advice with respect to such litigation and shall not settle any such litigation if and to the extent all such settlement payments exceed \$1,000,000 (one million Dollars) in the aggregate without the prior written consent of the Company, such consent not to be unreasonably withheld, delayed or conditioned.

Section 7.11. [Reserved].

Section 7.12. Transaction Bonuses. After the Closing, Acquiror shall pay a transaction bonus to each of Messrs. Denis Phares and Sean Nichols if and when payable in accordance with Annex A.

Section 7.13. Acquiror Closing Extension. Prior to August 10, 2022, Acquiror shall extend the deadline for Acquiror to consummate its initial business combination in accordance with its Governing Documents and the prospectus providing for its initial public offering by an additional three (3) months from the Termination Date (as defined in Acquiror's Amended and Restated Certificate of Incorporation as in effect on the date hereof) (such date, the "Extended Termination Date"); provided, that if the Closing has not occurred by the date that is two Business Days prior to the Extended Termination Date, Acquiror shall extend the deadline for Acquiror to consummate its initial business combination in accordance with its Governing Documents and the prospectus providing for its initial public offering by an additional three (3) months from the Extended Termination Date.

ARTICLE VIII

JOINT COVENANTS

Section 8.1. HSR Act; Other Filings.

(a) In connection with the transactions contemplated hereby, each of the Company and Acquiror shall (and, to the extent required, the Company shall cause its Affiliates to) comply promptly but in no event later than ten (10) Business Days after the date hereof with the notification and reporting requirements of the HSR Act. Each of the Company and Acquiror shall substantially comply with any Antitrust Information or Document Requests.

(b) Each of the Company and Acquiror shall (and, to the extent required, shall cause its Affiliates to) request early termination of any waiting period under the HSR Act and exercise its commercially reasonable efforts to (i) obtain termination or expiration of the waiting period under the HSR Act and (ii) prevent the entry, in any Legal Proceeding brought by an Antitrust Authority or any other Person, of any Governmental Order which would prohibit, make unlawful or delay the consummation of the transactions contemplated hereby.

(c) Acquiror shall cooperate in good faith with Antitrust Authorities and undertake promptly any and all action required to complete lawfully the transactions contemplated hereby as soon as practicable (but in any event prior to the Agreement End Date) and any and all action necessary or advisable to avoid, prevent, eliminate or remove the actual or threatened commencement of any proceeding in any forum by or on behalf of any Antitrust Authority or the issuance of any Governmental Order that would delay, enjoin, prevent, restrain or otherwise prohibit the consummation of the Merger, including, with the Company's prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned), (i) proffering and consenting and/or agreeing to a Governmental Order or other agreement providing for (A) the sale, licensing or other disposition, or the holding separate, of particular assets, categories of assets or lines of business of the Company or Acquiror or (B) the termination, amendment or assignment of existing relationships and contractual rights and obligations of the Company or Acquiror and (ii) promptly effecting the disposition, licensing or holding separate of assets or lines of business or the termination, amendment or assignment of existing relationships and contractual rights, in each case, at such time as may be necessary to permit the lawful consummation of the transactions contemplated hereby on or prior to the Agreement End Date; provided that, notwithstanding anything in this Agreement to the contrary, nothing in this Section 8.1 or any other provision of this Agreement shall require or obligate Acquiror or any other Person to take any actions with respect to Acquiror's Affiliates, the Sponsor, the direct or indirect equityholders of the Company, any PIPE Investor, their respective Affiliates, any investment funds or investment vehicles affiliated with, or managed or advised by, Acquiror's Affiliates, the Sponsor, any PIPE Investor, or any portfolio company (as such term is commonly understood in the private equity industry) or investment of Acquiror's Affiliates, the Sponsor, any PIPE Investor, or of any such investment fund or investment vehicle.

(d) Acquiror shall pay fifty percent (50%) of all filing fees payable to the Antitrust Authorities in connection with the transactions contemplated by this Agreement and the Company shall pay fifty percent (50%) of all filing fees payable to the Antitrust Authorities in connection with the transactions contemplated by this Agreement.

(e) With respect to each of the above filings, and any other requests, inquiries, Actions or other proceedings by or from Governmental Authorities, each of the Company and Acquiror shall (and, to the extent required, shall cause its controlled Affiliates to) (i) diligently and expeditiously defend and use commercially reasonable efforts to obtain any necessary clearance, approval, consent, or Governmental Authorization under Laws prescribed or enforceable by any Governmental Authority for the transactions contemplated by this Agreement and to resolve any objections as may be asserted by any Governmental Authority with respect to the transactions contemplated by this Agreement; and (ii) cooperate fully with each other in the defense of such matters. To the extent not prohibited by Law, the Company shall promptly furnish to Acquiror, and Acquiror shall promptly furnish to the Company, copies of any notices or written communications received by such party or any of its Affiliates from any third party or any Governmental Authority with respect to the transactions contemplated hereby, and each party shall permit counsel to the other parties an opportunity to review in advance, and each party shall consider in good faith the views of such counsel in connection with, any proposed written communications by such party and/or its Affiliates to any Governmental Authority concerning the transactions contemplated hereby; provided that none of the parties shall extend any waiting period or comparable period under the HSR Act or enter into any agreement with any Governmental Authority without the written consent of the other parties. To the extent not prohibited by Law, the Company agrees to provide Acquiror and its counsel, and Acquiror agrees to provide the Company and its counsel, the opportunity, on reasonable advance notice, to participate in any substantive meetings or discussions, either in person or by telephone, between such party and/or any of its Affiliates, agents or advisors, on the one hand, and any Governmental Authority, on the other hand, concerning or in connection with the transactions contemplated hereby.

Section 8.2. Preparation of Proxy Statement/Registration Statement; Stockholders' Meeting and Approvals.

(a) Registration Statement and Prospectus.

(i) As promptly as practicable after the execution of this Agreement, (x) Acquiror and the Company shall jointly prepare and Acquiror shall, after receipt of required PCAOB Financial Statements, file with the SEC, a mutually acceptable proxy statement to be filed with the SEC as part of the Registration Statement and sent to the Acquiror Stockholders relating to the Acquiror Stockholders' Meeting (such proxy statement, together with any amendments or supplements thereto, the "Proxy Statement"), and (y) Acquiror shall, after receipt of required PCAOB Financial Statements, prepare (with the Company's reasonable cooperation (including causing its Subsidiaries and instructing its representatives to cooperate)) and file with the SEC the Registration Statement, in which the Proxy Statement will be included as a prospectus (the "Proxy Statement/Registration Statement"), in connection with the registration under the Securities Act of the shares of Acquiror Common Stock that constitute the Aggregate Merger Consideration to be received by the equityholders of the Company (other than (1) certain equity securities issuable under the Equity Incentive Plan that are based on Acquiror Common Stock and constitute a portion of the Aggregate Merger Consideration, which shall instead be registered by Acquiror pursuant to an effective registration statement on Form S-8 (or other applicable form, including Form S-1 or Form S-3) in accordance with Section 7.1(a) and (2) the shares of Acquiror Common Stock that constitute the Aggregate Merger Consideration to be received by the Requisite Company Stockholders, which shall instead be registered by Acquiror on a registration statement on Form S-1 or other permissible form (the "Resale Registration Statement")) (collectively, the "Registration Statement Securities"). Each of Acquiror and the Company shall use its commercially reasonable efforts to cause the Proxy Statement/Registration Statement to comply with the rules and regulations promulgated by the SEC, to have the Registration Statement declared effective under the Securities Act as promptly as practicable after such filing and to keep the Registration Statement effective as long as is necessary to consummate the transactions contemplated hereby. Acquiror also agrees to use its commercially reasonable efforts to obtain all necessary state securities law or "Blue Sky" permits and approvals required to carry out the transactions contemplated hereby, and the Company shall furnish all information concerning the Company and any of its respective members or stockholders as may be reasonably requested in connection with any such action. Each of Acquiror and the Company agrees to furnish to the other party all information concerning itself, officers, directors, managers, stockholders, and other equityholders and information regarding such other matters as may be reasonably necessary or advisable or as may be reasonably requested in connection with the Proxy Statement/Registration Statement, a Current Report on Form 8-K pursuant to the Exchange Act in connection with the transactions contemplated by this Agreement, or any other statement, filing, notice or application made by or on behalf of Acquiror, the Company or their respective Subsidiaries to any regulatory authority (including the Nasdaq) in connection with the Merger and the other transactions contemplated hereby (the "Offer Documents"). Acquiror will cause the Proxy Statement/Registration Statement to be mailed to the Acquiror Stockholders in each case promptly after the Registration Statement is declared effective under the Securities Act.

(ii) To the extent not prohibited by Law, Acquiror will advise the Company, reasonably promptly after Acquiror receives notice thereof, of the time when the Proxy Statement/Registration Statement has become effective or any supplement or amendment has been filed, of the issuance of any stop order or the suspension of the qualification of the Acquiror Common Stock for offering or sale in any jurisdiction, of the initiation or written threat of any proceeding for any such purpose, or of any request by the SEC for the amendment or supplement of the Proxy Statement/Registration Statement or for additional information. To the extent not prohibited by Law, the Company and its counsel shall be given a reasonable opportunity to review and comment on the Proxy Statement/Registration Statement and any Offer Document prepared by Acquiror each time before any such document is filed by Acquiror with the SEC, and Acquiror shall give reasonable and good faith consideration to any comments made by the Company and its counsel and shall incorporate all such reasonable comments into the Proxy Statement/Registration Statement and any Offer Document, as applicable. To the extent not prohibited by Law, Acquiror shall provide the Company and its counsel with (A) any comments or other communications, whether written or oral, that Acquiror or its counsel may receive from time to time from the SEC or its staff with respect to the Proxy Statement/Registration Statement or Offer Documents promptly after receipt of those comments or other communications and (B) a reasonable opportunity to participate in the response of Acquiror to those comments and to provide comments on that response (to which reasonable and good faith consideration shall be given), including by participating with the Company or its counsel in any discussions or meetings with the SEC.

(iii) Each of Acquiror and the Company shall ensure that none of the information supplied by or on its behalf for inclusion or incorporation by reference in (A) the Registration Statement will, at the time the Registration Statement is filed with the SEC, at each time at which it is amended and at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, not misleading or (B) the Proxy Statement will, at the date it is first mailed to the Acquiror Stockholders and at the time of the Acquiror Stockholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

(iv) If at any time prior to the Effective Time any information relating to the Company, Acquiror or any of their respective Subsidiaries, Affiliates, directors or officers is discovered by the Company or Acquiror, which is required to be set forth in an amendment or supplement to the Proxy Statement or the Registration Statement, so that neither of such documents would include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, with respect to the Proxy Statement, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by Law, disseminated to the Acquiror Stockholders, with such amendment or supplement to be approved by such discovering party prior to filing and dissemination (such approval not to be unreasonably withheld, conditioned or delayed).

(b) Acquiror Stockholder Approval.

(i) Acquiror shall (x) as promptly as practicable after the Registration Statement is declared effective under the Securities Act, (A) cause the Proxy Statement to be disseminated to Acquiror Stockholders in compliance with applicable Law, (B) solely with respect to the Transaction Proposals, duly (1) give notice of and (2) convene and hold a general meeting of Acquiror Stockholders (the "Acquiror Stockholders' Meeting") in accordance with Acquiror's Governing Documents and applicable Nasdaq rules for a date no later than thirty (30) Business Days following the date the Registration Statement is declared effective, and (C) solicit proxies from the holders of Acquiror Common Stock to vote in favor of each of the Transaction Proposals, and (y) provide its stockholders with the opportunity to elect to effect an Acquiror Share Redemption.

(ii) Acquiror shall (x) through its Board of Directors, recommend to its stockholders the (A) approval of the change of Acquiror's name to "Dragonfly Energy Holdings Corp.," (B) amendment and restatement of Acquiror's Governing Documents, in the forms attached as Exhibits A and B to this Agreement (with such changes as may be agreed in writing by Acquiror and the Company) (as may be subsequently amended by mutual written agreement of the Company and Acquiror at any time before the effectiveness of the Registration Statement) (including clause (A) of this Section 8.2(b)(ii), the "Amendment Proposal") (including any separate or unbundled proposals as are required to implement the foregoing, collectively, the "Unbundling Precatory Proposals"), (C) adoption and approval of this Agreement in accordance with applicable Law and exchange rules and regulations and the approval of the Business Combination contemplated hereby (the "BCA Proposal"), (D) approval of the issuance of shares of Acquiror Common Stock in connection with the Merger and PIPE Investment (the "Nasdaq Proposal"), (E) approval of the adoption by Acquiror of the ESPP (the "Acquiror ESPP Proposal") and the Equity Incentive Plan and associated forms of award agreements described in Section 7.1 (the "Acquiror Incentive Plan Proposal"), (F) election of directors effective as of the Closing as contemplated by Section 7.6 (the "Director Proposal"), (G) adoption and approval of any other proposals as the SEC (or staff member thereof) may indicate are necessary in its comments to the Registration Statement or correspondence related thereto, (H) adoption and approval of any other proposals as reasonably agreed by Acquiror and the Company to be necessary or appropriate in connection with the transactions contemplated hereby, and (I) adjournment of the Acquiror Stockholders' Meeting, if necessary, to permit further solicitation of proxies because there are not sufficient votes to approve and adopt any of the foregoing (such proposals in (A) through (I), together, the "Transaction Proposals"), and such recommendations, the "Acquiror Board Recommendation"), and (y) include the Acquiror Board Recommendation in the Proxy Statement.

(iii) Notwithstanding the foregoing, if, at any time prior to obtaining the Acquiror Stockholder Approval, the Acquiror Board of Directors determines in good faith, in response to an Intervening Event, after consultation with its outside legal counsel, that, in light of such Intervening Event, the failure to make a Modification in Recommendation would reasonably be expected to result in a breach of its fiduciary duties under applicable Law, the Acquiror Board of Directors may, prior to obtaining the Acquiror Stockholder Approval, make a Modification in Recommendation; provided that Acquiror will not be entitled to make, or agree or resolve to make, a Modification in Recommendation unless (i) Acquiror promptly notifies the Company in writing, at least five (5) Business Days prior to taking such action (the "Intervening Event Notice Period") advising the Company that the Acquiror Board of Directors proposes to take such action and containing the material facts underlying the Acquiror Board of Directors' determination that an Intervening Event has occurred (including the rationale therefor), and (ii) following the end of such Intervening Event Notice Period (it being agreed that in the event after the commencement of the Intervening Event Notice Period, there is any material development with respect to an Intervening Event, the Intervening Event Notice Period shall be extended, if applicable, to ensure that at least three (3) Business Days remains in the Intervening Event Notice Period subsequent to the time Acquiror notifies the Company of any such material revision (it being understood that there may be multiple extensions)), the Acquiror Board of Directors determines in good faith, after consulting with outside legal counsel, that the failure to make a Modification in Recommendation would reasonably be expected to result in a breach of the Acquiror Board of Directors' fiduciary duties under applicable Law. If requested by the Company, Acquiror and its representatives shall, during the Intervening Event Notice Period, negotiate with the Company in good faith to make such adjustments in the terms and conditions of this Agreement so as to obviate the need for a Modification in Recommendation.

(iv) To the fullest extent permitted by applicable Law, Acquiror's obligations to establish a record date for, duly call, give notice of, convene and hold the Acquiror Stockholders' Meeting shall not be affected by any Modification in Recommendation. Acquiror may only adjourn the Acquiror Stockholders' Meeting (A) to solicit additional proxies for the purpose of obtaining the Acquiror Stockholder Approval, (B) for the absence of a quorum and (C) to allow reasonable additional time for the filing or mailing of any supplemental or amended disclosure that is required under applicable Law and for such supplemental or amended disclosure to be disseminated and reviewed by Acquiror Stockholders prior to the Acquiror Stockholders' Meeting; provided that, without the Company's prior written consent, the Acquiror Stockholders' Meeting (x) may not be adjourned to a date that is more than fifteen (15) days after the date for which the Acquiror Stockholders' Meeting was originally scheduled (excluding any adjournments required by applicable Law) and (y) shall not be held later than three (3) Business Days prior to the Agreement End Date. Acquiror agrees that it shall provide the holders of shares of Acquiror Common Stock the opportunity to elect redemption of such shares of Acquiror Common Stock in connection with the Acquiror Stockholders' Meeting, as required by Acquiror's Governing Documents. Acquiror shall use its commercially reasonable efforts to obtain the approval of the Transaction Proposals at the Acquiror Stockholders' Meeting, including by soliciting from its stockholders proxies as promptly as possible in favor of the Transaction Proposals.

(c) Company Stockholder Approval.

(i) The Company, in each case prior to the Company Stockholder Approval Deadline, shall cause (A) counterparts to the Written Consent, fully executed by the Requisite Company Stockholders, to be delivered to the Company and Acquiror and (B) the Company Stockholder Approval to be obtained.

(ii) As promptly as practicable following the execution and delivery of this Agreement, the Company shall prepare and send a notice to the equityholders of the Company who as of the Company Stockholder Approval Deadline had not yet executed and delivered the Written Consent, which notice shall include the Written Consent for consideration and execution by such equityholders, as well as any additional information required by applicable Law (including the Dissenter's Rights Statutes) or the Governing Documents of the Company (the "Stockholder Notice"). Acquiror shall be provided with a reasonable opportunity to review and comment on the Stockholder Notice prior to its being sent to such equityholders and shall cooperate with the Company in the preparation of the Stockholder Notice and promptly provide all reasonable information regarding Acquiror and Merger Sub reasonably requested by the Company. The Company shall cause the Written Consent (and any materials or procedures relating to the Written Consent) to comply in all respects with the Governing Documents of the Company and the applicable provisions of the NRS, including any and all applicable provisions of the Dissenter's Rights Statutes. At the option of Acquiror, the Stockholder Notice (including the Written Consent) shall be accompanied by an "advance notice statement" (as defined in the Dissenter's Rights Statutes), which advance notice statement shall require that the Company receive "statements of intent" (as defined in the Dissenter's Rights Statutes) within 15 days after the advance notice statement is sent.

Section 8.3. Support of Transaction. Without limiting any covenant contained in Article VI or Article VII, Acquiror and the Company shall each, and each shall cause its Subsidiaries to, (a) use commercially reasonable efforts to obtain as soon as practicable all material consents and approvals of third parties (including any Governmental Authority) that any of Acquiror, or the Company or their respective Affiliates are required to obtain in order to consummate the Merger, and (b) take such other action as soon as practicable as may be reasonably necessary or as another party may reasonably request to satisfy the conditions of Article IX or otherwise to comply with this Agreement and to consummate the transactions contemplated hereby as soon as practicable and in accordance with all applicable Law.

Section 8.4. Cooperation; Consultation.

(a) Prior to Closing, each of the Company and Acquiror shall, and each of them shall cause its respective Subsidiaries (as applicable) and its and their officers, directors, managers, employees, consultants, counsel, accounts, agents and other representatives to, use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to arrange and consummate the Debt Financing on the terms and conditions described in the Debt Commitment Letter, including by (a) providing such information and assistance as the other party may reasonably request (including the Company providing such financial statements and other financial data relating to the Company (i) as would be required (x) if Acquiror were filing a general form for registration of securities under Form 10 following the consummation of the transactions contemplated hereby and (y) for the Resale Registration Statement) and (ii) otherwise required by the Debt Commitment Letter, (b) granting such access to the other party and its representatives as may be reasonably necessary for their due diligence, (c) participating in a reasonable number of meetings, presentations, road shows, drafting sessions and due diligence sessions with respect to such financing efforts (including direct contact between senior management and other representatives of the Company at reasonable times and locations), (d) maintaining in full force and effect the Debt Commitment Letter, (e) complying with its or their obligations under the Debt Commitment Letter in all material respects, (f) satisfying on a timely basis (or obtaining the waiver of) all conditions to funding in the Debt Commitment Letter and such definitive agreements to be entered into pursuant to the Debt Commitment Letter to the extent in the control of such party, (g) negotiating and, in the case of the Company, executing and delivering definitive agreements with respect to the Debt Financing consistent in all material respects with the terms and conditions contemplated by the Debt Commitment Letter so that such agreements are in effect no later than the Closing Date, and (h) if all the conditions to the Debt Financing have been satisfied (other than those conditions that by their terms are to be satisfied at Closing), causing the lenders under the Debt Commitment Letter to fund the Debt Financing no later than the Closing. All such cooperation, assistance and access shall be granted during normal business hours and shall be granted under conditions that shall not (i) unreasonably interfere with the business and operations of the Company, Acquiror, or their respective auditors, (ii) require the entry into any agreement in connection with the Debt Financing which would be effective prior to the Closing or provide any certification or opinion which would be effective prior to the Closing, (iii) provide access to or require disclosure of any information to the extent such disclosure would jeopardize the attorney-client privilege, attorney work product protections or similar protections, (iv) cause any representation or warranty in this Agreement to be breached, (v) cause any director, officer or employee of the Company or Acquiror to incur any personal liability, (vi) conflict with the organizational documents of the Company or Acquiror or any applicable Law, (vii) result in any contravention, violation or breach of any material Contract, or (viii) require any action that causes any closing condition set forth in Article IX to fail to be satisfied or otherwise cause a breach of this Agreement. Notwithstanding the foregoing, Acquiror and its Affiliates have no obligation to pay any commitment or other similar fee, incur or reimburse any costs or expenses, enter into any binding agreement or commitment or incur any other liability or obligation in connection with the Debt Financing prior to the Closing. In the event any portion of the Debt Financing becomes unavailable on the terms and conditions contemplated in the Debt Commitment Letter, each of the Company and Acquiror shall use commercially reasonable efforts to arrange to obtain, as promptly as practicable thereafter, alternative financing in an aggregate principal amount not less than the aggregate principal amount of the Debt Financing on the date hereof (it being understood and agreed that the consummation of any such other financing by the Company or Acquiror shall be subject to the parties' mutual agreement) ("Alternative Financing"). In the event any Alternative Financing is obtained, references herein to (A) "Debt Financing" shall include and mean such Alternate Financing and (B) "Debt Commitment Letter" shall be deemed to include any new commitment letter obtained in connection with the Alternative Financing.

(b) From the date of the announcement of this Agreement (pursuant to any applicable public communication made in compliance with Section 11.12), until the Closing Date, Acquiror shall use its commercially reasonable efforts to, and shall instruct its financial advisors to, keep the Company and its financial advisors reasonably informed with respect to the PIPE Investment and the rotation of the Acquiror Common Shares during such period, including by (i) providing regular updates and (ii) consulting and cooperating with, and considering in good faith any feedback from, the Company or its financial advisors with respect to such matters; provided that, except as set forth in the Subscription Agreement or any Additional Subscription Agreements, each of Acquiror and the Company acknowledges and agrees that none of their respective financial advisors shall be entitled to any fees with respect to the PIPE Investment unless otherwise mutually agreed by the Company and Acquiror in writing.

Section 8.5. Section 16 Matters. Prior to the Effective Time, each of the Company and Acquiror shall take all such steps as may be required (to the extent permitted under applicable Law) to cause any dispositions of shares of the Company Capital Stock or acquisitions of Acquiror Common Shares (including, in each case, securities deliverable upon exercise, vesting or settlement of any derivative securities) resulting from the transactions contemplated hereby by each individual who is or may become subject to the reporting requirements of Section 16(a) of the Exchange Act in connection with the transactions contemplated hereby to be exempt under Rule 16b-3 promulgated under the Exchange Act.

Section 8.6. Additional Equity Financing. For the avoidance of doubt, during the Interim Period and subject to Section 6.1(n) and Section 7.5(a)(vii), Acquiror and the Company may execute Additional Subscription Agreements with investors and other financing sources with the prior written consent of the other parties hereto (which shall include both Acquiror and the Company).

ARTICLE IX

CONDITIONS TO OBLIGATIONS

Section 9.1. Conditions to Obligations of Acquiror, Merger Sub and the Company. The obligations of Acquiror, Merger Sub and the Company to consummate, or cause to be consummated, the Merger are subject to the satisfaction of the following conditions, which may be waived, if legally permissible, in writing by all of such parties:

(a) The Acquiror Stockholder Approval shall have been obtained;

(b) The Company Stockholder Approval shall have been obtained;

(c) The Registration Statement shall have become effective under the Securities Act, and no stop order suspending the effectiveness of the Registration Statement shall have been issued, and no proceedings for that purpose shall have been initiated or threatened by the SEC and not withdrawn;

(d) The waiting period or periods under the HSR Act applicable to the transactions contemplated by this Agreement and the Ancillary Agreements shall have expired or been terminated;

(e) There shall not be in force any Governmental Order enjoining or prohibiting the consummation of the Merger or any Law that makes the consummation of the Merger illegal or otherwise prohibited; provided that the Governmental Authority issuing such Governmental Order has jurisdiction over the parties with respect to the transactions contemplated hereby;

(f) Acquiror shall have at least \$5,000,001 of net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act and inclusive of the PIPE Investment Amount actually received by Acquiror prior to or substantially concurrently with the Closing); and

(g) The Registration Statement Securities shall have been approved for listing on Nasdaq.

Section 9.2. Conditions to Obligations of Acquiror and Merger Sub. The obligations of Acquiror and Merger Sub to consummate, or cause to be consummated, the Merger are subject to the satisfaction of the following additional conditions, any one or more of which may be waived in writing by Acquiror and Merger Sub:

(a) (i) The representations and warranties of the Company contained in Section 4.6(a) and the first sentence of Section 4.6(b) shall be true and correct in all but *de minimis* respects as of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct in all but *de minimis* respects at and as of such date, (ii) the Company Fundamental Representations (other than Section 4.6(a) and the first sentence of Section 4.6(b)) shall be true and correct in all material respects, in each case as of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct in all material respects at and as of such date, and (iii) each of the representations and warranties of the Company contained in this Agreement other than the Company Fundamental Representations (disregarding any qualifications and exceptions contained therein relating to materiality, material adverse effect and Company Material Adverse Effect or any similar qualification or exception) shall be true and correct as of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct at and as of such date, except for, in each case, inaccuracies that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect;

- (b) Each of the covenants to be performed by the Company as of or prior to the Closing shall have been performed in all material respects;
- (c) The Key Employment Agreements shall have been amended in accordance with the terms of the applicable Amendments, and shall continue to be in full force and effect and shall not have been terminated for any reason;
- (d) The Company Preferred Conversion shall have occurred or will occur immediately prior to the Effective Time;
- (e) If, and only if, the Debt Financing as contemplated by the Debt Commitment Letter is (i) consummated prior to or concurrent with the Closing, the Company shall have delivered the Payoff Consent and Payoff Letter to Acquiror and all outstanding PIUS Debt shall be paid off substantially concurrently with the Closing or (ii) not consummated prior to or concurrent with the Closing, the PIUS Debt shall have been refinanced on terms mutually agreeable to Acquiror and the Company (such agreement of Acquiror and the Company not to be unreasonably withheld, conditioned or delayed); and
- (f) There shall not have occurred a Company Material Adverse Effect after the date of this Agreement.

Section 9.3. Conditions to the Obligations of the Company. The obligation of the Company to consummate, or cause to be consummated, the Merger is subject to the satisfaction of the following additional conditions, any one or more of which may be waived in writing by the Company:

- (a) (i) The representations and warranties of Acquiror contained in Section 5.12(a) and the second sentence of Section 5.12(b) shall be true and correct in all but *de minimis* respects as of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct in all but *de minimis* respects at and as of such date and (ii) each of the representations and warranties of Acquiror contained in this Agreement (other than Section 5.12(a) and the second sentence of Section 5.12(b)) (disregarding any qualifications and exceptions contained therein relating to materiality, material adverse effect or any similar qualification or exception) shall be true and correct as of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct at and as of such date, except for, in each case, inaccuracies that would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Acquiror's ability to consummate the transactions contemplated by this Agreement; and
- (b) Each of the covenants to be performed by Acquiror as of or prior to the Closing shall have been performed in all material respects.

ARTICLE X

TERMINATION/EFFECTIVENESS

Section 10.1. Termination. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

(a) by mutual written consent of the Company and Acquiror;

(b) by the Company or Acquiror if any Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which has become final and non-appealable and has the effect of making consummation of the Merger illegal or otherwise preventing or prohibiting consummation of the Merger or if there shall be adopted any Law that permanently makes consummation of the Merger illegal or otherwise prohibited; provided that such Governmental Authority has jurisdiction over the parties with respect to the Merger;

(c) by the Company or Acquiror if the Acquiror Stockholder Approval shall not have been obtained by reason of the failure to obtain the required vote at the Acquiror Stockholders' Meeting duly convened therefor (taking into account any adjournments or postponements thereof) or at any adjournment or postponement thereof;

(d) by the Company if there has been a Modification in Recommendation;

(e) by written notice to the Company from Acquiror if (i) there is any breach of any representation, warranty, covenant or agreement on the part of the Company set forth in this Agreement, such that the conditions specified in Section 9.2(a) or Section 9.2(b) would not be satisfied at the Closing (a "Terminating Company Breach"), except that, if such Terminating Company Breach is curable by the Company, then, for a period of up to thirty (30) days after receipt by the Company of written notice from Acquiror of such breach (the "Company Cure Period"), such termination shall not be effective, and such termination shall become effective only if the Terminating Company Breach is not cured within the Company Cure Period, or (ii) the Closing has not occurred on or before the date that is nine (9) months after the date hereof (the "Agreement End Date"), unless, in each case of clauses (i) or (ii) above, Acquiror is in material breach hereof;

(f) by Acquiror if the Company Stockholder Approval shall not have been obtained by the Company Stockholder Approval Deadline; or

(g) by written notice to Acquiror from the Company if (i) there is any breach of any representation, warranty, covenant or agreement on the part of Acquiror or Merger Sub set forth in this Agreement, such that the conditions specified in Section 9.3(a) or Section 9.3(b) would not be satisfied at the Closing (a "Terminating Acquiror Breach"), except that, if any such Terminating Acquiror Breach is curable by Acquiror or Merger Sub, then, for a period of up to thirty (30) days after receipt by Acquiror of written notice from the Company of such breach (the "Acquiror Cure Period"), such termination shall not be effective, and such termination shall become effective only if the Terminating Acquiror Breach is not cured within the Acquiror Cure Period, or (ii) the Closing has not occurred on or before the Agreement End Date, unless, in each case of clauses (i) or (ii) above, the Company is in material breach hereof.

Section 10.2. Effect of Termination. In the event of the termination of this Agreement pursuant to Section 10.1, this Agreement shall forthwith become void and have no effect, without any liability on the part of any party or its respective Affiliates, officers, directors or stockholders, other than liability of the Company for fraud or any willful and material breach of this Agreement occurring prior to such termination, except that the provisions of Section 6.6, this Section 10.2 and Article XI and the Confidentiality Agreement shall survive any termination of this Agreement.

ARTICLE XI

MISCELLANEOUS

Section 11.1. Trust Account Waiver. The Company acknowledges that Acquiror is a blank check company with the powers and privileges to effect a Business Combination. The Company further acknowledges that, as described in the prospectus dated August 10, 2021 (the "Prospectus") available at www.sec.gov, substantially all of Acquiror assets consist of the cash proceeds of Acquiror's initial public offering and private placements of its securities and substantially all of those proceeds have been deposited in the trust account for the benefit of Acquiror, certain of its public stockholders and the underwriters of Acquiror's initial public offering (the "Trust Account"). The Company acknowledges that it has been advised by Acquiror that, except with respect to interest earned on the funds held in the Trust Account that may be released to Acquiror to pay Taxes, the Trust Agreement provides that cash in the Trust Account may be disbursed only (i) if Acquiror completes the transactions which constitute a Business Combination, then to those Persons and in such amounts as described in the Prospectus; (ii) if Acquiror fails to complete a Business Combination within the allotted time period and liquidates, subject to the terms of the Trust Agreement, to Acquiror in limited amounts to permit Acquiror to pay the costs and expenses of its liquidation and dissolution, and then to Acquiror's public stockholders; and (iii) if Acquiror holds a stockholder vote to amend Acquiror's Governing Documents to modify the substance or timing of the obligation to redeem 100% of Acquiror Common Shares if Acquiror fails to complete a Business Combination within the allotted time period, then for the redemption of any Acquiror Common Shares properly tendered in connection with such vote. For and in consideration of Acquiror entering into this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Company hereby irrevocably waives any right, title, interest or claim of any kind they have or may have in the future in or to any monies in the Trust Account and agree not to seek recourse against the Trust Account or any funds distributed therefrom as a result of, or arising out of, this Agreement and any negotiations, Contracts or agreements with Acquiror.

Section 11.2. Waiver. Any party to this Agreement may, at any time prior to the Closing, by action taken by its board of directors (or similar governing body) or other officers or Persons thereunto duly authorized, (a) extend the time for the performance of the obligations or acts of the other parties, (b) waive any inaccuracies in the representations and warranties (of another party) that are contained in this Agreement or (c) waive compliance by the other parties with the agreements or conditions contained in this Agreement, but such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party granting such extension or waiver. Any delay in exercising any right pursuant to this Agreement shall not constitute a waiver of such right. Any waiver by a party of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition, of this Agreement.

Section 11.3. Notices. All notices and other communications among the parties shall be in writing and shall be deemed to have been duly given (i) when delivered in person, (ii) when delivered after posting in the United States mail having been sent registered or certified mail return receipt requested, postage prepaid, (iii) when delivered by FedEx or other nationally recognized overnight delivery service, or (iv) when delivered by email, addressed as follows:

- (a) If to Acquiror or Merger Sub prior to the Closing, or to Acquiror after the Effective Time, to:

Chardan NexTech Acquisition 2 Corp.
17 State Street, 21st Floor
New York, NY 10004
Attention: CCP
Email: amaghakian@chardan.com

with copies to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, New York 10001
Attention: Jeffrey A. Brill
Peter D. Serating
Email: jeffrey.brill@skadden.com
peter.serating@skadden.com

- (b) If to the Company prior to the Closing, or to the Surviving Corporation after the Effective Time, to:

Dragonfly Energy Corp.
1190 Trademark Drive #108
Reno, Nevada 89521
Attention: General Counsel
Email: legal@dragonflyenergy.com

with copies to (which shall not constitute notice):

O'Melveny & Myers LLP
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
Attention: Kurt J. Berney
Noah K. Kornblith
Email: kberney@omm.com
nkornblith@omm.com

or to such other address or addresses as the parties may from time to time designate in writing. Copies delivered solely to outside counsel shall not constitute notice.

Section 11.4. Assignment. No party shall assign this Agreement or any part hereof without the prior written consent of the other parties and any such transfer without prior written consent shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

Section 11.5. Rights of Third Parties. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any Person, other than the parties, any rights or remedies under or by reason of this Agreement; provided, however, that (a) the D&O Indemnified Parties are intended third-party beneficiaries of, and may enforce, Section 7.7, (b) the past, present and future directors, managers, officers, employees, incorporators, members, partners, stockholders, Affiliates, agents, attorneys, advisors and representatives of the parties, and any Affiliate of any of the foregoing (and their successors, heirs and representatives), are intended third-party beneficiaries of, and may enforce, Section 11.16 and (c) the Sponsor is a third party beneficiary of Section 7.6(a)(i).

Section 11.6. Expenses. Except as otherwise set forth in this Agreement, each party shall be responsible for and pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby, including all fees of its legal counsel, financial advisers and accountants. If the Closing shall not occur, the Company shall be responsible for the Company Transaction Expenses, and Acquiror shall be responsible for the Acquiror Transaction Expenses. If the Closing shall occur, Acquiror shall pay or cause to be paid the (x) Company Transaction Expenses, and (y) the Acquiror Transaction Expenses, in the case of each of clauses (x) and (y), in accordance with Section 2.4(c). For the avoidance of doubt, any payments to be made (or to cause to be made) by Acquiror pursuant to this Section 11.6 shall be paid upon consummation of the Merger and release of proceeds from the Trust Account.

Section 11.7. Governing Law. This Agreement, and all claims or causes of action based upon, arising out of, or related to this Agreement or the transactions contemplated hereby, shall be governed by, and construed in accordance with, the Laws of the State of Delaware, without giving effect to principles or rules of conflict of Laws to the extent such principles or rules would require or permit the application of Laws of another jurisdiction.

Section 11.8. Headings; Counterparts; Effectiveness. The headings in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures to this Agreement may be executed via "eSignature" by DocuSign, Inc. or similar programs and delivered by email (including by .pdf, .tif, .gif, .jpeg or similar formatted attachment thereto) by any party and such signature will be deemed binding for all purposes hereof without delivery of an original signature being thereafter required. This Agreement shall become effective when each party shall have received one or more counterparts hereof signed by each of the other parties and unless and until such receipt, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 11.9. Company and Acquiror Disclosure Letters. The Company Disclosure Letter and the Acquiror Disclosure Letter (including, in each case, any section thereof) referenced herein are a part of this Agreement as if fully set forth herein. Any disclosure made by a party in the applicable Disclosure Letter corresponding to any Section or subsection of Article IV (in the case of the Company Disclosure Letter) or Article V (in the case of the Acquiror Disclosure Letter) shall be deemed to have been disclosed with respect to every other section and subsection of Article IV, other than Section 4.24 (in the case of the Company Disclosure Letter), or Article V, other than Section 5.10 (in the case of the Acquiror Disclosure Letter), as applicable, where the relevance of such disclosure to such other Section or subsection is reasonably apparent on the face of the disclosure. Certain information set forth in the Disclosure Letters is included solely for informational purposes and may not be required to be disclosed pursuant to this Agreement. The disclosure of any information shall not be deemed to constitute an acknowledgment that such information is required to be disclosed in connection with the representations and warranties made in this Agreement, nor shall such information be deemed to establish a standard of materiality.

Section 11.10. Entire Agreement. This Agreement (together with the Company Disclosure Letter and the Acquiror Disclosure Letter) and the Ancillary Agreements constitute the entire agreement among the parties to this Agreement relating to the transactions contemplated hereby and supersede any other agreements, whether written or oral, that may have been made or entered into by or among any of the parties relating to the transactions contemplated hereby. No representations, warranties, covenants, understandings, agreements, oral or otherwise, relating to the transactions contemplated hereby exist between such parties except as expressly set forth in this Agreement and the Ancillary Agreements.

Section 11.11. Amendments. This Agreement may be amended or modified in whole or in part, only by a duly authorized agreement in writing executed in the same manner as this Agreement and which makes reference to this Agreement; provided that, (a) after receipt of the Written Consent, no amendment or modification shall be made that by Law requires further approval of the Requisite Company Stockholders and (b) after the Acquiror Stockholder Approval has been obtained, no amendment or modification to this Agreement shall be made that by Law requires the further approval of the stockholders of Acquiror without such further approval.

Section 11.12. Publicity.

(a) All press releases or other public communications relating to the transactions contemplated hereby, and the method of the release for publication thereof, shall prior to the Closing be subject to the prior mutual approval of Acquiror and the Company, which approval shall not be unreasonably withheld, delayed or conditioned by any party; provided that no party shall be required to obtain consent pursuant to this Section 11.12(a) to the extent any proposed release or statement is substantially equivalent to the information that has previously been made public without breach of the obligation under this Section 11.12(a).

(b) The restriction in Section 11.12(a) shall not apply to the extent the public announcement is required by applicable securities Law, any Governmental Authority or stock exchange rule; provided, however, that in such an event, the party making the announcement shall use its commercially reasonable efforts to consult with the other party in advance as to its form, content and timing. Disclosures resulting from the parties' efforts to obtain approval or early termination under the HSR Act and to make any related filing shall be deemed not to violate this Section 11.12.

Section 11.13. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. The parties further agree that if any provision contained herein is, to any extent, held invalid or unenforceable in any respect under the Laws governing this Agreement, they shall take any actions necessary to render the remaining provisions of this Agreement valid and enforceable to the fullest extent permitted by Law and, to the extent necessary, shall amend or otherwise modify this Agreement to replace any provision contained herein that is held invalid or unenforceable with a valid and enforceable provision giving effect to the intent of the parties.

Section 11.14. Jurisdiction; Waiver of Jury Trial.

(a) Any Action based upon, arising out of or related to this Agreement or the transactions contemplated hereby must be brought in the Court of Chancery of the State of Delaware (or, to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware), or, if it has or can acquire jurisdiction, in the United States District Court for the District of Delaware, and each of the parties irrevocably and unconditionally (i) consents and submits to the exclusive jurisdiction of each such court in any such Action, (ii) waives any objection it may now or hereafter have to personal jurisdiction, venue or to convenience of forum, (iii) agrees that all claims in respect of the Action shall be heard and determined only in any such court, and (iv) agrees not to bring any Action arising out of or relating to this Agreement or the transactions contemplated hereby in any other court. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by Law or to commence Legal Proceedings or otherwise proceed against any other party in any other jurisdiction, in each case, to enforce judgments obtained in any Action brought pursuant to this Section 11.14.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY ACTION WHICH MAY ARISE UNDER THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 11.15. Enforcement. The parties hereby agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy could occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent any breach, or threatened breach, of this Agreement and to specific enforcement of the terms and provisions of this Agreement, without proof of damages, in addition to any other remedy to which any party is entitled at law or in equity. In the event that any Action shall be brought in equity to enforce the provisions of this Agreement, no party shall oppose the granting of specific performance and other equitable relief or allege, and each party hereby waives the defense, that there is an adequate remedy at law, and each party agrees to waive any requirement for the securing or posting of any bond in connection therewith. The parties hereby acknowledge and agree that the right of specific enforcement is an integral part of the transactions contemplated hereby and without that right, none of the parties would have entered into this Agreement.

Section 11.16. Non-Recourse. Except in the case of claims against a Person in respect of such Person's actual fraud:

(a) solely with respect to the Company, Acquiror and Merger Sub, this Agreement may only be enforced against, and any claim or cause of action based upon, arising out of, or related to this Agreement or the transactions contemplated hereby may only be brought against, the Company, Acquiror and Merger Sub as named parties; and

(b) except to the extent a party (and then only to the extent of the specific obligations undertaken by such party), (i) no past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney, advisor or representative or Affiliate of the Company, Acquiror or Merger Sub and (ii) no past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney, advisor or representative or Affiliate of any of the foregoing shall have any liability (whether in Contract, tort, equity or otherwise) for any one or more of the representations, warranties, covenants, agreements or other obligations or liabilities of any one or more of the Company, Acquiror or Merger Sub under this Agreement for any claim or cause of action based on, arising out of, or related to this Agreement or the transactions contemplated hereby.

Section 11.17. Non-Survival of Representations, Warranties and Covenants. Except (x) as otherwise contemplated by Section 10.2 or (y) in the case of claims against a Person in respect of such Person's actual fraud, none of the representations, warranties, covenants, obligations or other agreements in this Agreement or in any certificate, statement or instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants, obligations, agreements and other documents, shall survive the Closing and shall terminate and expire upon the occurrence of the Effective Time (and there shall be no liability after the Closing in respect thereof), except for (a) those covenants and agreements contained herein that by their terms expressly apply in whole or in part after the Closing and then only with respect to any breaches occurring after the Closing and (b) this Article XI.

Section 11.18. Conflicts and Privilege.

(a) Acquiror and the Company, on behalf of their respective successors and assigns (including, after the Closing, the Surviving Corporation), hereby agree that, in the event a dispute with respect to this Agreement or the transactions contemplated hereby arises after the Closing between or among (x) the Sponsor, the stockholders or holders of other Equity Securities of Acquiror or the Sponsor and/or any of their respective directors, members, partners, officers, employees or Affiliates (other than the Surviving Corporation) (collectively, the “CNTQ Parties”), on the one hand, and (y) the Surviving Corporation and/or any member of the Dragonfly Group, on the other hand, any legal counsel, including Skadden, Arps, Slate, Meagher & Flom LLP (“Skadden”) and Brownstein Hyatt Farber Schreck, LLP (“Brownstein”), that represented Acquiror and/or the Sponsor prior to the Closing may represent the Sponsor and/or any other member of the CNTQ Parties, in such dispute even though the interests of such Persons may be directly adverse to the Surviving Corporation, and even though such counsel may have represented Acquiror in a matter substantially related to such dispute, or may be handling ongoing matters for the Surviving Corporation and/or the Sponsor. Acquiror and the Company, on behalf of their respective successors and assigns (including, after the Closing, the Surviving Corporation), further agree that, as to all communications prior to the Closing (made in connection with the negotiation, preparation, execution, delivery and performance under, or any dispute or Action arising out of or relating to, this Agreement, any Ancillary Agreements or the transactions contemplated hereby or thereby) between or among Acquiror, the Sponsor and/or any other member of the CNTQ Parties, on the one hand, and Skadden or Brownstein, on the other hand, shall be deemed subject to attorney client privilege (the “Skadden / Brownstein Privileged Communications”), and the attorney/client privilege and the expectation of client confidence shall survive the Merger and belong to the CNTQ Parties after the Closing, and shall not pass to or be claimed or controlled by the Surviving Corporation. Any privileged communications or information shared by the Company prior to the Closing with Acquiror or the Sponsor under a common interest agreement shall remain the privileged communications or information of the Surviving Corporation. Acquiror and the Company, together with any of their respective Affiliates, Subsidiaries, successors or assigns, agree that no Person other than the CNTQ Parties may use or rely on any of the Skadden / Brownstein Privileged Communications, whether located in the records or email server of Acquiror, Surviving Corporation or their respective Subsidiaries, in any Action against or involving any of the parties after the Closing, and Acquiror and the Company agree not to assert that any privilege has been waived as to the Skadden / Brownstein Privileged Communications, by virtue of the Merger.

(b) Acquiror and the Company, on behalf of their respective successors and assigns (including, after the Closing, the Surviving Corporation), hereby agree that, in the event a dispute with respect to this Agreement or the transactions contemplated hereby arises after the Closing between or among (x) the stockholders or holders of other Equity Securities of the Company and any of their respective directors, members, partners, officers, employees or Affiliates (other than the Surviving Corporation) (collectively, the “Dragonfly Group”), on the one hand, and (y) the Surviving Corporation and/or any member of the CNTQ Parties, on the other hand, any legal counsel, including O’Melveny & Myers LLP (“O’Melveny”) that represented the Company prior to the Closing may represent any member of the Dragonfly Group in such dispute even though the interests of such Persons may be directly adverse to the Surviving Corporation, and even though such counsel may have represented the Company in a matter substantially related to such dispute, or may be handling ongoing matters for the Surviving Corporation. Acquiror and the Company, on behalf of their respective successors and assigns (including, after the Closing, the Surviving Corporation), further agree that, as to all communications prior to the Closing (made in connection with the negotiation, preparation, execution, delivery and performance under, or any dispute or Action arising out of or relating to, this Agreement, any Ancillary Agreements or the transactions contemplated hereby or thereby) between or among the Company and/or any member of the Dragonfly Group, on the one hand, and O’Melveny, on the other hand, shall be deemed subject to attorney client privilege (the “O’Melveny Privileged Communications”), and the attorney/client privilege and the expectation of client confidence shall survive the Merger and belong to the Dragonfly Group after the Closing, and shall not pass to or be claimed or controlled by the Surviving Corporation. Any privileged communications or information shared by Acquiror prior to the Closing with the Company under a common interest agreement shall remain the privileged communications or information of the Surviving Corporation. Acquiror and the Company, together with any of their respective Affiliates, Subsidiaries, successors or assigns, agree that no Person other than the Dragonfly Group may use or rely on any of the O’Melveny Privileged Communications, whether located in the records or email server of Acquiror, Surviving Corporation or their respective Subsidiaries, in any Action against or involving any of the parties after the Closing, and Acquiror and the Company agree not to assert that any privilege has been waived as to the O’Melveny Privileged Communications, by virtue of the Merger.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the parties have hereunto caused this Agreement to be duly executed as of the date first above written.

CHARDAN NEXTECH ACQUISITION 2 CORP.

By: /s/ Jonas Grossman

Name: Jonas Grossman

Title: Chief Executive Officer

BRONCO MERGER SUB, INC.

By: /s/ Jonas Grossman

Name: Jonas Grossman

Title: President

DRAGONFLY ENERGY CORP.

By: /s/ Denis Phares

Name: Denis Phares

Title: Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

Schedule of Transaction Bonuses

Scenario	Minimum Cash Balance After Fees⁽¹⁾	Cash Transaction Bonus	Acquiror Warrant Proceed Bonus
Scenario A	Less than \$20,000,000	No bonus to be paid.	Messrs. Phares and Nichols shall each receive 5% of proceeds as a result of exercise of Acquiror Warrants (for an aggregate of 10% of proceeds).
Scenario B	Between \$20,000,000 and \$50,000,000	Messrs. Phares and Nichols shall each receive a cash transaction bonus of \$2,000,000 (for an aggregate of \$4,000,000).	Messrs. Phares and Nichols shall each receive 2.5% of proceeds as a result of exercise of Acquiror Warrants (for an aggregate of 5% of proceeds).
Scenario C	Greater than \$50,000,000	Messrs. Phares and Nichols shall each receive a cash transaction bonus of \$2,000,000 (for an aggregate of \$4,000,000); <u>provided</u> , that every dollar above \$50,000,000 of Minimum Cash Balance After Fees shall be split equally between Messrs. Phares and Nichols up to a cash transaction bonus of \$4,000,000 to each (for an aggregate of \$8,000,000 in the event that Minimum Cash Balance After Fees is greater than or equal to \$54,000,000).	To the extent that Minimum Cash Balance After Fees is less than \$54,000,000, upon the exercise of Acquiror Warrants, each of Messrs. Phares and Nichols shall receive a percentage of the proceeds from the sale of Acquiror Warrants such that the sum of the Acquiror Warrant Proceed Bonus and the cash transaction bonus received by each of Messrs. Phares and Nichols is equal to \$4,000,000 (for an aggregate of \$8,000,000).

⁽¹⁾ “Minimum Cash Balance After Fees” means cash held by Acquiror following Closing and after payment of Company Transaction Expenses (including the repayment of all outstanding PIUS Debt) and Acquiror Transaction Expenses and other transaction-related fees from Acquiror’s initial public offering and after receipt of proceeds from Acquiror’s private placement, and/or any other equity or debt financing, including any convertible securities, consummated by the Company.

EXECUTION VERSION

SPONSOR SUPPORT AGREEMENT

This SPONSOR SUPPORT AGREEMENT (this “Agreement”), dated as of May 15, 2022, is made by and among Chardan NexTech Acquisition 2 Corp., a Delaware corporation (“Acquiror”), Dragonfly Energy Corp., a Nevada corporation (the “Company”) and Chardan NexTech Investments 2 LLC, a Delaware limited liability company (the “Sponsor”). Acquiror, the Company and the Sponsor shall be referred to herein from time to time collectively as the “Parties”. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Merger Agreement (as defined below).

WHEREAS, Acquiror, the Company and Bronco Merger Sub, Inc., a Nevada corporation (“Merger Sub”), entered into that certain Agreement and Plan of Merger, dated as of the date hereof (as it may be amended, restated or otherwise modified from time to time in accordance with its terms, the “Merger Agreement”);

WHEREAS, the Sponsor is the record and beneficial owner of 3,162,500 shares (the “Owned Shares”) of common stock of Acquiror, par value \$0.0001 per share (“Acquiror Common Stock”);

WHEREAS, the Merger Agreement contemplates that the Parties will enter into this Agreement concurrently with the execution and delivery of the Merger Agreement by the parties thereto, pursuant to which, among other things, (a) the Sponsor will vote in favor of approval of the Transaction Proposals and (b) the Sponsor will agree not to redeem any shares of Acquiror Common Stock in connection with the Merger; and

WHEREAS, on or prior to the date hereof, Acquiror entered into a subscription agreement with Chardan Capital Markets, LLC pursuant to which Chardan Capital Markets, LLC agreed to purchase from Acquiror shares of Acquiror Common Stock as described in the subscription agreement (“Investor Shares”).

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, each intending to be legally bound, hereby agree as follows:

1. Agreement to Vote. The Sponsor hereby irrevocably and unconditionally agrees (a) to vote, or cause to be voted, at the Acquiror Stockholders’ Meeting or any other meeting of the Acquiror Stockholders, or in any action by written resolution of the Acquiror Stockholders, in each case, during which any or all of the Transaction Proposals are presented to the Acquiror Stockholders for approval, all of the Sponsor’s Acquiror Common Stock (and any additional shares of Acquiror equity securities acquired by the Stockholder after the date of this Agreement, including as a result of a stock dividend, stock split, recapitalization, combination, reclassification, exchange, exercise, conversion or change of such Acquiror Common Stock, but excluding the Investor Shares or shares of Common Stock acquired in the public market, the “Subject Acquiror Equity Securities”) (i) in favor of the Transaction Proposals and (ii) against, and the Sponsor shall withhold consent with respect to, any Business Combination Proposal (other than the Merger) or any other matter, action or proposal that would reasonably be expected to result in (x) a breach of any of the Acquiror’s or Merger Sub’s covenants, agreements or obligations under the Merger Agreement or in any Ancillary Agreements or (y) any of the conditions to the Closing set forth in Sections 9.1 or 9.3 of the Merger Agreement not being satisfied, (b) if the Acquiror Stockholders’ Meeting or any other meeting of the Acquiror Stockholders is held in respect of the matters set forth in clause (a), to appear at such meeting, in person or by proxy, or otherwise cause all of the Sponsor’s Subject Acquiror Equity Securities to be counted as present thereat for purposes of establishing a quorum and (c) not to redeem, elect to redeem or tender or submit any of its Subject Acquiror Equity Securities for redemption in connection with the Acquiror Stockholder Approval, the Merger or any other transactions or otherwise prior to the termination of this Agreement pursuant to Section 6, and any attempt to redeem such Subject Acquiror Equity Securities will be void *ab initio* and of no effect. The obligations of the Sponsor specified in this Section 1 shall apply whether or not the Merger, any of the transactions or any action described above is recommended by the Acquiror Board.

2. Transfer of Shares.

a. The Sponsor hereby agrees that it shall not (i) sell, assign, transfer (including by operation of law), place a lien on, pledge, hypothecate, grant an option to purchase, distribute, dispose of or otherwise encumber any of its Subject Acquiror Equity Securities or otherwise enter into any contract, option or other arrangement or undertaking to do any of the foregoing (each, a "Transfer") or (ii) deposit any of its Subject Acquiror Equity Securities into a voting trust or enter into a voting agreement or arrangement or grant any proxy or power of attorney with respect to any of its Subject Acquiror Equity Securities that conflicts with any of the covenants or agreements set forth in this Agreement; provided, however, that the foregoing shall not apply to any Transfer (A) to Acquiror's officers or directors or Affiliates; (B) by private sales or transfers made in connection with the transactions contemplated by, and expressly permitted under, the Merger Agreement; and (C) by virtue of the Sponsor's organizational documents upon liquidation or dissolution of the Sponsor; provided, that any transferee of any Transfer of the types set forth in clauses (A) through (C) must enter into a written agreement agreeing to be bound by this Agreement.

b. In furtherance of the foregoing, Acquiror hereby agrees to (i) place a revocable stop order on all Subject Acquiror Equity Securities subject to Section 2(a), including those which may be covered by a registration statement, and (ii) notify Acquiror's transfer agent in writing of such stop order and the restrictions on such Subject Acquiror Equity Securities under Section 2(a) and direct Acquiror's transfer agent not to process any attempts by the Sponsor to Transfer any Subject Acquiror Equity Securities except in compliance with Section 2(a); for the avoidance of doubt, the obligations of Acquiror under this Section 2(b) shall be deemed to be satisfied by the existence of any similar stop order and restrictions currently existing on the Subject Acquiror Equity Securities.

3. Other Covenants.

a. The Sponsor hereby agrees to be bound by and subject to (i) Section 11.12 (Publicity) of the Merger Agreement to the same extent as such provisions apply to the parties to the Merger Agreement, as if the Sponsor is directly a party thereto, and (ii) Section 7.4 (No Solicitation by Acquiror), Section 7.13 (Acquiror Closing Extension) and Section 8.3 (Support of Transaction) of the Merger Agreement to the same extent as such provisions apply to Acquiror, as if the Sponsor is directly party thereto.

b. The Sponsor acknowledges and agrees that the Company and Acquiror are entering into the Merger Agreement in reliance upon the Sponsor entering into this Agreement and agreeing to be bound by, and perform, or otherwise comply with, as applicable, the agreements, covenants and obligations contained in this Agreement and but for the Sponsor entering into this Agreement and agreeing to be bound by, and perform, or otherwise comply with, as applicable, the agreements, covenants and obligations contained in this Agreement the Company and Acquiror would not have entered into, or agreed to consummate the transactions contemplated by, the Merger Agreement.

c. Without the prior written consent of the Company, the Acquiror and Sponsor hereby agree not to amend that certain Initial Public Offering Letter Agreement, dated August 10, 2021, by and among Acquiror, Sponsor, Chardan NexTech 2 Warrant Holdings LLC, and certain members of the Acquiror's board of directors and/or management team.

4. Representations and Warranties. Sponsor represents and warrants to the Company as follows:

a. it is the record and beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act) of, and has good title to, the Owned Shares, free and clear of Liens other than as created by this Agreement and Permitted Liens. As of the date hereof, other than the Owned Shares and 4,627,858 warrants comprising a part of the units issued and sold by the Acquiror in the IPO, the Sponsor does not own beneficially or of record any shares of capital stock of Acquiror (or any securities convertible into shares of capital stock of Acquiror);

b. none of the Subject Acquiror Equity Securities is subject to any proxy, voting trust or other agreement or arrangement with respect to the voting of such securities, except as provided hereunder;

c. it is duly organized, validly existing and in good standing under the laws of Delaware, and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby are within Sponsor's, corporate, limited liability company or organizational powers and have been duly authorized by all necessary actions on the part of Sponsor;

d. the execution and delivery of this Agreement by Sponsor does not, and the performance by Sponsor of its obligations hereunder will not, (i) conflict with or result in a violation of the organizational documents of Sponsor or any Contract to which it is a party, including the IPO Letter Agreement (as defined below), or (ii) require any consent or approval that has not been given or other action that has not been taken by any third party (including under any Contract binding upon Sponsor or Sponsor's Subject Acquiror Equity Securities), in each case, to the extent such consent, approval or other action would prevent, enjoin or materially delay the performance by Sponsor of its obligations under this Agreement;

e. there are no Actions pending against Sponsor or, to the knowledge of Sponsor, threatened against Sponsor, before (or, in the case of threatened Actions, that would be before) any arbitrator or any Governmental Authority, which in any manner challenges or seeks to prevent, enjoin or materially delay the performance by Sponsor of its obligations under this Agreement;

f. no investment banker, broker, finder or other intermediary is entitled to any broker's, finder's, financial advisor's or other similar fee or commission for which the Acquiror is or will be liable in connection with the transactions contemplated hereby based upon arrangements made by or, to the knowledge of the Sponsor, on behalf of the Sponsor, other than, for the avoidance of doubt, Acquiror's engagement of any investment banker, broker, finder or other intermediary as set forth in the Acquiror Disclosure Schedule; and

g. that certain letter agreement, dated as of August 10, 2021 by and between Acquiror, the Sponsor and the other parties thereto (the "**IPO Letter Agreement**") remains in full force and effect and neither Sponsor nor, to the knowledge of Sponsor, any other party thereto, is in violation thereof or default thereunder.

5. **Termination.** This Agreement shall automatically terminate, without any notice or other action by any Party, and be void *ab initio* upon the earlier of (a) the Effective Time and (b) the termination of the Merger Agreement in accordance with its terms (the "**Termination Date**"). Upon termination of this Agreement as provided in the immediately preceding sentence, none of the Parties shall have any further obligations or liabilities under, or with respect to, this Agreement. Notwithstanding the foregoing or anything to the contrary in this Agreement, the termination of this Agreement pursuant to **Section 5(b)** shall not affect any liability on the part of any Party for a Willful Breach of any covenant or agreement set forth in this Agreement prior to such termination or Fraud. For purposes of this **Section 5**, (x) "**Willful Breach**" means a material breach that is a consequence of an act undertaken or a failure to act by the breaching Party with the knowledge that the taking of such act or such failure to act would, or would reasonably be expected to, constitute or result in a breach of this Agreement and (y) "**Fraud**" means, with respect to a Party to this Agreement, an actual and intentional fraud with respect to the making of the representations and warranties contained herein; **provided** that such actual and intentional fraud of such Party shall only be deemed to exist if such Party had actual knowledge that a representation or warranty made by such Party were false when made, with the intention that the other such Party to this Agreement rely thereon, and the other Party did rely thereon to its detriment.

6. **No Recourse.** Except for claims pursuant to the Merger Agreement or any other Ancillary Agreement by any party(ies) thereto against any other party(ies) thereto, each Party agrees that (a) this Agreement may only be enforced against, and any action for breach of this Agreement may only be made against, the Parties, and no claims of any nature whatsoever (whether in tort, contract or otherwise) arising under or relating to this Agreement, the negotiation hereof or its subject matter, or the transactions contemplated hereby shall be asserted against any Affiliate of the Company or any Affiliate of Acquiror (other than the Sponsor, on the terms and subject to the conditions set forth herein), and (b) none of the Affiliates of the Company or the Affiliates of Acquiror (other than the Sponsor, on the terms and subject to the conditions set forth herein) shall have any liability arising out of or relating to this Agreement, the negotiation hereof or its subject matter, or the transactions contemplated hereby, including with respect to any claim (whether in tort, contract or otherwise) for breach of this Agreement or in respect of any written or oral representations made or alleged to be made in connection herewith, as expressly provided herein, or for any actual or alleged inaccuracies, misstatements or omissions with respect to any information or materials of any kind furnished in connection with this Agreement, the negotiation hereof or the transactions contemplated hereby. The Sponsor hereby waives any and all rights and claims to redeem any Investor Shares or shares of Common Stock acquired in the public market.

7. Fiduciary Duties. Notwithstanding anything in this Agreement to the contrary, (a) the Sponsor makes no agreement or understanding herein in any capacity other than in its capacity as a record holder and beneficial owner of the Subject Acquiror Equity Securities and (b) nothing herein will be construed to limit or affect any action or inaction by any representative of the Sponsor in its capacity as a member of the board of directors (or other similar governing body) of Acquiror or any of its Affiliates or as an officer, employee or fiduciary of Acquiror or any of its Affiliates, in each case, acting in such person's capacity as a director, officer, employee or fiduciary of Acquiror or such Affiliate.

8. No Third Party Beneficiaries. This Agreement shall be for the sole benefit of the Parties and their respective successors and permitted assigns and is not intended, nor shall be construed, to give any Person, other than the Parties and their respective successors and assigns, any legal or equitable right, benefit or remedy of any nature whatsoever by reason this Agreement. Nothing in this Agreement, expressed or implied, is intended to or shall constitute the Parties, partners or participants in a joint venture.

9. Incorporation by Reference. Sections 1.2 (Construction) 11.4 (Assignment), 11.7 (Governing Law), 11.8 (Headings; Counterparts; Effectiveness), 11.10 (Entire Agreement), 11.11 (Amendments), 11.13 (Severability), 11.14 (Jurisdiction; Waiver of Jury Trial), 11.15 (Enforcement) and 11.17 (Non-Survival of Representations, Warranties and Covenants) of the Merger Agreement are incorporated herein by reference and shall apply to this Agreement *mutatis mutandis*.

[signature page follows]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed on its behalf as of the day and year first above written.

CHARDAN NEXTECH INVESTMENTS 2 LLC

By: /s/ Jonas Grossman
Name: Jonas Grossman
Title: Chief Executive Officer

CHARDAN NEXTECH ACQUISITION 2 CORP.

By: /s/ Jonas Grossman
Name: Jonas Grossman
Title: Managing Member

DRAGONFLY ENERGY CORP.

By: /s/ Denis Phares
Name: Denis Phares
Title: Chief Executive Officer

[Signature Page to Sponsor Support Agreement]

EXECUTION VERSION

SUBSCRIPTION AGREEMENT

This SUBSCRIPTION AGREEMENT (this “**Subscription Agreement**”) is entered into on May 15, 2022, by and between Chardan NexTech Acquisition 2 Corp., a Delaware corporation (the “**Company**”), and Chardan NexTech Investments 2 LLC (“**Subscriber**”).

WHEREAS, immediately following the execution and delivery of this Subscription Agreement, the Company will enter into that certain Agreement and Plan of Merger, dated as of May 15, 2022 (as amended, supplemented or otherwise modified from time to time in accordance with its terms, the “**Merger Agreement**”) with Dragonfly Energy Corp., a Nevada corporation (“**Dragonfly**”), and Bronco Merger Sub, Inc., a Nevada corporation and a direct wholly owned subsidiary of the Company (“**Merger Sub**”), pursuant to which Merger Sub will be merged with and into Dragonfly, with Dragonfly surviving as a wholly owned subsidiary of the Company (the “**Merger**”), on the terms and subject to the conditions set forth therein (the Merger, together with the other transactions contemplated by the Merger Agreement, the “**Transactions**”);

WHEREAS, in connection with the Transactions, Subscriber desires to subscribe for and purchase from the Company, prior to or substantially concurrently with the consummation of the Transactions, that number of shares of the Company’s common stock, par value \$0.0001 per share (the “**Shares**”), set forth on the signature page hereto (the “**Subscribed Shares**”) for a purchase price of \$10.00 per share (the “**Per Share Price**”), or the aggregate purchase price set forth on Subscriber’s signature page hereto (the “**Purchase Price**”), and the Company desires to issue and sell to Subscriber the Subscribed Shares in consideration of the payment of the Purchase Price by or on behalf of Subscriber to the Company, all on the terms and conditions set forth herein;

WHEREAS, in connection with the Transactions and as contemplated by the Merger Agreement, the Company and Dragonfly may enter into separate subscription agreements with investors and other financing sources (the “**Additional Subscription Agreements**”), pursuant to which such investors (the “**Other Subscribers**”) may subscribe for and purchase Shares and/or other securities, or provide other financing; and

WHEREAS, prior to the Closing (as defined below), Subscriber may purchase Shares in the open market and reduce (i) its Purchase Price hereunder by an amount equal to the number of Shares that Subscriber purchased in the open market multiplied by the per share redemption amount received by public stockholders who elect to redeem their Shares prior to Closing (such amount, the “**Open Market Purchase Credit**”), and (ii) the number of its Subscribed Shares by an amount equal to the number of Shares Subscriber purchased in the open market and not redeemed as contemplated above (the “**Open Market Share Credit**”).

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants, and subject to the terms and conditions herein contained, and intending to be legally bound hereby, the Company and the Subscriber hereby agree as follows:

1. Subscription. Subject to the terms and conditions hereof, at the Closing (as defined below), Subscriber hereby agrees to subscribe for and purchase, and the Company hereby agrees to issue and sell to Subscriber, upon the payment of the Purchase Price, the Subscribed Shares (such subscription and issuance, the “**Subscription**”).
-

2. Closing.

- a. The consummation of the Subscription contemplated hereby (the “**Closing**”) shall occur on the date of and immediately prior to the consummation of the Transactions (the date of Closing of the Subscription, the “**Closing Date**”).
- b. At least five (5) Business Days prior to the date that the Company reasonably expects all conditions to the closing of the Transactions to be satisfied, the Company shall deliver written notice to Subscriber (the “**Closing Notice**”) specifying (i) the anticipated Closing Date and (ii) the wire instructions for delivery of the Purchase Price to the Company. No later than two (2) Business Days prior to the anticipated Closing Date (the “**Funding Date**”), Subscriber shall deliver to the Company (a) the Purchase Price via wire transfer of United States dollars in immediately available funds to the account specified by the Company in the Closing Notice, such funds to be held by the Company in escrow until the Closing, and (b) such information as is reasonably requested in the Closing Notice in order for the Company to cause the Subscribed Shares to be issued and delivered to Subscriber including, without limitation, a duly completed and executed Internal Revenue Service Form W-9 or appropriate Form W-8, if applicable. The Company shall deliver to Subscriber, upon satisfaction (or, if applicable, waiver) of the conditions set forth in this Section 2, (i) at the Closing, the Subscribed Shares in book entry form, free and clear of any liens or other restrictions (other than those arising under this Subscription Agreement or applicable securities laws or imposed by the Subscriber), in the name of Subscriber (or its nominee in accordance with its delivery instructions) or to a custodian designated by Subscriber, as applicable, and (ii) as promptly as practicable after the Closing, written notice from the Company or its transfer agent evidencing the issuance to Subscriber of the Subscribed Shares on and as of the Closing Date. In the event that the Closing Date does not occur within five (5) Business Days after the anticipated Closing Date specified in the Closing Notice, unless otherwise agreed to in writing by the Company and Subscriber, the Company shall promptly (but not later than seven (7) Business Days after the anticipated Closing Date specified in the Closing Notice) return the funds so delivered by Subscriber to the Company by wire transfer in immediately available funds to the account specified by Subscriber. Notwithstanding such return or cancellation (x) a failure to close on the anticipated Closing Date shall not, by itself, be deemed to be a failure of any of the conditions to Closing set forth in this Section 2 to be satisfied or waived on or prior to the Closing Date, and (y) unless and until this Subscription Agreement is terminated in accordance with Section 7 herein, Subscriber shall remain obligated (A) to redeliver funds to the Company in escrow following the Company’s delivery to Subscriber of a new closing notice and (B) to consummate the Closing upon satisfaction of the conditions set forth in this Section 2. For the purposes of this Subscription Agreement, “**Business Day**” means any day other than a Saturday, Sunday or a day on which the Federal Reserve Bank of New York is closed.

- c. The Closing shall be subject to the satisfaction or valid waiver by the Company, on the one hand, and the Subscriber, on the other, on the Closing Date of each of the following conditions:
- (i) all conditions precedent to the closing of the Transactions set forth in the Merger Agreement shall have been satisfied (as determined by the parties to the Merger Agreement) or waived by the party entitled to make such waiver under the Merger Agreement (other than those conditions which, by their nature or terms, are to be satisfied at the closing of the Transactions pursuant to the Merger Agreement), and the closing of the Transactions shall be scheduled to occur substantially concurrently with or following the Closing; and
 - (ii) no governmental authority shall have issued, enforced or entered any judgment or order, which is then in effect and has the effect of making the Subscription illegal or otherwise restraining or prohibiting consummation of the Subscription.
- d. The obligation of the Company to consummate the Closing shall be subject to the satisfaction or valid waiver by the Company of the additional conditions that: (i) Subscriber shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Subscription Agreement to be performed, satisfied or complied with by Subscriber at or prior to the Closing and (ii) the representations and warranties of the Subscriber contained in this Subscription Agreement are true, accurate and complete at and as of the Closing Date (unless they specifically speak as of an earlier date, in which case they shall be true and correct as of such date) except for inaccuracies or the failure of such representations and warranties to be true and correct that (without giving effect to any limitation as to “materiality” or “Subscriber Material Adverse Effect” (as defined below) or another similar materiality qualification set forth herein), individually or in the aggregate, would not reasonably be expected to have a Subscriber Material Adverse Effect, in each case without giving effect to the consummation of the Transactions; and
- e. The obligation of Subscriber to consummate the Closing shall be subject to the satisfaction or valid waiver by Subscriber of the additional conditions that: (i) the Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Subscription Agreement to be performed, satisfied or complied with by the Company at or prior to the Closing and (ii) the representations and warranties of the Company contained in this Subscription Agreement are true, accurate and complete at and as of the Closing Date (unless they specifically speak as of an earlier date, in which case they shall be true and correct as of such date) except for inaccuracies or the failure of such representations and warranties to be true and correct that (without giving effect to any limitation as to “materiality” or “Company Material Adverse Effect” (as defined below) or another similar materiality qualification set forth herein), individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect, in each case without giving effect to the consummation of the Transactions.

3. Further Assurances. At the Closing, the Company and the Subscriber shall execute and deliver such additional documents and take such additional actions as each reasonably may deem to be practical and necessary to consummate the Subscription as contemplated by this Subscription Agreement.
4. Company Representations and Warranties. The Company represents and warrants to Subscriber that (provided that no representation or warranty by the Company shall apply to any statement or information in the SEC Reports (as defined below) that relates to the topics referenced in the SEC Statements (as defined below) or any other accounting matters with respect to the Company's securities or other IPO (as defined below) related matters, nor shall any correction, amendment or restatement of the Company's filings or financial statements due wholly or in part to the SEC Statements or any other accounting matters, nor any other effects that relate to or arise out of, or are in connection with or in response to, any of the foregoing or any changes in accounting or disclosure related thereto, be deemed to be material for purposes of this Subscription Agreement or be deemed to be a breach of any representation or warranty by the Company):
- a. The Company (i) is duly organized, validly existing and in good standing under the laws of the State of Delaware, (ii) has the requisite power and authority to own, lease and operate its properties, to carry on its business as it is now being conducted and to enter into and perform its obligations under this Subscription Agreement and (iii) is duly licensed or qualified to conduct its business and, if applicable, is in good standing under the laws of each jurisdiction (other than its jurisdiction of incorporation) in which the conduct of its business or the ownership of its properties or assets requires such license or qualification, except, with respect to the foregoing clauses (ii) and (iii), where such failure would not reasonably be expected to have a Company Material Adverse Effect. For purposes of this Subscription Agreement, a "**Company Material Adverse Effect**" means an event, change, development, occurrence, condition or effect with respect to the Company and its subsidiaries, taken together as a whole (on a consolidated basis), that, individually or in the aggregate, would reasonably be expected to have a material adverse effect on (i) the business, financial condition or results of operations of the Company and its subsidiaries, taken together as a whole (on a consolidated basis) or (ii) the Company's ability to consummate the transactions contemplated hereby, including the issuance and sale of the Subscribed Shares.
 - b. The Subscribed Shares have been duly authorized and, when issued and delivered to Subscriber against full payment therefor in accordance with the terms of this Subscription Agreement and registered in book-entry form with the Company's transfer agent, will be validly issued, fully paid and non-assessable and will not have been issued in violation of any preemptive rights created under the Company's organizational documents (as adopted on or prior to the Closing Date) or the laws of its jurisdiction of incorporation.

- c. This Subscription Agreement has been duly authorized, executed and delivered by the Company, and assuming the due authorization, execution and delivery of the same by Subscriber, this Subscription Agreement shall constitute the valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors generally and by the availability of equitable remedies.
- d. Assuming the accuracy of the representations and warranties of Subscriber in this Subscription Agreement, the Company's execution, delivery, and performance of this Subscription Agreement, including the issuance and sale of the Subscribed Shares and the compliance by the Company with all of the provisions of this Subscription Agreement and the consummation of the transactions contemplated herein, will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, (i) the organizational documents of the Company; (ii) any indenture, mortgage, deed of trust, loan agreement, lease, license or other agreement or instrument to which the Company is a party or by which the Company is bound or to which any of the property or assets of the Company is subject; or (iii) any statute or any judgment, order, rule or regulation of any court or governmental agency or body, domestic or foreign, having jurisdiction over the Company or any of its properties that, in the case of clauses (ii) and (iii), would reasonably be expected to have a Company Material Adverse Effect.
- e. Assuming the accuracy of the representations and warranties of the Subscriber, the Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority, self-regulatory organization (including The Nasdaq Stock Market LLC (the "Nasdaq")) or other person in connection with the execution, delivery and performance of this Subscription Agreement (including, without limitation, the issuance of the Subscribed Shares), other than (i) filings required by applicable state or federal securities laws, (ii) the filings required pursuant to Section 6 below, (iii) the filing, if required, of a Notice of Exempt Offering of Securities on Form D with the United States Securities and Exchange Commission (the "SEC") under Regulation D of the Securities Act of 1933, as amended (the "**Securities Act**"), (iv) those required by the SEC or the Nasdaq, including with respect to obtaining stockholder approval, (v) those filings required to consummate the Transactions as provided under the Merger Agreement, (vi) the filing of notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, if applicable, (vii) in connection with or as a result of the "Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies" issued by the SEC staff on April 12, 2021, the rules proposed by the SEC on March 30, 2022, intended to enhance investor protections in initial public offerings by special purpose acquisition companies ("**SPACs**") and in subsequent business combination transactions between SPACs and private operating companies, or any subsequent guidance, statements, change in presentation or interpretations issued by the SEC or the SEC staff or otherwise relating thereto (collectively, the "**SEC Statements**") or other accounting matter and (ix) any consent, waiver, authorization, order, notice, filing or registration the failure of which to make, give or obtain, as applicable, would not be reasonably likely to have a Company Material Adverse Effect.

- f. As of their respective filing dates or, if amended, as of the date of such amendment, which shall be deemed to supersede such original filing, all reports required to be filed by the Company with the SEC (the “**SEC Reports**”) complied in all material respects with the requirements of the Securities Act and the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and the rules and regulations of the SEC promulgated thereunder, and none of the SEC Reports filed under the Securities Act and Exchange Act, contained, when filed or, if amended prior to the date of this Subscription Agreement, as of the date of such amendment with respect to those disclosures that are amended, which shall be deemed to supersede such original filing, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, that notwithstanding anything to the contrary in this Subscription Agreement, no representation or warranty is made under this Subscription Agreement or otherwise as to the accounting treatment of the Company’s issued and outstanding warrants, other securities or any other initial public offering matter, or as to any deficiencies in disclosure (including with respect to accounting and disclosure controls) arising therefrom, in any SEC Reports. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing, or, if amended, as of the date of such amendment, which shall be deemed to supersede such original filing, and fairly present in all material respects the financial position of the Company as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited financial statements, to normal, year-end audit adjustments. The Company has filed each periodic report that the Company was required to file with the SEC since August 10, 2021 and through the date hereof. As of the date of this Subscription Agreement, there are no material outstanding or unresolved comments in comment letters received by the Company from the staff of the Division of Corporation Finance of the SEC with respect to any of the SEC Reports.
- g. As of the date of this Subscription Agreement, the authorized share capital of the Company consists of (a) 50,000,000 Shares, and (b) 1,000,000 shares of preferred stock, par value \$0.0001 per share (“**Preferred Stock**”). As of the date of this Subscription Agreement: (i) 15,812,500 Shares; (ii) no shares of Preferred Stock; and (iii) 9,487,500 public warrants exercisable for one (1) Share at \$11.50 per share and 4,627,858 private placement warrants exercisable for one (1) Share at \$11.50 per share (collectively, the “**Warrants**”), were issued and outstanding; and (v) no Shares were subject to issuance upon exercise of outstanding options. No Warrants are exercisable on or prior to the Closing.

- h. Except for such matters that have not had and would not be reasonably likely to have a Company Material Adverse Effect, there is no (i) suit, action, proceeding or arbitration before a governmental authority or arbitrator pending, or, to the knowledge of the Company, threatened in writing against the Company or (ii) judgment, decree, injunction, ruling or order of any governmental authority or arbitrator outstanding against the Company.
 - i. The issued and outstanding Shares as of the date of this Subscription Agreement are registered pursuant to Section 12(b) of the Exchange Act, and are listed for trading on the Nasdaq under the symbol “CNTQ” (it being understood that the trading symbol will be changed in connection with the Transaction). There is no suit, action, proceeding or investigation pending or, to the knowledge of the Company, threatened against the Company by the Nasdaq or the SEC to deregister the Shares or prohibit or terminate the listing of the Shares on Nasdaq, excluding, for the purposes of clarity, the customary ongoing review by Nasdaq of the Company’s continued listing application in connection with the Transactions. The Company has taken no action that is designed to terminate the registration of the Shares under the Exchange Act. The Company has not, in the twelve (12) months preceding the date hereof, received notice from the Nasdaq to the effect that the Company is not in compliance with the listing or maintenance requirements of the Nasdaq.
 - j. Assuming the accuracy of Subscriber’s representations and warranties set forth in Section 5 of this Subscription Agreement, no registration under the Securities Act is required for the offer and sale of the Subscribed Shares by the Company to Subscriber.
 - k. The Company has not received any written communication, from a governmental authority that alleges that the Company is not in compliance with or is in default or violation of any applicable antitrust or anticorruption law, except where such non-compliance, default or violation would not be reasonably expected to have a Company Material Adverse Effect.
 - l. No broker or finder is entitled to any brokerage or finder’s fee or commission solely in connection with the sale of the Subscribed Shares by the Company to Subscriber.
 - m. The Company is not and, immediately after receipt of payment for the Subscribed Shares, will not be required to register as an investment company under the Investment Company Act of 1940, as amended.
5. Subscriber Representations and Warranties. Subscriber represents and warrants to the Company that:
- a. Subscriber (i) is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, organization or formation, as applicable, and (ii) has the requisite power and authority to enter into and perform its obligations under this Subscription Agreement.

- b. This Subscription Agreement has been duly executed and delivered by Subscriber, and assuming the due authorization, execution and delivery of the same by the Company, this Subscription Agreement shall constitute the valid and legally binding obligation of Subscriber, enforceable against Subscriber in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors generally and by the availability of equitable remedies.
- c. The execution and delivery of this Subscription Agreement, the purchase of the Subscribed Shares and the compliance by Subscriber with all of the provisions of this Subscription Agreement and the consummation of the transactions contemplated herein will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under (i) the organizational documents of Subscriber; (ii) any indenture, mortgage, deed of trust, loan agreement, lease, license or other agreement or instrument to which Subscriber is a party or by which Subscriber is bound or to which any of the property or assets of Subscriber is subject; or (iii) any statute or any judgment, order, rule or regulation of any court or governmental agency or body, domestic or foreign, having jurisdiction over Subscriber or any of its properties that, in the case of clauses (ii) and (iii), would reasonably be expected to have a Subscriber Material Adverse Effect. For purposes of this Subscription Agreement, a “**Subscriber Material Adverse Effect**” means an event, change, development, occurrence, condition or effect with respect to Subscriber that would reasonably be expected to have a material adverse effect on Subscriber’s ability to consummate the transactions contemplated hereby, including the purchase of the Subscribed Shares.
- d. Subscriber or each of the funds managed by or affiliated with Subscriber for which Subscriber is acting as nominee, as applicable, (i) is an “qualified institutional buyer” (as defined in Rule 144A under the Securities Act) or is an institutional “accredited investor” (within the meaning of Rule 501(a)(1), Rule 501(a)(2), Rule 501(a)(3), or Rule 501(a)(7) under the Securities Act), in each case, satisfying the applicable requirements set forth on Annex A; (ii) is acquiring the Subscribed Shares only for its own account and not for the account of others, or if Subscriber is subscribing for the Subscribed Shares as a fiduciary or agent for one or more investor accounts, each owner of such account is a “qualified institutional buyer” (as defined in Rule 144A under the Securities Act) and Subscriber has full investment discretion with respect to each such account, and the full power and authority to make the acknowledgements, representations and agreements herein on behalf of each owner of each such account; and (iii) is not acquiring the Subscribed Shares with a view to, or for offer or sale in connection with, any distribution of the Company’s common stock in violation of the Securities Act (and has provided the Company with the requested information on Annex A following the signature page hereto) or any securities laws of the United States or any other jurisdiction. Subscriber is not an entity formed for the specific purpose of acquiring the Subscribed Shares. Subscriber is (i) is an institutional account as defined in FINRA Rule 4512(c), (ii) is a sophisticated investor, experienced in investing in private equity transactions and capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, including its participation in the purchase of the Subscribed Shares, and (iii) has exercised independent judgment in evaluating its participation in the purchase of the Subscribed Shares. Subscriber understands that the offering meets (i) the exemptions from filing under FINRA Rule 5123(b)(1)(A), (C) or (J) and (ii) the institutional customer exemption under FINRA Rule 2111(b).

- e. Subscriber understands that the Subscribed Shares are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the Subscribed Shares have not been registered under the Securities Act or any state securities law in reliance on the availability of an exemption from such registration. Subscriber understands that the Subscribed Shares may not be offered, resold, transferred, pledged or otherwise disposed of by Subscriber absent an effective registration statement under the Securities Act, except (i) to the Company or a subsidiary thereof, or (ii) pursuant to an applicable exemption from the registration requirements of the Securities Act, and, in each of cases (i) and (ii), in accordance with any applicable securities laws of the states and other jurisdictions of the United States, and that any certificates or book entries representing the Subscribed Shares shall contain a legend to such effect. Subscriber acknowledges that the Subscribed Shares will not be eligible for resale pursuant to Rule 144A promulgated under the Securities Act. Subscriber understands and agrees that the Subscribed Shares will be subject to transfer restrictions and, as a result of these transfer restrictions, Subscriber may not be able to readily offer, resell, transfer, pledge or otherwise dispose of the Subscribed Shares and may be required to bear the financial risk of an investment in the Subscribed Shares for an indefinite period of time. Subscriber understands that it has been advised to consult legal, tax and accounting advisors prior to making any offer, resale, pledge, disposition or transfer of any of the Subscribed Shares.
- f. Subscriber understands and agrees that Subscriber is purchasing the Subscribed Shares directly from the Company. Subscriber further acknowledges that there have not been, and Subscriber hereby agrees that it is not relying on, any representations, warranties, covenants or agreements made to Subscriber by the Company, Dragonfly, any of their respective affiliates or any control persons, officers, directors, employees, partners, agents or representatives, any other party to the Transactions or any other person or entity, expressly or by implication, other than those representations, warranties, covenants and agreements of the Company expressly set forth in this Subscription Agreement, and Subscriber expressly disclaims any representations, warranties, covenants or agreements not expressly set forth in this Subscription Agreement. Subscriber hereby represents and warrants that it is relying exclusively on Subscriber's own sources of information, investment analysis and due diligence (including professional advice such Subscriber deems appropriate) with respect to this offering of the Subscribed Shares, and the business, condition (financial and otherwise), management, operations, properties and prospects of the Company and the Target, including but not limited to all business, legal, regulatory, accounting, credit and tax matters. In particular, without limiting the foregoing, Subscriber acknowledges that certain information provided by the Company was based on projections, forecasts, estimates, budgets or other prospective information, and such information is based on assumptions and estimates that are inherently uncertain and are subject to a wide variety of significant business, economic and competitive risks and uncertainties that could cause actual results to differ materially from those contained in the projections, and neither the Company nor any other person makes any representation relating to any such information.

- g. In making its decision to subscribe for and purchase the Subscribed Shares, Subscriber has relied solely upon independent investigation made by Subscriber. Subscriber acknowledges and agrees that Subscriber has received or had access to, and an adequate opportunity to review, such information as Subscriber deems necessary to make an investment decision with respect to the Subscribed Shares, including, without limitation, with respect to the Company, Dragonfly and the Transactions. Subscriber represents and agrees that Subscriber and Subscriber's professional advisor(s), if any, have had the full opportunity to ask such questions, receive such answers and obtain such information as Subscriber and Subscriber's professional advisor(s), if any, have deemed necessary to make an investment decision with respect to the Subscribed Shares. Without limiting the generality of the foregoing, Subscriber acknowledges that it has reviewed the Company's filings with the SEC and any disclosure documents provided by or on behalf of the Company in connection with the Subscription and that no statement or printed material which is contrary to the disclosure documents has been made or given to the Subscriber by or on behalf of the Company. Subscriber further acknowledges and agrees that no person has been authorized to give any information or to make any representations which were not furnished pursuant to Section 4 and the Subscriber has not relied on any other representations or information in making its investment decision, whether written or oral, relating to the Company, its operations and/or its prospects.
- h. Subscriber became aware of this offering of the Subscribed Shares solely by means of direct contact between Subscriber and the Company or by means of contact from Dragonfly and/or their respective agents, control persons, representatives, affiliates, directors, officers, managers, members, and/or employees (such parties referred to collectively as "**Representatives**"). The Subscribed Shares were offered to Subscriber solely by direct contact between Subscriber and the Company, Dragonfly and/or their respective Representatives. Subscriber did not become aware of this offering of the Subscribed Shares, nor were the Subscribed Shares offered to Subscriber, by any other means and none of the Company, Dragonfly or their respective Representatives acted as investment advisor, broker or dealer to Subscriber. Subscriber acknowledges that the Company represents and warrants that the Subscribed Shares (i) were not offered to Subscriber by any form of general solicitation or general advertising and (ii) are not being offered to Subscriber in a manner involving a public offering under, or in a distribution in violation of, the Securities Act, or any state securities laws.

- i. Subscriber acknowledges that it is aware that there are substantial risks incident to the purchase and ownership of the Subscribed Shares. Subscriber is a sophisticated institutional investor and has such knowledge and experience in financial and business matters, and in investing in private placement securities, as to be capable of evaluating the merits and risks of an investment in the Subscribed Shares. At the time of making its investment decision, Subscriber has had access to such financial and other information concerning the Company and its subsidiaries as Subscriber deemed necessary or desirable in making a decision to purchase the Subscribed Shares, including an opportunity to ask questions and receive answers from officers of the Company and to obtain additional information necessary to verify the accuracy of any information furnished to Subscriber or to which Subscriber had access. Subscriber has independently made its own analysis and decision to purchase the Subscribed Shares and determined based on its own independent review, and such professional advice from its own advisors (including as to tax, legal and accounting matters) as Subscriber may deem appropriate, that its purchase of the Subscribed Shares (i) is consistent with Subscriber's financial needs, objectives and condition, (ii) complies with all investment policies, guidelines and other restrictions that are applicable to Subscriber, (iii) does not and will not violate any law, rule, regulation, agreement or other obligation to which Subscriber is bound (assuming the accuracy of the Company's representations and warranties contained herein), and (iv) is a fit, proper and suitable investment for Subscriber, notwithstanding the risks associated with a purchase of the Subscribed Shares.
- j. Subscriber has adequately analyzed and fully considered the risks of an investment in the Subscribed Shares and determined that the Subscribed Shares are a suitable investment for Subscriber and that Subscriber is able at this time and in the foreseeable future to bear the economic risk of a total loss of Subscriber's investment in the Company. Subscriber acknowledges specifically that a possibility of total loss exists.
- k. Subscriber understands and agrees that no federal or state agency has passed upon or endorsed the merits of the offering of the Subscribed Shares or made any findings or determination as to the fairness of this investment.
- l. Subscriber is not (i) a person or entity named on the List of Specially Designated Nationals and Blocked Persons administered by the U.S. Treasury Department's Office of Foreign Assets Control ("**OFAC**") or in any Executive Order issued by the President of the United States and administered by OFAC ("**OFAC List**") or on any EU or United Nations sanctions list, or a person or entity prohibited by any OFAC sanctions program, (ii) organized, resident, or located in a country or region subject to comprehensive sanctions administered by OFAC (as of the date of this Subscription Agreement, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, or Venezuela), (iii) 50% or greater owned, directly or indirectly, or controlled by, or acting on behalf of, one or more persons that are described in clauses (i) or (ii) of this paragraph; (iv) a Designated National as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (v) a non-U.S. shell bank or providing banking services directly or indirectly to a non-U.S. shell bank (each, a "**Prohibited Investor**"). Subscriber agrees to provide law enforcement agencies, if requested thereby, such records as required by applicable law, provided that Subscriber is permitted to do so under applicable law. Subscriber represents that if it is a financial institution subject to the Bank Secrecy Act (31 U.S.C. Section 5311 et seq.), as amended by the USA PATRIOT Act of 2001 and its implementing regulations (collectively, the "**BSA/PATRIOT Act**"), that Subscriber maintains policies and procedures reasonably designed to comply with applicable obligations under the BSA/PATRIOT Act. Subscriber also represents that, to the extent required, it maintains policies and procedures reasonably designed to ensure compliance with applicable OFAC sanctions programs, including the OFAC List. Subscriber further represents and warrants that, to the extent required, it maintains policies and procedures reasonably designed to ensure that the funds held by Subscriber and used to purchase the Subscribed Shares were legally derived and were not obtained, directly or indirectly, from a Prohibited Investor. Neither Subscriber nor any of its Affiliates or its or their respective directors or officers is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act.

- m. Subscriber is not currently (and at all times through Closing will refrain from being or becoming) a member of a “group” (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) acting for the purpose of acquiring, holding, voting or disposing of equity securities of the Company or Dragonfly (within the meaning of Rule 13d-5(b)(1) under the Exchange Act).
- n. Subscriber is not a foreign person (as defined in 31 C.F.R. Part 800.224) in which the national or subnational governments of a single foreign state have a substantial interest (as defined in 31 C.F.R. Part 800.244).
- o. If Subscriber is an employee benefit plan that is subject to Title I of ERISA, a plan, an individual retirement account or other arrangement that is subject to section 4975 of the Internal Revenue Code of 1986, as amended (the “**Code**”) or an employee benefit plan that is a governmental plan (as defined in section 3(32) of ERISA), a church plan (as defined in section 3(33) of ERISA), a non-U.S. plan (as described in section 4(b)(4) of ERISA) or other plan that is not subject to the foregoing but may be subject to provisions under any other federal, state, local, non-U.S. or other laws or regulations that are similar to such provisions of ERISA or the Code, or an entity whose underlying assets are considered to include “plan assets” of any such plan, account or arrangement (each, a “**Plan**”) subject to the fiduciary or prohibited transaction provisions of ERISA or section 4975 of the Code, Subscriber represents and warrants that neither the Company, Dragonfly nor any of their respective affiliates (the “**Transaction Parties**”) has acted as the Plan’s fiduciary with respect to its decision to acquire and hold the Subscribed Shares, and none of the Transaction Parties shall at any time be relied upon as the Plan’s fiduciary with respect to any decision to acquire, continue to hold or transfer the Subscribed Shares.
- p. Subscriber has, and prior to the Funding Date will have, sufficient funds immediately available to it to pay the Purchase Price pursuant to Section 2(b).
- q. The Subscriber has not entered into any agreement or arrangement entitling any agent, broker, investment banker, financial advisor or other person to any broker’s or finder’s fee or any other commission or similar fee in connection with the sale of the Subscribed Shares for which the Company could become liable.
- r. Subscriber acknowledges and agrees that the certificate or book-entry position representing the Subscribed Shares will bear or reflect, as applicable, a legend substantially similar to the following:

“THIS SECURITY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) PURSUANT TO ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, (II) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, OR (III) TO THE COMPANY, IN EACH OF CASES (I) THROUGH (III) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL NOTIFY ANY SUBSEQUENT PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE. THE COMPANY MAY REQUIRE THE DELIVERY OF A WRITTEN OPINION OF COUNSEL, CERTIFICATIONS AND/OR ANY OTHER INFORMATION IT REASONABLY REQUIRES TO CONFIRM THE SECURITIES ACT EXEMPTION FOR SUCH TRANSACTION.”
- s. Subscriber acknowledges and agrees that the Company continues to review the SEC Statements and its implications, including on the financial statements and other information included in its filings with the SEC, and any restatement, revision or other modification of such filings relating to or arising from such review, any subsequent related agreements or other guidance from the Staff of the SEC shall be deemed not material for purposes of this Subscription Agreement.
- t. To the extent Subscriber purchases any Shares in the open market following the date of this Subscription Agreement and prior to the Closing, Subscriber represents and warrants that it will not exercise its right to vote such Shares in connection with any vote to approve the Transactions.

6. Registration of Subscribed Shares and Removal of Legends.

- a. The Company and Subscriber hereby acknowledge and agree that the Subscription Shares shall be treated as “Registrable Securities” under the Registration Rights Agreement (as defined in the Merger Agreement).
- b. Notwithstanding anything contained herein, the Company shall, subject to the receipt of documentation and representation letter from the applicable Subscriber and transferee or other Holder, (i) use its commercially reasonable efforts to cause its transfer agent to effect the removal of the legends from (A) any Shares being sold under the Registration Statement, (B) at the time of sale of Shares pursuant to Rule 144 and (C) at the request of a Holder (defined below) at such time as the Shares held by such Holder may be sold by such Holder without restriction under Rule 144, including without limitation, any volume and manner of sale restrictions, and (ii) cause its legal counsel to deliver an opinion, if necessary, subject to the receipt of documentation and representation letter from the applicable Subscriber and transferee or other Holder, to the transfer agent in connection with the instruction under subclause (i) to the effect that removal of such restrictive legends in such circumstances may be effected under the Securities Act, in each case upon the receipt of customary representations and other documentation, if any, from the Holder as reasonably requested by the Company, its counsel or the transfer agent, establishing that restrictive legends are no longer required. “Holder” shall mean the Subscriber or any affiliate of Subscriber to which the rights under Section 6 shall have been assigned.

7. Termination. This Subscription Agreement shall terminate and be void and of no further force and effect, and all rights and obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earliest to occur of (a) such date and time as the Merger Agreement is validly terminated in accordance with its terms, (b) upon the mutual written agreement of the Company and the Subscriber to terminate this Subscription Agreement, (c) if the conditions to Closing set forth in Section 2 of this Subscription Agreement are not satisfied at, or are not capable of being satisfied on or prior to, the Closing and, as a result thereof, the transactions contemplated by this Subscription Agreement will not be or are not consummated at the Closing and (d) Closing has not occurred by May 15, 2023; provided, that nothing herein will relieve any party from liability for any willful breach hereof prior to the time of termination, and each party will be entitled to any remedies at law or in equity to recover losses, liabilities or damages arising from such breach. The Company shall notify Subscriber of the termination of the Merger Agreement promptly after the termination thereof.

8. Trust Account Waiver. Subscriber hereby acknowledges that, as described in the Company’s final prospectus dated August 10, 2021 filed with the SEC (the “**Prospectus**”), the Company has established a trust account (the “**Trust Account**”) containing the proceeds of its initial public offering (the “**IPO**”) and from certain private placements occurring simultaneously with the IPO (including interest accrued from time to time thereon) for the benefit of the Company’s public stockholders and certain other parties (including the underwriters of the IPO). For and in consideration of the Company entering into this Subscription Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Subscriber hereby (i) agrees that it does not now and shall not at any time hereafter have any right, title, interest or claim of any kind in or to any assets held in the Trust Account, and shall not make any claim against the Trust Account, regardless of whether such claim arises as a result of, in connection with or relating in any way to this Subscription Agreement or any other matter, and regardless of whether such claim arises based on contract, tort, equity or any other theory of legal liability (any and all such claims are collectively referred to hereafter as the “**Released Claims**”), (ii) irrevocably waives any Released Claims that it may have against the Trust Account now or in the future as a result of, or arising out of, any negotiations, contracts or agreements with the Company and (iii) will not seek recourse against the Trust Account for any reason whatsoever; provided, however, that nothing in this Section 8 shall preclude (x) any action, claim, suit or proceeding of any kind by the Subscriber or any of its affiliates against the Company or any of affiliates seeking recourse against or recovery from any assets or monies outside the Trust Account or (y) a Claim by the Subscriber or any of its affiliates in or to monies released from the Trust Account upon the completion of a business combination as described in the Prospectus, excluding monies released from the Trust Account to the Company’s public stockholders that are required to be paid to the Company’s public stockholders as a result of their exercise of their redemption rights as described in the Prospectus; provided, further, that nothing in this Agreement or this paragraph shall supplement, amend, limit, modify or otherwise affect (A) the underwriting agreement described in the Prospectus (the “**Underwriting Agreement**”), any rights the Subscriber or any of its affiliates has pursuant to the Underwriting Agreement to receive a portion of the deferred discount described in the Prospectus (the “**Deferred Discount**”), or any indemnification, contribution or other rights the Subscriber or any of its affiliates has pursuant to the Underwriting Agreement, or any action, claim, suit or proceeding, or claim for a portion of the Deferred Discount or for indemnification or contribution under the Underwriting Agreement of any kind by the Subscriber or any of its affiliates against the Company or any of its affiliates in connection with the Underwriting Agreement, which in each such case shall have recourse against the Trust Account, (B) any rights with respect to, or recourse or interests in, the Trust Account the Subscriber or any of its affiliates may have as a direct or indirect stockholder of, sponsor of, or lender to, the Company, or (C) any rights with respect to, or recourse or interests in, the Trust Account the Subscriber or any of its affiliates may have pursuant to any IPO related documentation. Subscriber agrees and acknowledges that such irrevocable waiver is material to this Subscription Agreement and specifically being relied upon by the Company and its affiliates to induce the Company to enter into this Subscription Agreement, and Subscriber further intends and understands such waiver to be valid, binding and enforceable against Subscriber and each of its affiliates under applicable law.

9. Miscellaneous.

- a. All notices, requests, demands, claims and other communications hereunder shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given (i) when delivered personally to the recipient, (ii) when sent by electronic mail, with no mail undeliverable or other rejection notice, (iii) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid), or (iv) four (4) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and, in each case, addressed to the intended recipient at its electronic mail address or address, as applicable, specified on the signature page hereof or to such electronic mail address or address as subsequently modified by written notice given in accordance with this Section 9(a).
- b. Subscriber acknowledges that the Company and Dragonfly will rely on the acknowledgments, understandings, agreements, representations and warranties of Subscriber contained in this Subscription Agreement. Prior to the Closing, Subscriber agrees to promptly notify the Company if it becomes aware that any of the acknowledgments, understandings, agreements, representations and warranties of Subscriber set forth herein are no longer accurate in all material respects (other than those acknowledgments, understandings, agreements, representations and warranties qualified by materiality, in which case the Subscriber shall notify the Company if they are no longer accurate in any respect). The Company acknowledges that Subscriber and others will rely on the acknowledgments, understandings, agreements, representations and warranties contained in this Subscription Agreement. Prior to the Closing, the Company agrees to promptly notify Subscriber if it becomes aware that any of the acknowledgments, understandings, agreements, representations and warranties of the Company set forth herein are no longer accurate in all material respects (other than those acknowledgments, understandings, agreements, representations and warranties qualified by materiality, in which case the Company shall notify Subscriber if they are no longer accurate in any respect).
- c. Each of the Company and Subscriber is irrevocably authorized to produce this Subscription Agreement or a copy hereof if legally compelled in connection with in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby. If either the Company or Subscriber is so compelled, then unless prohibited by law, rule, or regulation, the producing party shall provide the other with prior written notice (including by email) of such production and disclosure and shall reasonably consult with the Company or Subscriber, as applicable, regarding the production and disclosure.
- d. Subscriber shall pay all of its own expenses in connection with this Subscription Agreement and the transactions contemplated herein.
- e. Subscriber hereby acknowledges and agrees that it will not, nor will any person acting at the Subscriber's direction or pursuant to any understanding with the Subscriber, directly or indirectly offer, sell, pledge, contract to sell, sell any option, engage in hedging activities or execute any "short sales" as defined in Rule 200 of Regulation SHO under the Exchange Act ("**Short Sales**"), of the Subscribed Shares prior to the Closing (or such earlier termination of this Subscription Agreement in accordance with its terms). Notwithstanding the foregoing, (i) nothing in this Section 9(e) shall prohibit other entities under common management or control with Subscriber, or that share an investment advisor with Subscriber, that have no knowledge of this Subscription Agreement or of Subscriber's participation in the Subscription Agreement including the Subscriber's controlled affiliates and/or affiliates from entering into any Short Sales and (ii) in the case of a Subscriber that is a multi-managed investment bank or vehicle in which separate portfolio managers or desks manage separate portions of such Subscriber's assets, this Section 9(e) shall apply only with respect to the portion of assets managed by the portfolio manager or desk that made the investment decision to purchase the Subscribed Shares covered by this Subscription Agreement (the "**Investing Portfolio Manager**") and the portfolio managers or desks who have direct knowledge of the investment decisions made by the Investing Portfolio Manager.

- f. Neither this Subscription Agreement nor any rights that may accrue to the parties hereunder (including Subscriber's rights to purchase the Subscribed Shares) may be transferred or assigned without the prior written consent of each of the other parties hereto (other than the Subscribed Shares acquired hereunder, if any, and then only in accordance with this Subscription Agreement); provided, that, for the avoidance of doubt, the Company may transfer the Subscription Agreement and its rights hereunder in connection with the Transactions. Notwithstanding the foregoing, Subscriber may assign its rights and obligations under this Subscription Agreement to one or more of its affiliates or another person acceptable to the Company, provided that (i) such assignee(s) agrees in writing to be bound by the terms hereof, and upon such assignment by Subscriber, the assignee(s) shall become Subscriber hereunder and have the rights and obligations and be deemed to make the representations and warranties of Subscriber provided for herein to the extent of such assignment and (ii) no such assignment shall relieve Subscriber of its obligations hereunder if any such affiliate fails to perform such obligations.
- g. All the agreements, representations and warranties made by each party hereto in this Subscription Agreement shall survive the Closing.
- h. If Subscriber purchases Shares in the open market prior to Closing, the Company shall be deemed to have received from Subscriber the aggregate gross purchase price paid for such Shares.
- i. The Company may request from Subscriber such additional information as the Company may reasonably deem necessary to evaluate the eligibility of Subscriber to acquire the Subscribed Shares and to register the Subscribed Shares for resale, and Subscriber shall provide such information as may be reasonably requested. Subscriber acknowledges that the Company may file a copy of this Subscription Agreement with the SEC as an exhibit to a current or periodic report of the Company or a registration statement of the Company.
- j. This Subscription Agreement may not be amended, modified, waived or terminated except by an instrument in writing, signed by each of the parties hereto.

- k. This Subscription Agreement constitutes the entire agreement, and supersedes all other prior agreements, understandings, representations and warranties, both written and oral, among the parties, with respect to the subject matter hereof, other than the Registration Rights Agreement and any other agreements entered or to be entered into in connection with the Transactions. Except as provided in Section 9(n) hereof, this Subscription Agreement shall not confer any rights or remedies upon any person other than the parties hereto and their respective permitted successors and assigns.
- l. Except as otherwise provided herein, this Subscription Agreement shall be binding upon, and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns, and the agreements, representations, warranties, covenants and acknowledgments contained herein shall be deemed to be made by, and be binding upon, such heirs, executors, administrators, successors, legal representatives and permitted assigns.
- m. If any provision of this Subscription Agreement shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Subscription Agreement shall not in any way be affected or impaired thereby and shall continue in full force and effect.
- n. This Subscription Agreement may be executed and delivered in one or more counterparts (including by electronic mail or in .pdf) and by different parties in separate counterparts, with the same effect as if all parties hereto had signed the same document. All counterparts so executed and delivered shall be construed together and shall constitute one and the same agreement.
- o. This Subscription Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other person.
- p. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Subscription Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Subscription Agreement and to enforce specifically the terms and provisions of this Subscription Agreement, this being in addition to any other remedy to which such party is entitled at law, in equity, in contract, in tort or otherwise. The parties hereto acknowledge and agree that the Company shall be entitled to specifically enforce the Subscriber's obligations to fund the Purchase Price and the provisions of this Subscription Agreement, in each case, on the terms and subject to the conditions set forth herein.
- q. This Subscription Agreement and all disputes, legal actions, suits and proceedings arising out of or relating to this Subscription Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, including its statutes of limitations, without giving effect to the principles of conflicts of laws that would otherwise require the application of the law of any other jurisdiction.

- r. **TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH PARTY HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OR RELATED TO THIS SUBSCRIPTION AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY OR ANY AFFILIATE OF ANY OTHER SUCH PARTY, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS OR OTHERWISE. THE PARTIES AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS SUBSCRIPTION AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS SUBSCRIPTION AGREEMENT.**
- s. The parties agree that all disputes, legal actions, suits and proceedings arising out of or relating to this Subscription Agreement must be brought exclusively in the Court of Chancery of the State of Delaware and any state appellate court therefrom within the State of Delaware (or, if the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware or, in the event each federal court within the State of Delaware declines to accept jurisdiction over a particular matter, any state court within the State of Delaware) (collectively, the “**Designated Courts**”). Each party hereby consents and submits to the exclusive jurisdiction of the Designated Courts. No legal action, suit or proceeding with respect to this Subscription Agreement may be brought in any other forum. Each party hereby irrevocably waives all claims of immunity from jurisdiction and any objection which such party may now or hereafter have to the laying of venue of any suit, action or proceeding in any Designated Court, including any right to object on the basis that any dispute, action, suit or proceeding brought in the Designated Courts has been brought in an improper or inconvenient forum or venue. Each of the parties also agrees that delivery of any process, summons, notice or document to a party hereof in compliance with Section 9(a) of this Subscription Agreement shall be effective service of process for any action, suit or proceeding in a Designated Court with respect to any matters to which the parties have submitted to jurisdiction as set forth above.

- t. This Subscription Agreement may only be enforced against, and any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Subscription Agreement, or the negotiation, execution or performance of this Subscription Agreement, may only be brought against the Company, in the case of claim or cause of action brought to the Subscriber, and the Subscriber, in the case of a claim cause of action brought by the Company and then only with respect to the specific obligations set forth herein with respect to such person. No past, present or future director, officer, employee, incorporator, manager, member, partner, stockholder, affiliate, agent, attorney or other representative of any party hereto or of any affiliate of any party hereto, or any of their successors or permitted assigns, shall have any liability for any obligations or liabilities of any party hereto under this Subscription Agreement or for any claim, action, suit or other legal proceeding based on, in respect of or by reason of the transactions contemplated hereby.
- u. Each party hereto agrees that the Subscriber's identity and the Subscription, as well as nature of the Subscriber's obligations hereunder, may be disclosed in public announcements and disclosures if required by the SEC, including in any registration statements, proxy statements, consent solicitation statements, SEC Statements, and other SEC filings to be filed by the Company in connection with the Subscription and/or Transactions; provided that such disclosure is limited to the extent required to comply with law, rules or regulations, in response to a comment or request from the staff of the SEC or another regulatory agency or under Nasdaq regulations; provided further that, unless prohibited by law, rule, or regulation, the Company shall provide Subscriber with prior written notice (including by email) of such disclosure and shall reasonably consult with Subscriber regarding such disclosure. In all other cases, the Company acknowledges and agrees that the Company will not, and will cause its representatives, not to publicly make reference to the Subscriber in connection with the Transactions or this Subscription Agreement, including in a press release or marketing materials of the Company or for any similar or related purpose without the prior written consent of the Subscriber.
- v. The obligations of Subscriber under this Subscription Agreement are several and not joint with the obligations of any other investor, and Subscriber shall not be responsible in any way for the performance of the obligations of any other investor. The decision of Subscriber to purchase Subscribed Shares pursuant to this Subscription Agreement has been made by Subscriber independently of any other investor and independently of any information, materials, statements or opinions as to the business, affairs, operations, assets, properties, liabilities, results of operations, condition (financial or otherwise) or prospects of the Company or any of its subsidiaries which may have been made or given by any other investor or by any agent or employee of any other investor, and neither Subscriber nor any of its agents or employees shall have any liability to any other investor relating to or arising from any such information, materials, statements or opinions. Nothing contained herein, and no action taken by Subscriber or any other investor pursuant hereto or thereto, shall be deemed to constitute the Subscriber and any other investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Subscriber and any other investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Subscription Agreement. Subscriber acknowledges that no other investor has acted as agent for the Subscriber in connection with making its investment hereunder and no other investor will be acting as agent of the Subscriber in connection with monitoring its investment in the Subscribed Shares or enforcing its rights under this Subscription Agreement. Subscriber shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Subscription Agreement, and it shall not be necessary for any other investor to be joined as an additional party in any proceeding for such purpose.

[Signature pages follow.]

IN WITNESS WHEREOF, each of the Company and Subscriber has executed or caused this Subscription Agreement to be executed by its duly authorized representative as of the date first set forth above.

CHARDAN NEXTECH ACQUISITION 2 CORP.

By: /s/ Jonas Grossman

Name: Jonas Grossman

Title: Chief Executive Officer

Address for Notices:

Chardan NexTech Acquisition 2 Corp.

17 State Street, 21st Floor

New York, NY 10004

Attention: Jonas Grossman

Email: jgrossman@cnaq.com

with copies to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP

One Manhattan West

New York, New York 10001

Attention: Jeffrey A. Brill

Peter D. Serating

Michelle Gasaway

Email: jeffrey.brill@skadden.com

peter.serating@skadden.com

michelle.gasaway@skadden.com

SUBSCRIBER:

CHARDAN NEXTECH INVESTMENTS 2 LLC

By: /s/ Jonas Grossman

Name: Jonas Grossman

Title: Manager

Address for Notices:

Name in which shares are to be registered:

Number of Subscribed Shares subscribed for:

500,000 minus the Open Market Share Credit (if any)

Price Per Subscribed Share: \$10.00

Aggregate Purchase Price:

\$5,000,000 minus the Open Market Purchase Credit (if any)

You must pay the Purchase Price by wire transfer of United States dollars in immediately available funds to the account of the Company specified by the Company in the Closing Notice.

ANNEX A

ELIGIBILITY REPRESENTATIONS OF SUBSCRIBER

This Annex A should be completed and signed by Subscriber
and constitutes a part of the Subscription Agreement.

A. QUALIFIED INSTITUTIONAL BUYER STATUS (Please check the applicable box)

☐ Subscriber is a “qualified institutional buyer” (as defined in Rule 144A under the Securities Act (a “QIB”)).

OR

B. INSTITUTIONAL ACCREDITED INVESTOR STATUS

☐ Subscriber is an institutional “accredited investor” (within the meaning of Rule 501(a) under the Securities Act) or an entity in which all of the equity holders are accredited investors within the meaning of Rule 501(a) under the Securities Act, and has marked and initialed the appropriate box on the following page indicating the provision under which it qualifies as an “accredited investor.”

C. AFFILIATE STATUS

(Please check the applicable box)

SUBSCRIBER:

☐ is:

☐ is not:

an “affiliate” (as defined in Rule 144 under the Securities Act) of the Company or acting on behalf of an affiliate of the Company.

Rule 501(a), in relevant part, states that an “accredited investor” shall mean any person who comes within any of the below listed categories, or who the issuer reasonably believes comes within any of the below listed categories, at the time of the sale of the securities to that person. Subscriber has indicated, by marking and initialing the appropriate box below, the provision(s) below which apply to Subscriber and under which Subscriber accordingly qualifies as an institutional “accredited investor.”

- ☐ Any bank, registered broker or dealer, insurance company, registered investment company, business development company, or small business investment company;
- ☐ Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000;
- ☐ Any employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of \$5,000,000;
- ☐ Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, similar business trust or partnership not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
- ☐ Any trust with assets in excess of \$5,000,000, not formed to acquire the securities offered, whose purchase is directed by a sophisticated person; or
- ☐ Any entity in which all of the equity owners are accredited investors meeting one or more of the above tests or one of the following tests.

FORM OF AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

THIS AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”), dated as of [●], 2022 (the “**Effective Date**”), is made and entered into by and among Dragonfly Energy Holdings Corp., a Delaware corporation (f/k/a Chardan NexTech Acquisition 2 Corp.) (the “**Company**”), and each of the stockholders set forth on the signature pages hereto (each, a “**Stockholder**” collectively, the “**Stockholders**”).

WHEREAS, on the Effective Date, certain Stockholders identified as the “Initial Stockholders” on Exhibit A hereto (the “**Initial Stockholders**”) collectively hold 3,162,500 shares of Common Stock (the “**Initial Shares**”) and warrants exercisable for 4,627,858 shares of Common Stock (the “**Initial Warrants**”), which were issued to the Initial Stockholders prior to the consummation of the Company’s initial public offering;

WHEREAS, the Company and the Initial Stockholders are party to that certain Registration Rights Agreement, dated August 10, 2021 (the “**Original RRA**”);

WHEREAS, on the Effective Date, certain of the Stockholders identified as the “Dragonfly Stockholders” on Exhibit A hereto (the “**Dragonfly Stockholders**”) have acquired an aggregate of [●] shares of Common Stock (together with any shares of Common Stock that may be issued to the Dragonfly Stockholders as Earnout Shares (as defined in the Merger Agreement) in connection with the consummation of the transactions contemplated by that certain Agreement and Plan of Merger (the “**Merger Agreement**”), dated as of May 15, 2022, by and among the Company, Bronco Merger Sub, Inc., a Nevada corporation and a direct wholly owned subsidiary of the Company (“**Merger Sub**”), and Dragonfly Energy Corp., a Nevada corporation (the “**Acquired Company**”), pursuant to which Merger Sub merged with and into the Acquired Company (the “**Merger**”), with the Acquired Company surviving the Merger as a wholly owned subsidiary of the Company;

WHEREAS, on the date hereof, Sponsor (as defined below) purchased an aggregate of 500,000 shares of Common Stock less the Open Market Share Credit (as defined in the Subscription Agreement) (the “**PIPE Shares**”) in a transaction exempt from registration under the Securities Act pursuant to the Subscription Agreement dated as of May 15, 2022, entered into by and between the Company and Sponsor (the “**Subscription Agreement**”); and

WHEREAS, in connection with the Closing, the Company and the Initial Stockholders desire to amend and restate the Original RRA in its entirety as set forth herein, and the Stockholders and the Company desire to enter into this Agreement to provide the Stockholders with certain rights relating to the registration of such securities from time to time after the Effective Date.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. CERTAIN DEFINITIONS. As used in this Agreement, the following capitalized terms used herein shall have the following meanings:

“**1933 Act**” means the Securities Act of 1933, as amended.

“**1934 Act**” means the Securities and Exchange Act of 1934, as amended.

“**Acquired Company**” has the meaning set forth in the Recitals.

“**Agreement**” has the meaning set forth in the Preamble.

“**Allowed Delay**” has the meaning set forth in Section 2(c)(iii).

“**Availability Date**” has the meaning set forth in Section 3(n).

“**Block Trade**” means an offering and/or sale of Registrable Securities by any Stockholder on a block trade or underwritten basis (whether firm commitment or otherwise) not involving a “roadshow,” including, without limitation, a same day trade, overnight trade or similar transaction.

“**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in the City of New York are authorized or required by law to remain closed.

“**Closing**” shall have the meaning given in the Merger Agreement.

“**Common Stock**” means the Company’s common stock, par value \$0.0001 per share.

“**Company**” has the meaning set forth in the Preamble.

“**Cut Back Shares**” has the meaning set forth in Section 2(d).

“**Demand**” has the meaning set forth in Section 2(e)(i).

“**Demanding Stockholders**” has the meaning set forth in Section 2(e)(i).

“**Dragonfly Stockholders**” has the meaning set forth in the Recitals.

“**Earnout Shares**” has the meaning set forth in the Merger Agreement.

“**Effective Date**” has the meaning set forth in the Preamble.

“**Effectiveness Period**” has the meaning set forth in Section 3(a).

“**Filing Deadline**” has the meaning set forth in Section 2(a)(i).

“**Indemnified Party**” has the meaning set forth in Section 5(c).

“**Indemnifying Party**” has the meaning set forth in Section 5(c).

“**Initial Registration Statement**” has the meaning set forth in Section 2(a)(i).

“**Initial Shares**” has the meaning set forth in the Recitals.

“**Initial Stockholders**” has the meaning set forth in the Recitals.

“**Initial Warrants**” has the meaning set forth in the Recitals.

“**Lock-up**” shall have the meaning given in Section 6.

“**Lock-up Parties**” shall mean the Dragonfly Stockholders and their Permitted Transferees.

“**Lock-up Period**” shall mean the period beginning on the Closing Date and ending on the date that is six (6) months after the Closing Date.

“**Lock-up Shares**” shall mean (a) the shares of Common Stock and any other equity securities convertible into or exercisable or exchangeable for shares of Common Stock held by the Dragonfly Stockholders immediately following the Closing (other than shares of Common Stock acquired in the public market) and (b) any Earnout Shares issued within six (6) months of the Closing Date and the shares of Common Stock issued with respect to or in exchange for such Earnout Shares (if applicable).

“**Losses**” has the meaning set forth in Section 5(a).

“**Maximum Number of Shares**” has the meaning set forth in Section 2(e)(ii).

“**Merger**” has the meaning set forth in the Recitals.

“**Merger Agreement**” has the meaning set forth in the Recitals.

“**Merger Sub**” has the meaning set forth in the Recitals.

“**Minimum Takedown Threshold**” has the meaning set forth in Section 2(e)(i).

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

“**Original RRA**” has the meaning set forth in the Recitals.

“**Other Coordinated Offering**” has the meaning set forth in Section 2(f)(i).

“Permitted Transferees” means (a) with respect to the Dragonfly Stockholders and their respective Permitted Transferees, (i) prior to the expiration of the Lock-up Period, any person or entity to whom such Stockholder is permitted to transfer such Registrable Securities prior to the expiration of the Lock-up Period pursuant to Section 6(b) and (ii) after the expiration of the Lock-up Period, any person or entity to whom such Stockholder is permitted to transfer such Registrable Securities, subject to and in accordance with any applicable agreement between such Stockholder and/or their respective Permitted Transferees and the Company and any transferee thereafter; and (b) with respect to all other Stockholders and their respective Permitted Transferees, any person or entity to whom a Stockholder is permitted to transfer its Registrable Securities, including prior to the expiration of any lock-up period applicable to such Registrable Securities, subject to and in accordance with any applicable agreement between such Stockholder and/or their respective Permitted Transferees and the Company and any transferee thereafter.

“Piggy-Back Registration” has the meaning set forth in Section 2(f)(i).

“PIPE Shares” has the meaning set forth in the Recitals.

“Prospectus” means (i) the prospectus included in any Registration Statement, 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 such Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference in such prospectus, and (ii) when available to be used, any “free writing prospectus” as defined in Rule 405 under the 1933 Act.

“Register,” “registered” and “registration” refer to a registration made by preparing and filing a Registration Statement or similar document in compliance with the 1933 Act (as defined below), and the declaration or ordering of effectiveness of such Registration Statement or document.

“Registrable Securities” means (a) any outstanding shares of Common Stock and any other equity security (including the Initial Warrants and any other warrants to purchase shares of Common Stock and shares of Common Stock issued or issuable upon the exercise of any other equity security) of the Company held by a Stockholder immediately following the Closing (including any securities distributable pursuant to the Merger Agreement and any PIPE Shares); (b) any outstanding shares of Common Stock or any other equity security (including warrants to purchase shares of Common Stock and shares of Common Stock issued or issuable upon the exercise of any other equity security) of the Company acquired by a Stockholder following the date hereof to the extent that such securities are “restricted securities” (as defined in Rule 144) or are otherwise held by an “affiliate” (as defined in Rule 144) of the Company; (c) any shares of Common Stock and any other equity security received as Earnout Shares; and (d) any other equity security of the Company or any of its subsidiaries issued or issuable with respect to any securities referenced in clause (a), (b) or (c) above by way of a stock dividend or stock split or in connection with a recapitalization, merger, consolidation, spin-off, reorganization or similar transaction; provided that, such securities shall cease to be Registrable Securities upon the earliest to occur of: (i) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been sold, transferred, disposed of or exchanged in accordance with such Registration Statement by the applicable Stockholder; (ii) such securities shall have been otherwise transferred, new certificates or book entry positions for such securities not bearing a legend restricting further transfer shall have been delivered by the Company and subsequent public distribution of such securities shall not require registration under the Securities Act; (iii) such securities shall have ceased to be outstanding; (iv) such securities have been sold to, or through, a broker, dealer or underwriter in a public distribution or other public securities transaction in compliance with Rule 144 following the Closing Date; or (v) with respect to a Stockholder, when all such securities held by such Stockholder could be sold without restriction on volume or manner of sale in any three-month period without registration under Rule 144 promulgated under the Securities Act (or any successor rule promulgated thereafter by the SEC).

“Registration Statement” means any registration statement filed by the Company under the 1933 Act and the rules and regulations promulgated thereunder that covers the resale of any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus included in such registration statement, amendments and supplements to such Registration Statement, including post-effective amendments, and all exhibits to and all material incorporated by reference in such Registration Statement.

“Requesting Stockholder” means Stockholders requesting piggy back rights pursuant to this Agreement with respect to an Underwritten Offering or Underwritten Shelf Takedown.

“Required Stockholders” means the Stockholders holding a majority of the Registrable Securities outstanding from time to time.

“Restriction Termination Date” has the meaning set forth in Section 2(d).

“Rule 144” means Rule 144 promulgated by the SEC pursuant to the 1933 Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such rule.

“Rule 415” has the meaning set forth in Section 2(a)(i).

“SEC” means the U.S. Securities and Exchange Commission.

“SEC Restrictions” has the meaning set forth in Section 2(d).

“Selling Stockholder” means any Stockholder electing to sell any of its Registrable Securities in a Registration.

“Selling Stockholder Questionnaire” means such form of questionnaire as may reasonably be adopted by the Company from time to time.

“Sponsor” means Chardan NexTech Investments 2 LLC prior to its dissolution and, after the dissolution of Chardan NexTech Investments 2 LLC, the members of Chardan NexTech Investments 2 LLC.

“**Sponsor Managers**” shall mean (i) prior to the dissolution of the Sponsor, the managers of the Sponsor and (ii) after the dissolution of the Sponsor, the managers of the Sponsor immediately prior to such dissolution.

“**Sponsor Member**” shall mean a member of Sponsor who becomes party to this Agreement as a Permitted Transferee of Sponsor.

“**Stockholder**” has the meaning set forth in the Preamble.

“**Stockholder Indemnified Party**” has the meaning set forth in Section 5(a).

“**Subscription Agreement**” has the meaning set forth in the Recitals.

“**Subsequent Registration Statement**” means a new registration statement for an offering to be made on a delayed or continuous basis pursuant to Rule 415.

“**Trading Day**” means a day on which the Common Stock is listed or quoted and traded on the Nasdaq Capital Market.

“**Underwriter**” means a securities dealer who purchases any Registrable Securities as principal in an Underwritten Offering and not as part of such dealer’s market-making activities.

“**Underwritten Offering**” has the meaning set forth in Section 2(e)(i).

“**Underwritten Shelf Takedown**” has the meaning set forth in Section 2(e)(i).

“**Withdrawal Notice**” has the meaning set forth in Section 2(e)(iii).

2. REGISTRATION RIGHTS.

(a) Registration Statements.

(i) As soon as practicable following the Effective Date but no later than thirty (30) calendar days after the Effective Date (the “**Filing Deadline**”), the Company shall submit to or file with the SEC a Registration Statement registering the resale of all of the Registrable Securities (determined as of two (2) Business Days prior to such submission or filing) for an offering to be made on a delayed or continuous basis pursuant to Rule 415 promulgated under the 1933 Act (“**Rule 415**”) or, if Rule 415 is not available for offers and sales of the Registrable Securities, by such other form of registration statement as is then available to effect a registration for resale of such Registrable Securities (the “**Initial Registration Statement**”). The Initial Registration Statement shall be on Form S-1; provided, however, that no Stockholder shall be named as an Underwriter in such Registration Statement without the Stockholder’s prior written consent. The Company shall use commercially reasonable efforts to convert or replace the Initial Registration Statement with a Registration Statement on Form S-3 promptly following confirmation that the Company has become eligible to use Form S-3 to register the Registrable Securities.

(ii) Such Registration Statement also shall cover, to the extent allowable under the 1933 Act and the rules promulgated thereunder (including Rule 416), such indeterminate number of additional shares of Common Stock resulting from stock splits, stock combinations, stock dividends or similar transactions with respect to the Registrable Securities. Such Registration Statement (and each amendment or supplement thereto, and each request for acceleration of effectiveness thereof) shall be provided in accordance with Section 3(c) to the Stockholders prior to its filing or other submission.

(iii) If the Initial Registration Statement ceases to be effective under the 1933 Act for any reason at any time while Registrable Securities are still outstanding, the Company shall use its commercially reasonable efforts to as promptly as is reasonably practicable to cause such Initial Registration Statement to again become effective under the 1933 Act or file a Subsequent Registration Statement registering the resale of all Registrable Securities (determined as of two (2) business days prior to such filing) pursuant to any method or combination of methods legally available to the Company. Any Subsequent Registration Statement shall be an automatic shelf registration statement (as defined in Rule 405 promulgated under the 1933 Act) if the Company is a well-known seasoned issuer (as defined in Rule 405 promulgated under the 1933 Act) at the most recent applicable eligibility determination date, and shall be on Form S-3 to the extent that the Company is eligible to use such form.

(b) Expenses. Except as otherwise set forth herein, the Company will pay all expenses associated with each Registration Statement, including filing and printing fees, the fees and expenses of the Company's counsel and accounting fees and expenses, costs associated with clearing the Registrable Securities for sale under applicable state securities laws and listing fees, but excluding discounts, commissions, fees of Underwriters, selling brokers, dealer managers or similar securities industry professionals with respect to the Registrable Securities being sold.

(c) Effectiveness.

(i) The Company shall use commercially reasonable efforts to have each Registration Statement declared effective as soon as practicable after the filing thereof, but no later than the earlier of (i) the ninetieth (90th) calendar day following the filing date thereof if the SEC notifies the Company that it will "review" the Registration Statement and (ii) the tenth (10th) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that the Registration Statement will not be "reviewed" or will not be subject to further review. The Company shall notify the Stockholders as promptly as practicable after the Registration Statement is declared effective and shall simultaneously or prior thereto file with the SEC pursuant to Rule 424(b) promulgated under the 1933 Act, and provide the Stockholders with copies of, any related Prospectus to be used in connection with the sale or other disposition of the securities covered thereby.

(ii) The Company shall maintain the Initial Registration Statement and any Subsequent Registration Statement in accordance with the terms hereof, and shall prepare and file with the SEC such amendments, including post-effective amendments, and supplements as may be necessary to keep the Initial Registration Statement and any Subsequent Registration Statement continuously effective, available for use to permit the Stockholders named therein to sell their Registrable Securities included therein and in compliance with the provisions of the 1933 Act until such time as there are no longer any Registrable Securities.

(iii) In the event that any Stockholder holds Registrable Securities that are not registered for resale on a delayed or continuous basis, the Company, upon written request of such Stockholder, shall promptly use its commercially reasonable efforts to cause the resale of such Registrable Securities to be covered by either, at the Company's option, any then available Registration Statement (including by means of a post-effective amendment) or by filing a Subsequent Registration Statement and causing the same to become effective as soon as reasonably practicable after such filing and such Subsequent Registration Statement shall be subject to the terms hereof.

(iv) For not more than ninety (90) consecutive days or for a total of not more than one-hundred twenty (120) days, in each case, in any twelve (12) month period, the Company may suspend the filing, initial effectiveness or continued use of any Registration Statement in respect of any Registration contemplated by this Section 2 in the event that the Company determines in good faith that such suspension is necessary to (A) delay the disclosure of material non-public information concerning the Company, the disclosure of which at the time is not, in the good faith opinion of the Company, in the best interests of the Company; (B) amend or supplement the affected Registration Statement or the related Prospectus so that such Registration Statement or Prospectus shall not include any Misstatement; or (C) require the inclusion in such Registration Statement of financial statements that are unavailable to the Company for reasons beyond the Company's control (each, an "**Allowed Delay**"); provided that the Company shall promptly (1) notify each Stockholder in writing of the commencement of an Allowed Delay, but shall not (without the prior written consent of a Stockholder) disclose to such Stockholder any material non-public information giving rise to an Allowed Delay, (2) advise the Stockholders in writing to cease all sales under such Registration Statement until the end of the Allowed Delay (but not, for the avoidance of doubt, any sale pursuant to Rule 144 or other applicable exemption under the 1933 Act) and (3) use commercially reasonable efforts to terminate an Allowed Delay as promptly as reasonably practicable.

(d) Rule 415; Cutback. If at any time the SEC takes the position that the offering of some or all of the Registrable Securities in a Registration Statement is not eligible to be made on a delayed or continuous basis under the provisions of Rule 415 or requires any Stockholder to be named as an Underwriter, the Company shall use commercially reasonable efforts to persuade the SEC that the offering contemplated by such Registration Statement is a valid secondary offering and not an offering “by or on behalf of the issuer” as defined in Rule 415 and that none of the Stockholders is an Underwriter. The Stockholders shall have the right to select one legal counsel to review any registration or matters pursuant to this Section 2(d). In the event that, despite the Company’s commercially reasonable efforts and compliance with the terms of this Section 2(d), the SEC refuses to alter its position, the Company shall (i) remove from such Registration Statement such portion of the Registrable Securities (the “**Cut Back Shares**”) and/or (ii) agree to such restrictions and limitations on the registration and resale of the Registrable Securities as the SEC may require to assure the Company’s compliance with the requirements of Rule 415 (collectively, the “**SEC Restrictions**”); provided, however, that the Company shall not agree to name any Stockholder as an Underwriter in such Registration Statement without the prior written consent of such Stockholder. Any cut-back imposed on the Stockholders pursuant to this Section 2(d) shall be allocated among the Stockholders on a *pro rata* basis and shall be applied first to any of the Registrable Securities of such Stockholder as such Stockholder shall designate, unless the SEC Restrictions otherwise require or provide or the Required Stockholders and Sponsor otherwise agree. From and after the first date on which the Company is able to effect the registration of such Cut Back Shares (such date, the “**Restriction Termination Date**”), all of the provisions of this Section 2 (including the Company’s obligations with respect to the submission or filing of a Registration Statement and its obligations to use commercially reasonable efforts to have such Registration Statement declared effective within the time periods set forth herein) shall again be applicable to such Cut Back Shares; provided, however, that (i) the Filing Deadline for such Registration Statement including such Cut Back Shares shall be ten (10) Business Days after the Restriction Termination Date, and (ii) the date by which the Company is required to obtain effectiveness with respect to such Cut Back Shares under Section 2(c) shall be the earlier of (i) the ninetieth (90th) calendar day following the filing date thereof if the SEC notifies the Company that it will “review” the Registration Statement and (ii) the tenth (10th) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that the Registration Statement will not be “reviewed” or will not be subject to further review.

(e) Underwritten Offerings.

(i) Requests for Underwritten Shelf Takedowns. Subject to the provisions of: (A) Section 6(a), with respect to any Lock-up Party and (B) any existing lock-up arrangement then in effect, with respect to any other Stockholder, at any time and from time to time when an effective Registration Statement is on file with the SEC, a Stockholder may make a written demand (a “**Demand**”, and such Stockholder, a “**Demanding Stockholder**”) to sell all or any portion of its Registrable Securities in a firm commitment underwritten offering (an “**Underwritten Offering**”) that is registered pursuant to the applicable Registration Statement (each, an “**Underwritten Shelf Takedown**”), to be effected by the Company as soon as reasonably practicable; provided that the Company shall only be obligated to effect an Underwritten Shelf Takedown if such Underwritten Shelf Takedown shall include Registrable Securities proposed to be sold by the Demanding Stockholders, either individually or together with other Demanding Stockholders, with a total offering price reasonably expected to exceed, in the aggregate, \$25 million (the “**Minimum Takedown Threshold**”). All requests for Underwritten Shelf Takedowns shall be made by giving written notice to the Company, which shall specify the approximate number of Registrable Securities proposed to be sold in the Underwritten Shelf Takedown and the expected price range of such Underwritten Shelf Takedown. A majority-in-interest of the Stockholders initiating the Demand and the Company shall have the right to jointly select the Underwriters for such Underwritten Shelf Takedown (which shall consist of one or more reputable nationally recognized investment banks). The Sponsor and the Dragonfly Stockholders may each demand not more than one (1) Underwritten Shelf Take-Down in any twelve (12) month period, for an aggregate of not more than two (2) Underwritten Shelf Take-Downs in any twelve (12) month period. Notwithstanding anything to the contrary in this Agreement, the Company may effect any Underwritten Shelf Takedown pursuant to any then effective Registration Statement, including a Form S-1 or a Form S-3, that is then available for such Underwritten Shelf Takedown.

(ii) Reduction of Underwritten Offering. If the managing Underwriter or Underwriters for a Demand, in good faith, advises the Company, the Demanding Stockholders and the Requesting Stockholders (if any) that the dollar amount or number of shares of Registrable Securities which the Demanding Stockholders and Requesting Stockholders (if any) desire to sell, taken together with all other shares of Common Stock or other equity securities which the Company desires to sell and the shares of Common Stock or other equity securities, if any, as to which Underwritten Offering has been requested pursuant to separate written contractual piggy-back registration rights held by any other stockholders of the Company who desire to sell, exceeds the maximum dollar amount or maximum number of equity securities that can be sold in such Underwritten Offering without adversely affecting the proposed offering price, the timing, the distribution method, or the probability of success of such offering (such maximum dollar amount or maximum number of securities, as applicable, the “**Maximum Number of Shares**”), then the Company shall include in such Underwritten Offering the following securities in the following order of priority: (i) the Registrable Securities as to which an Underwritten Shelf Takedown has been requested by the Demanding Stockholders on a *pro rata* basis that can be sold without exceeding the Maximum Number of Shares; (ii) to the extent that the Maximum Number of Shares has not been reached under the foregoing clause (i), the Registrable Securities as to which an Underwritten Shelf Takedown has been requested by the Requesting Stockholders (if any) on a *pro rata* basis that can be sold without exceeding the Maximum Number of Shares; (iii) any shares of Common Stock or other equity securities proposed to be sold by Company, which can be sold without exceeding the Maximum Number of Shares; and (iv) to the extent that the Maximum Number of Shares have not been reached under the foregoing clauses (i), (ii) and (iii), the shares of Common Stock or other securities for the account of other persons that the Company is obligated to Register pursuant to separate written contractual arrangements of persons or entities other than the Holders of Registrable Securities hereunder, which can be sold without exceeding the Maximum Number of Shares.

(iii) Withdrawal. Prior to the filing of the applicable “red herring” prospectus or prospectus supplement used for marketing such Underwritten Shelf Takedown, a majority-in-interest of the Demanding Stockholders initiating the Underwritten Shelf Takedown shall have the right to withdraw from such offering for any or no reason whatsoever upon written notification (a “**Withdrawal Notice**”) to the Company and the Underwriter or Underwriters (if any) of their intention to withdraw; provided that the Sponsor or the Dragonfly Stockholders may elect to have the Company continue an Underwritten Shelf Takedown if the Minimum Takedown Threshold would still be satisfied by the Registrable Securities proposed to be sold in the Underwritten Shelf Takedown by the Sponsor or the Dragonfly Stockholders, as applicable (including their Permitted Transferees). If withdrawn, a demand for an Underwritten Shelf Takedown shall constitute a demand for an Underwritten Shelf Takedown by the withdrawing Demanding Stockholder for purposes of Section 2(e)(i), unless such Demanding Stockholder reimburses the Company for all Registration Expenses with respect to such Underwritten Shelf Takedown (or, if there is more than one Demanding Stockholder, a pro rata portion of such Registration Expenses based on the respective number of Registrable Securities that each Demanding Stockholder has requested be included in such Underwritten Shelf Takedown); provided that, if the Sponsor or such Dragonfly Stockholders, as applicable, elects to continue an Underwritten Shelf Takedown pursuant to the proviso in the immediately preceding sentence, such Underwritten Shelf Takedown shall instead count as an Underwritten Shelf Takedown demanded by the Sponsor or such Dragonfly Stockholders, as applicable, for purposes of Section 2(e)(i). Following the receipt of any Withdrawal Notice, the Company shall promptly forward such Withdrawal Notice to any other Stockholders that had elected to participate in such Underwritten Shelf Takedown. Notwithstanding anything to the contrary in this Agreement, the Company shall be responsible for the Registration Expenses incurred in connection with an Underwritten Shelf Takedown prior to its withdrawal under this Section 2(e)(iii), other than if a Demanding Stockholder elects to pay the Registration Expenses with respect to an Underwritten Shelf Takedown pursuant to clause (ii) of the second sentence of this Section 2(e)(iii).

(f) Piggy-Back Registration.

(i) Piggy-Back Rights. If at any time, the Company proposes to conduct a registered offering of, or if the Company proposes to file a Registration Statement under the 1933 Act with respect to the Registration of, equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into, equity securities, by the Company for its own account or for stockholders of the Company for their account (including, without limitation, pursuant to Section 2(e)), other than a Registration Statement (or any registered offering with respect thereto) (i) filed in connection with any employee stock option or other benefit plan, (ii) for an exchange offer or offering of securities solely to the Company's existing stockholders, (iii) for an offering solely of debt that is convertible into equity securities of the Company, (iv) for a dividend reinvestment plan, (v) for a Block Trade, (vi) for an Other Coordinated Offering or (vii) that is the Equity Facility Form S-1 (as defined in the Merger Agreement), then the Company shall (x) give written notice of such proposed filing to the holders of Registrable Securities as soon as practicable but in no event less than ten (10) days before the anticipated filing date of such Registration Statement or, in the case of an Underwritten Shelf Takedown, the applicable "red herring" prospectus or prospectus supplement used for marketing such offering, which notice shall describe the amount and type of securities to be included in such offering, the intended method(s) of distribution, and the name of the proposed managing Underwriter or Underwriters, if any, of the offering, and (y) offer to the holders of Registrable Securities in such notice the opportunity to Register the sale of such number of shares of Registrable Securities as such holders may request in writing within five (5) days following receipt of such notice (a "**Piggy-Back Registration**"). Subject to Section 2(f)(ii), the Company shall, in good faith, cause such Registrable Securities to be included in such Piggy-Back Registration and, if applicable, shall use its commercially reasonable efforts to cause the managing Underwriter or Underwriters of such Piggy-Back Registration to permit the Registrable Securities requested by the holders pursuant to this Section 2(f)(i) to be included therein on the same terms and conditions as any similar securities included in such registered offering of the Company and to permit the sale or other disposition of such Registrable Securities in accordance with the intended method(s) of distribution thereof. All holders of Registrable Securities proposing to distribute their securities through a Piggy-Back Registration that involves an Underwriter or Underwriters shall enter into an underwriting agreement in customary form with the Underwriter or Underwriters selected for such Underwritten Offering.

(ii) Reduction of Piggy-Back Registration. If the managing Underwriter or Underwriters in an Underwritten Offering that is to be a Piggy-Back Registration advises the Company and the Holders of Registrable Securities participating in the Piggy-Back Registration that the dollar amount or number of shares of Common Stock or other equity securities which the Company desires to sell, taken together with shares of Common Stock or other equity securities, if any, as to which such Underwritten Offering has been demanded pursuant to separate written contractual arrangements with persons or entities other than the Holders of Registrable Securities hereunder, the Registrable Securities as to which such Underwritten Offering has been requested under this Section 2(f), and the shares of Common Stock or other equity securities, if any, as to which such Underwritten Offering has been requested pursuant to separate written contractual piggy-back registration rights of persons or entities other than the Holders of Registrable Securities hereunder, exceeds the Maximum Number of Shares, then the Company shall include in any such Registration or registered offering:

(1) If the Registration is undertaken for the Company's account: (A) the shares of Common Stock or other securities that the Company desires to sell for its own account that can be sold without exceeding the Maximum Number of Shares; (B) to the extent that the Maximum Number of Shares has not been reached under the foregoing clause (A), the shares of Common Stock or other securities, if any, comprised of Registrable Securities, as to which Registration has been requested pursuant to the applicable written contractual Piggy-Back Registration rights of the Stockholders pursuant to Section 2(f)(i), on a *pro rata* basis, that can be sold without exceeding the Maximum Number of Shares; and (C) to the extent that the Maximum Number of Shares has not been reached under the foregoing clauses (A) and (B), the shares of Common Stock or other securities for the account of other persons that the Company is obligated to Register pursuant to separate written contractual piggy-back registration rights of persons or entities other than the Holders of Registrable Securities hereunder, which can be sold without exceeding the Maximum Number of Shares;

(2) If the Registration or registered offering is a "demand" registration undertaken at the demand of persons or entities other than the Holders of Registrable Securities, (A) the shares of Common Stock or other securities for the account of the demanding persons that can be sold without exceeding the Maximum Number of Shares; (B) to the extent that the Maximum Number of Shares has not been reached under the foregoing clause (A), the shares of Common Stock or other securities, if any, comprised of Registrable Securities, as to which Registration has been requested pursuant to the applicable written contractual Piggy-Back Registration rights of Holders under Section 2(f)(i), on a *pro rata* basis, that can be sold without exceeding the Maximum Number of Shares; (C) to the extent that the Maximum Number of Shares has not been reached under the foregoing clauses (A) and (B), the shares of Common Stock or other securities that the Company desires to sell for its own account that can be sold without exceeding the Maximum Number of Shares; and (D) to the extent that the Maximum Number of Shares has not been reached under the foregoing clauses (A), (B) and (C), the shares of Common Stock or other securities for the account of other persons that the Company is obligated to Register pursuant to separate written contractual piggy-back registration rights of persons or entities other than the Holders of Registrable Securities hereunder, that can be sold without exceeding the Maximum Number of Shares; and

(3) If the Registration or registered offering and Underwritten Shelf Takedown is pursuant to a request by a Stockholder pursuant to Section 2(e)(i) hereof, then the Company shall include in any such Registration or registered offering securities in the priority set forth in Section 2(e)(ii).

(iii) **Unlimited Piggy-Back Registration Rights.** For purposes of clarity, any Registration effected pursuant to this Section 2(f) shall not be counted as a Registration pursuant to a Demand effected under Section 2(e) hereof.

(iv) **Piggyback Registration Withdrawal.** Any Holder of Registrable Securities (other than a Demanding Stockholder, whose right to withdraw from an Underwritten Shelf Takedown, and related obligations, shall be governed by Section 2(e)(iii)) shall have the right to withdraw from a Piggyback Registration for any or no reason whatsoever upon written notification to the Company and the Underwriter or Underwriters (if any) of his, her or its intention to withdraw from such Piggyback Registration prior to the effectiveness of the Registration Statement filed with the SEC with respect to such Piggyback Registration or, in the case of a Piggyback Registration pursuant to an Underwritten Shelf Takedown, the filing of the applicable “red herring” prospectus or prospectus supplement with respect to such Piggyback Registration used for marketing such transaction upon no less than three (3) days’ notice to the Company. The Company (whether on its own good faith determination or as the result of a request for withdrawal by persons or entities pursuant to separate written contractual obligations) may withdraw a Registration Statement filed with the SEC in connection with a Piggyback Registration (which, in no circumstance, shall include the Initial Registration Statement or any Subsequent Registration Statement) at any time prior to the effectiveness of such Registration Statement. Notwithstanding anything to the contrary in this Agreement (other than Section 2(e)(iii)), the Company shall be responsible for the Registration Expenses incurred in connection with the Piggyback Registration prior to its withdrawal under this Section 2(f)(iv).

(g) **Block Trades; Other Coordinated Offerings.**

(i) Subject to Section 2(c)(iv), at any time and from time to time when an effective Registration Statement is on file with the SEC, if a Stockholder wishes to engage in (a) a Block Trade or (b) an “at the market” or similar registered offering through a broker, sales agent or distribution agent, whether as agent or principal (an “**Other Coordinated Offering**”), in each case, (x) with a total offering price reasonably expected to exceed \$20 million in the aggregate or (y) with respect to all remaining Registrable Securities held by the Stockholder, then such Stockholder only needs to notify the Company of the Block Trade or Other Coordinated Offering at least two (2) business days prior to the day such offering is to commence and the Company shall use its commercially reasonable efforts to facilitate such Block Trade or Other Coordinated Offering; provided that the Stockholders representing a majority of the Registrable Securities wishing to engage in the Block Trade or Other Coordinated Offering shall use commercially reasonable efforts to work with the Company and any Underwriters, brokers, sales agents or placement agents prior to making such request in order to facilitate preparation of the registration statement, prospectus and other offering documentation related to the Block Trade or Other Coordinated Offering.

(ii) Prior to the filing of the applicable “red herring” prospectus or prospectus supplement used in connection with a Block Trade or Other Coordinated Offering, a majority-in-interest of the Stockholders initiating such Block Trade or Other Coordinated Offering shall have the right to submit a Withdrawal Notice to the Company, the Underwriter or Underwriters (if any) and any brokers, sales agents or placement agents (if any) of their intention to withdraw from such Block Trade or Other Coordinated Offering. Notwithstanding anything to the contrary in this Agreement, the Company shall be responsible for the Registration Expenses incurred in connection with a Block Trade or Other Coordinated Offering prior to its withdrawal under this Section 2(g)(ii).

(iii) Notwithstanding anything to the contrary in this Agreement, Section 2(f) shall not apply to a Block Trade or Other Coordinated Offering initiated by a Stockholder pursuant to this Agreement.

(iv) The Stockholder in a Block Trade or Other Coordinated Offering shall have the right to select the Underwriters and any brokers, sales agents or placement agents (if any) for such Block Trade or Other Coordinated Offering (in each case, which shall consist of one or more reputable nationally recognized investment banks), subject to the approval of the Company (which shall not be unreasonably withheld).

(v) For the avoidance of doubt, any Block Trade or Other Coordinated Offering effected pursuant to this Section 2(g)(v) shall not be counted as a demand for an Underwritten Shelf Takedown pursuant to Section 2(e)(i) hereof, provided that no more than two Block Trades may be demanded in any twelve-month period.

(h) Statutory Underwriter.

(i) In no event shall any Stockholder be identified as an underwriter in any Registration Statement; provided, that if the SEC requires that a Stockholder be identified as a statutory underwriter in a Registration Statement, the Stockholder will have the option, in its sole and absolute discretion, to either (i) withdraw from the Registration Statement, it being understood that such withdrawal shall not relieve the Company of its obligation to register for resale such Stockholder's Registrable Securities at a later date or (ii) be included as such in the Registration Statement. In the event that a Stockholder elects to include its Registrable Securities on a Registration Statement in accordance with the foregoing clause (ii), the Company shall provide such Stockholder with a draft of such Registration Statement (and any amendments or supplements thereto) as soon as reasonably practicable, and any disclosures contained therein relating to such Stockholder shall be subject to the approval of such Stockholder (which approval shall not be unreasonably withheld or delayed).

3. COMPANY OBLIGATIONS.

In connection with any Registration Statement, Underwritten Offering and/or Underwritten Shelf Takedown, the Company will use commercially reasonable efforts to effect the registration of the Registrable Securities in accordance with the terms hereof and the intended plan of distribution, and pursuant thereto the Company will, as expeditiously as possible:

(a) use commercially reasonable efforts to cause such Registration Statement to become effective and to remain continuously effective for a period that will terminate upon the date on which all Registrable Securities covered by such Registration Statement cease to be Registrable Securities (the "Effectiveness Period") and advise the Stockholders promptly in writing when the Effectiveness Period has expired;

(b) prepare and file with the SEC such amendments and post-effective amendments to such Registration Statement and the related Prospectus as may be necessary to keep such Registration Statement effective for the Effectiveness Period and to comply with the provisions of the 1933 Act and the 1934 Act with respect to the distribution of all of the Registrable Securities covered thereby;

(c) provide copies to and permit the Stockholders to review each Registration Statement and all amendments and supplements thereto not less than five (5) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any related Prospectus or any amendment or supplement thereto (except for Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K and any similar or successor reports) and provide the Stockholders a reasonable opportunity to comment thereon, and the Company shall consider such comments in good faith before filing any Registration Statement or amendment or supplement thereto;

(d) furnish to each Stockholder whose Registrable Securities are included in any Registration Statement (i) promptly after the same is prepared and filed with the SEC, if requested by the Stockholder, one (1) copy of any Registration Statement and any amendment thereto, each preliminary prospectus and Prospectus and each amendment or supplement thereto, and (ii) such number of copies of a Prospectus, including a preliminary prospectus, and all amendments and supplements thereto and such other documents as each Stockholder may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Stockholder that are covered by such Registration Statement; provided that the Company shall have no obligation to provide any document pursuant to this clause that is available on the SEC's EDGAR system;

(e) use commercially reasonable efforts to (i) prevent the issuance of any stop order or other suspension of effectiveness and (ii) if such order is issued, obtain the withdrawal of any such order as soon as practicable;

(f) prior to any public offering of Registrable Securities, use commercially reasonable efforts to register or qualify or cooperate with the Stockholders and their counsel in connection with the registration or qualification of such Registrable Securities for the offer and sale under the securities or blue sky laws of such jurisdictions requested by the Stockholders and do any and all other commercially reasonable acts or things necessary or advisable to enable the distribution in such jurisdictions of the Registrable Securities covered by the Registration Statement; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (i) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(f), (ii) subject itself to general taxation in any jurisdiction where it would not otherwise be so subject but for this Section 3(f), or (iii) file a general consent to service of process in any such jurisdiction;

(g) use commercially reasonable efforts to cause all Registrable Securities covered by a Registration Statement to be listed on each national securities exchange or other market on which similar securities issued by the Company are then listed;

(h) provide a transfer agent or warrant agent, as applicable, and registrar for all such Registrable Securities no later than the effective date of such Registration Statement;

(i) promptly notify the Stockholders, at any time prior to the end of the Effectiveness Period, upon discovery that, or upon the happening of any event as a result of which, the Prospectus included in the Registration Statement, as then in effect, includes a Misstatement, and promptly prepare, file with the SEC and furnish to such holder a supplement to or an amendment of such Prospectus as may be necessary so that such Prospectus shall not include such Misstatement;

(j) in the event of an Underwritten Offering, an Underwritten Shelf Takedown, a Block Trade, an Other Coordinated Offering, or sale by a broker, placement agent or sales agent pursuant to such Registration, in each of the following cases to the extent customary for a transaction of its type, permit a representative of the Stockholders, the Underwriters or other financial institutions facilitating such Underwritten Offering, Underwritten Shelf Takedown, Block Trade, Other Coordinated Offering or other sale pursuant to such Registration, if any, and any attorney, consultant or accountant retained by such Stockholders or Underwriter to participate, at each such person's or entity's own expense, in the preparation of the Registration Statement, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such representative, Underwriter, financial institution, attorney, consultant or accountant in connection with the Registration; provided, however, that such representatives, Underwriters or financial institutions agree to confidentiality arrangements in form and substance reasonably satisfactory to the Company, prior to the release or disclosure of any such information;

(k) obtain a "cold comfort" letter from the Company's independent registered public accountants in the event of an Underwritten Offering, an Underwritten Shelf Takedown, a Block Trade, an Other Coordinated Offering or sale by a broker, placement agent or sales agent pursuant to such Registration (subject to such broker, placement agent or sales agent providing such certification or representation reasonably requested by the Company's independent registered public accountants and the Company's counsel) in customary form and covering such matters of the type customarily covered by "cold comfort" letters for a transaction of its type as the managing Underwriter may reasonably request, and reasonably satisfactory to a majority-in-interest of the participating Stockholders;

(l) in the event of an Underwritten Offering, an Underwritten Shelf Takedown, a Block Trade, an Other Coordinated Offering or sale by a broker, placement agent or sales agent pursuant to such Registration, on the date the Registrable Securities are delivered for sale pursuant to such Registration, to the extent customary for a transaction of its type, obtain an opinion, dated such date, of counsel representing the Company for the purposes of such Registration, addressed to the participating Stockholders, the broker, placement agents or sales agent, if any, and the Underwriters, if any, covering such legal matters with respect to the Registration in respect of which such opinion is being given as the participating Stockholders, broker, placement agent, sales agent or Underwriter may reasonably request and as are customarily included in such opinions and negative assurance letters. In the event no legal opinion is delivered to any broker, placement agent, sales agent or Underwriter, the Company shall furnish to each participating Stockholder, at any time that such Stockholder elects to use a prospectus, an opinion of counsel to the Company to the effect that the Registration Statement containing such prospectus has been declared effective and that no stop order is in effect;

(m) in the event of any Underwritten Offering, an Underwritten Shelf Takedown, a Block Trade, an Other Coordinated Offering or sale by a broker, placement agent or sales agent pursuant to such Registration, enter into and perform its obligations under an underwriting or other purchase or sales agreement, in usual and customary form, with the managing Underwriter or the broker, placement agent or sales agent of such offering or sale;

(n) use commercially reasonable efforts to comply with all applicable rules and regulations of the SEC under the 1933 Act and the 1934 Act, including, without limitation, Rule 172 under the 1933 Act, file any final Prospectus, including any supplement or amendment thereof, with the SEC pursuant to Rule 424 under the 1933 Act, promptly inform the Stockholders in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Stockholders are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder; and make available to its security holders, as soon as reasonably practicable, but not later than the Availability Date (as defined below), an earnings statement covering a period of at least twelve (12) months, beginning after the effective date of each Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the 1933 Act, including Rule 158 promulgated thereunder (for the purpose of this Section 3(n), “**Availability Date**” means the 45th day following the end of the fourth fiscal quarter that includes the effective date of such Registration Statement, except that, if such fourth fiscal quarter is the last quarter of the Company’s fiscal year, “**Availability Date**” means the ninetieth (90th) day after the end of such fourth fiscal quarter);

(o) with respect to an Underwritten Offering or an Underwritten Shelf Takedown, use its commercially reasonable efforts to make available senior executives of the Company to participate in customary “road show” presentations that may be reasonably requested by the Underwriter in such Underwritten Offering or Underwritten Shelf Takedown, as applicable; and

(p) otherwise, in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested by the participating Stockholders, consistent with the terms of this Agreement, in connection with such Registration.

With a view to making available to the Stockholders the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit the Stockholders to sell shares of Common Stock to the public without registration, the Company covenants and agrees to: (i) make and keep public information available, as those terms are understood and defined in Rule 144, until the earlier of (A) six (6) months after such date as all of the Registrable Securities may be sold without restriction by the holders thereof pursuant to Rule 144 or any other rule of similar effect and (B) such date as all of the Registrable Securities shall have been resold pursuant to a Registration Statement or Rule 144; (ii) file with the SEC in a timely manner all reports and other documents required of the Company under the 1934 Act; (iii) prior to the filing of any Registration Statement or any amendment thereto (whether pre-effective or post-effective) and prior to the filing of any Prospectus, provide to each Stockholder copies of all pages thereof (if any) that reference such Stockholders, and (iv) furnish to each Stockholder upon request, as long as such Stockholder owns any Registrable Securities, a written statement by the Company that it has complied with the reporting requirements of the 1934 Act.

4. OBLIGATION OF THE INVESTORS.

(a) Each Stockholder agrees to furnish to the Company a completed Selling Stockholder Questionnaire within ten (10) Trading Days after the Effective Date. At least ten (10) Trading Days prior to the first anticipated filing date of a Registration Statement for any registration under this Agreement, the Company will notify each Stockholder of the information the Company reasonably requires from that Stockholder regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, other than the information contained in the Selling Stockholder Questionnaire, if any. Each Stockholder shall furnish such information to the Company in writing promptly upon receiving such notification and, in any event, at least three (3) Trading Days prior to the applicable anticipated filing date (unless such Stockholder has notified the Company in writing of its election to exclude all of its Registrable Securities from such Registration Statement) and shall execute such documents in connection with such registration as the Company may reasonably request. Each Stockholder further agrees that it shall not be entitled to be named as a selling securityholder in the Registration Statement or use the Prospectus for offers and resales of Registrable Securities at any time, unless such Stockholder has returned to the Company a completed and signed Selling Stockholder Questionnaire and a response to any reasonable requests for further information as described in the previous sentence. If a Stockholder returns a Selling Stockholder Questionnaire or a request for further information, in either case, after its respective deadline, the Company shall use its reasonable best efforts to take such actions as are required to name such Stockholder as a selling security holder in the Registration Statement or any pre-effective or post-effective amendment thereto and to include (to the extent not theretofore included) in the Registration Statement the Registrable Securities identified in such late Selling Stockholder Questionnaire or request for further information. Each Stockholder acknowledges and agrees that the information in the Selling Stockholder Questionnaire or request for further information as described in this Section 4(a) will be used by the Company in the preparation of the Registration Statement and hereby consents to the inclusion of such information in the Registration Statement.

(b) Each Stockholder, by its acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of a Registration Statement or in connection with any Underwritten Offering hereunder, unless such Stockholder has notified the Company in writing of its election to exclude all of its Registrable Securities from such Registration Statement or such Underwritten Offering.

(c) Each Stockholder agrees that, upon receipt of any notice from the Company of either (i) the commencement of an Allowed Delay pursuant to Section 2(c)(i) or (ii) the happening of an event pursuant to Section 3(i) hereof, such Stockholder will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement covering such Registrable Securities (but not, for the avoidance of doubt, pursuant to Rule 144 or other applicable exemption under the 1933 Act), until the Stockholder is advised by the Company that such dispositions may again be made pursuant to such Registration Statement.

(d) Each Stockholder covenants and agrees that it will comply with the prospectus delivery requirements of the 1933 Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to any Registration Statement.

5. INDEMNIFICATION.

(a) Indemnification by the Company. The Company agrees to indemnify and hold harmless each Stockholder, and each of its officers, employees, Affiliates, directors, partners, members, managers, equityholders, attorneys, advisors and agents, and each person or entity, if any, who controls (within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act) each Stockholder (each, a “**Stockholder Indemnified Party**”), to the fullest extent permitted by applicable law, from and against any expenses, losses, judgments, actions, claims, proceedings (whether commenced or threatened), damages, liabilities or costs (including, without limitation, reasonable attorneys’ fees) (collectively, “**Losses**”), as incurred, arising out of or based upon any Misstatement contained in any Registration Statement under which the sale of such Registrable Securities was registered under the 1933 Act, any preliminary Prospectus, final Prospectus or summary Prospectus contained in such Registration Statement, any amendment or supplement to such Registration Statement, preliminary Prospectus, final Prospectus or summary Prospectus, or any free writing prospectus relating to such Registration Statement, or any violation by the Company of the 1933 Act or any rule or regulation promulgated thereunder applicable to the Company or any state securities (or Blue Sky) law, rule or regulation and relating to action or inaction required of the Company in connection with any such Registration; and the Company shall promptly reimburse the Stockholder Indemnified Party for any reasonable, customary and documented out-of-pocket legal and any other expenses reasonably incurred, as incurred, by such Stockholder Indemnified Party in connection with investigating and defending any such Losses, except, with respect to any Stockholder of Registrable Securities, to the extent such Stockholder is liable to indemnify the Company for such Losses pursuant to Section 5(b); provided, however, that the indemnity agreement contained in this Section 5(a) shall not apply to amounts paid in settlement of any claim or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, and the Company will not be liable in any such case to the extent that any such losses, judgments, claims, damages, liabilities or out-of-pocket expenses arises out of or is based upon any Misstatement made in such Registration Statement in reliance upon and in conformity with information furnished to the Company, in writing, by a Stockholder Indemnified Party expressly for use therein.

(b) Indemnification by Stockholders. Each Selling Stockholder will, in the event that any Registration of any Registrable Securities held by such Stockholder is being effected under the 1933 Act pursuant to this Agreement and the Company has required all Selling Stockholders to provide such an undertaking on the same terms, indemnify and hold harmless the Company, each of its directors and officers and each Underwriter (if any), and each other Selling Stockholder and each other person, if any, who controls another Selling Stockholder or such underwriter within the meaning of the 1933 Act, against any Losses, insofar as such Losses arise out of or are based upon any Misstatement contained in any Registration Statement under which the sale of such Registrable Securities was Registered under the 1933 Act, any preliminary Prospectus, final Prospectus or summary Prospectus contained in the Registration Statement, or any amendment or supplement thereto, if the Misstatement was made (or not made, in the case of an omission) in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of such Selling Stockholder expressly for use therein, and shall reimburse the Company, its directors and officers, and each other Selling Stockholder for any reasonable, customary and documented out-of-pocket legal or other expenses incurred by any of them in connection with investigation or defending any such Loss. Each Selling Stockholder's indemnification obligations hereunder shall be several, and not joint and several, and shall be proportional to and limited to the amount of any net proceeds (after payment of any underwriting fees, discounts, commissions or taxes) actually received by such Selling Stockholder pursuant to such Registration Statement from which such Losses arise, except in the case of fraud or willful misconduct by such Selling Stockholder.

(c) Conduct of Indemnification Proceedings. Promptly after receipt by any person of any notice of any Loss in respect of which indemnity may be sought pursuant to Section 5(a) or 5(b), such person (the "**Indemnified Party**") shall, if a claim in respect thereof is to be made against any other person for indemnification hereunder, notify such other person (the "**Indemnifying Party**") in writing of the Loss; provided, however, that the failure by the Indemnified Party to promptly notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability which the Indemnifying Party may have to such Indemnified Party hereunder, except and solely to the extent the Indemnifying Party is actually and materially prejudiced by such failure. If the Indemnified Party is seeking indemnification with respect to any claim or action brought against the Indemnified Party, then the Indemnifying Party shall be entitled to participate in such claim or action, and, to the extent that it wishes, jointly with all other Indemnifying Parties, to assume control of the defense thereof with counsel reasonably satisfactory to the Indemnified Party. After notice from the Indemnifying Party to the Indemnified Party of its election to assume control of the defense of such claim or action, the Indemnifying Party shall not be liable to the Indemnified Party for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; provided, however, that in any action in which both the Indemnified Party and the Indemnifying Party are named as defendants, the Indemnified Party shall have the right to employ separate counsel (but no more than one such separate counsel, in addition to local counsel) to represent the Indemnified Party and its controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the Indemnified Party against the Indemnifying Party, with the reasonable and documented fees and expenses of such counsel to be paid by such Indemnifying Party if, based upon the opinion of counsel of such Indemnified Party, representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, consent to entry of judgment or effect any settlement of any claim or pending or threatened proceeding in respect of any Losses for which the Indemnified Party seeks indemnification hereunder if such settlement or judgment includes any non-monetary remedies binding on the Indemnified Party, requires an admission of fault or culpability on the part of the Indemnified Party or does not include an unconditional release from all liability of the Indemnified Party in respect of such Losses.

(d) Contribution. If the indemnification provided for in the foregoing Sections 5(a) and 5(b) is unavailable to any Indemnified Party in respect of any Loss referred to herein, then each such Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Loss in such proportion as is appropriate to reflect the relative fault of the Indemnified Parties and the Indemnifying Parties in connection with the actions or omissions which resulted in such Loss, as well as any other relevant equitable considerations. The relative fault of any Indemnified Party and any Indemnifying Party shall be determined by reference to, among other things, whether the Misstatement relates to information supplied by such Indemnified Party or such Indemnifying Party (in the case of a Stockholder, such Misstatement was made in reliance upon and in conformity with information furnished in writing to the Company by such Stockholder expressly for use therein) and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such Misstatement. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by *pro rata* allocation or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 5(d). The amount paid or payable by an Indemnified Party as a result of any Loss referred to in this paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 5(d), no Stockholder shall be required to contribute any amount in excess of the dollar amount of the net proceeds (after payment of any underwriting fees, discounts, commissions or taxes) actually received by such Stockholder from the sale of Registrable Securities which gave rise to such contribution obligation, less the aggregate amount of any damages or other amounts such Stockholder has otherwise been required to pay (pursuant to Section 5(b) otherwise) as a result of the Misstatement. No person or entity guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person or entity who was not guilty of such fraudulent misrepresentation.

6. LOCK-UP.

(a) Lock-Up. Subject to Section 6(b), each Lock-up Party agrees that it shall not Transfer any Lock-up Shares prior to the end of the Lock-up Period (the "**Lock-up**").

(b) Permitted Transferees. Notwithstanding the provisions set forth in Section 6(a), each Lock-up Party may Transfer the Lock-up Shares during the Lock-up Period (a) to (i) the Company's officers or directors, (ii) any affiliates or family members of the Company's officers or directors, (iii) any direct or indirect partners, members or equity holders of such Lock-up Party, or any related investment funds or vehicles controlled or managed by such persons or entities or their respective affiliates, or (iv) any other Lock-up Party or any direct or indirect partners, members or equity holders of such other Lock-up Party, any affiliates of such other Lock-up Party or any related investment funds or vehicles controlled or managed by such persons or entities or their respective affiliates; (b) in the case of an individual, by gift to a member of the individual's immediate family or to a trust, the beneficiary of which is a member of the individual's immediate family or an affiliate of such person or entity, or to a charitable organization; (c) in the case of an individual, by virtue of laws of descent and distribution upon death of the individual; (d) in the case of an individual, pursuant to a qualified domestic relations order; (e) to the partners, members or equity holders of such Lock-up Party by virtue of the Lock-up Party's organizational documents, as amended, upon dissolution of the Lock-up Party; (f) in connection with any bona fide mortgage, encumbrance or pledge to a financial institution in connection with any bona fide loan or debt transaction or enforcement thereunder; (g) to the Company; or (h) in connection with a liquidation, merger, stock exchange, reorganization, tender offer approved by the Company's board of directors or a duly authorized committee thereof or other similar transaction which results in all of the Company's stockholders having the right to exchange their shares of Common Stock for cash, securities or other property subsequent to the Closing Date. The parties acknowledge and agree that any Permitted Transferee of a Lock-up Party shall be subject to the transfer restrictions set forth in this ARTICLE 6 with respect to the Lock-Up Shares upon and after acquiring such Lock-Up Shares.

7. MISCELLANEOUS.

(a) Effective Date. This Agreement shall be effective as of the Effective Date.

(b) Amendments and Waivers. Compliance with any of the provisions, covenants and conditions set forth in this Agreement may be waived, or any of such provisions, covenants or conditions may be amended or modified only by a writing signed by the Company, the Required Stockholders and Sponsor. Notwithstanding the foregoing, this Agreement may not be amended and the observance of any term of this Agreement may not be waived with respect to any Stockholder without the written consent of such Stockholder unless such amendment or waiver applies to all Stockholders in the same fashion.

(c) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered upon receipt, when delivered personally or by a nationally recognized overnight delivery service or by e-mail, in each case properly addressed to the party to receive the same. The addresses for such communications shall be:

If to the Company:

Dragonfly Energy Corp.
1190 Trademark Drive #108
Reno, Nevada 89521

Attention: General Counsel
Email: legal@dragonflyenergy.com

If to any Stockholder, to it at the address set forth under such Stockholder's name on its signature page hereto, or, in the case of a Stockholder or any other party named above, at such other address or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (i) given by the recipient of such notice, consent, waiver or other communication; (ii) provided by affidavit of personal delivery by a delivery service selected by the Company; or (iii) provided by a nationally recognized overnight delivery service shall be rebuttable evidence of personal service, deposit with a nationally recognized overnight delivery service or electronic transmission.

(d) Assignments and Transfers by Stockholders.

(i) The provisions of this Agreement shall be binding upon and inure to the benefit of the Stockholders and their respective successors and assigns. A Stockholder may transfer or assign, in whole or from time to time in part, to such Stockholder's Permitted Transferees its rights hereunder in connection with the transfer of Registrable Securities by such Stockholder to such Permitted Transferee; provided that such Stockholder complies with all laws applicable thereto or the terms of any contract to which such Stockholder is a party, and provides written notice of assignment to the Company promptly after such assignment is effected, and such person agrees in writing to be bound by all of the provisions contained herein.

(ii) For the avoidance of doubt, the Sponsor shall be permitted to transfer any of its rights hereunder to one or more affiliates or any direct or indirect partners, members or equity holders of the Sponsor, including a transfer of its rights in connection with a distribution of any Registrable Securities held by Sponsor to the Sponsor Members (it being understood that no such transfer shall reduce or multiply any rights of the Sponsor or such transferees). Notwithstanding anything to the contrary herein, upon a transfer by the Sponsor pursuant to this Section 7(d) to the Sponsor Members, the rights that are personal to the Sponsor shall be exercised by the Sponsor Members only with the consent of the Sponsor Managers.

(e) Assignments and Transfers by the Company. This Agreement may not be assigned by the Company (whether by operation of law or otherwise) without the prior written consent of the Required Stockholders and Sponsor; provided, however, that in the event that the Company is a party to a merger, consolidation, share exchange or similar business combination transaction in which the Common Stock is converted into the equity securities of another Person, from and after the effective time of such transaction, such Person shall, by virtue of such transaction, be deemed to have assumed the obligations of the Company hereunder, the term "**Company**" shall be deemed to refer to such Person and the term "**Registrable Securities**" shall be deemed to include the securities received by the Stockholders in connection with such transaction unless such securities are otherwise freely tradable by the Stockholders after giving effect to such transaction.

(f) Other Registration Rights. Other than as provided in (i) the Warrant Agreement, dated as of August 10, 2021, between the Company and Continental Stock Transfer & Trust Company and (ii) the Equity Facility Definitive Documentation (as defined in the Merger Agreement), the Company represents and warrants that no person or entity, other than a Stockholder holding Registrable Securities, has any right to require the Company to register any securities of the Company for sale or to include such securities of the Company in any Registration Statement filed by the Company for the sale of securities for its own account or for the account of any other person or entity. The Company hereby agrees and covenants that it will not grant rights to register any Common Stock (or securities convertible into or exchangeable for Common Stock) pursuant to the Securities Act that are more favorable or senior to those granted to the Holders hereunder without (a) the prior written consent of the Required Stockholders and Sponsor (in each case, not to be unreasonably withheld); or (b) granting economically and legally equivalent rights to the Stockholders hereunder such that the Stockholders shall receive the benefit of such more favorable or senior terms and/or conditions. Further, the Company represents and warrants that this Agreement supersedes any other registration rights agreement or agreement with similar terms and conditions and in the event of a conflict between any such agreement or agreements and this Agreement, the terms of this Agreement shall prevail.

(g) Benefits of the Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement (including Section 5 hereof).

(h) Counterparts; Execution. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A PDF or other reproduction of this Agreement may be executed by one or more parties hereto, and an executed copy of this Agreement may be delivered by one or more parties hereto by email or other electronic transmission device pursuant to which the signature of or on behalf of such party can be seen, and such execution and delivery shall be considered legal, valid, binding and effective for all purposes. The parties hereto hereby agree that no party shall raise the execution of a PDF or other reproduction of this Agreement, or the fact that any signature or document was transmitted or communicated by e-mail or other electronic transmission device, as a defense to the formation of this Agreement.

(i) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(j) Severability. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(k) Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

(l) No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties thereto express their mutual intent, and no rules of strict construction will be applied against any party.

(m) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

(n) Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the courts of the State of New York for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

COMPANY:

DRAGONFLY ENERGY HOLDINGS CORP.

By: _____
Name:
Title:

[Signature Page to Registration Rights Agreement]

STOCKHOLDER:

Name of Stockholder

(Signature)

Name of Signing Party (Please Print)

Title of Signing Party (Please Print)

Tax ID #

Date Signed

[Signature Page to Registration Rights Agreement]

EXHIBIT A

Initial Stockholders

Stockholder Name	Initial Shares	Initial Warrants	PIPE Shares
Jonathan Biele	22,000	-	-
Perry Boyle	22,000	-	-
Roderick Hardamon	22,000	-	-
Jory Des Jardins	22,000	-	-
Hitesh Thakrar	22,000	-	-
Todd Thomson	22,000	-	-
Chardan NexTech Investments 2 LLC	3,030,500	-	[500,000]
Chardan NexTech 2 Warrant Holdings LLC	-	4,627,858	-
Total:	3,162,500	4,627,858	

Dragonfly Stockholders

Stockholder Name	Merger Shares	Earnout Shares (%)
Denis Phares	[●]	[●]%
Phares 2021 GRAT dated July 9, 2021		
Sean Nichols		
Nichols Living Trust 2015		
Nichols GRAT I dated June 14, 2021		
John Marchetti		
Nicole Harvey		
Dynavolt Technology (HK) Ltd		

May 15, 2022

Dragonfly Energy Corp.
1190 Trademark Dr. #108
Reno, Nevada 89521
Attention: Denis Phares

Chardan NexTech Acquisition 2 Corp.
17 State Street, Suite 2130
New York, NY 10004

Re: Commitment Letter

Ladies and Gentlemen:

You have advised EICF Agent LLC (“**EICF**”; references to EICF in this Commitment Letter shall include any affiliated funds of EICF which may provide the Facility) and CCM Investments 5 LLC (“**Chardan Commitment Party**” and collectively with EICF, the “**Initial Commitment Parties**”, “**we**” or “**us**”; references to Chardan Commitment Party in this Commitment Letter shall include any controlled affiliate(s) of Chardan Commitment Party which may provide the Facility) that Chardan NexTech Acquisition 2 Corp., a blank check company incorporated as a Delaware corporation and incorporated for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses (“**CNTQ**”), plans to engage in a business combination transaction and the other transactions more particularly described on Exhibit A attached hereto (collectively, the “**Transactions**”) with Dragonfly Energy Corp., a Nevada corporation, (“**Dragonfly**” and collectively, with its subsidiaries or controlled affiliates, the “**Borrower**” and collectively with CNTQ and its subsidiaries, the “**Credit Parties**” or “**you**”). You have requested that EICF agree to commit to provide a portion of the Facility and to serve as lead arranger and administrative agent for the Facility. You have requested that Chardan Commitment Party agree to commit to provide a portion of the Facility. References herein to the “Transaction” shall include the financings described herein and all other transactions related to the Transaction. Capitalized terms used but not defined in the body of this commitment letter have the meanings assigned to them in the exhibits attached hereto. References herein to this “Commitment Letter” mean this commitment letter together with each of the exhibits attached hereto.

Commitments.

In connection with the Transaction, the Initial Commitment Parties are pleased to commit to provide, on a several and not joint basis, to Borrower \$75,000,000 by way of a senior secured term loan facility (the “**Facility**”) on the terms set forth in the Summary of Terms and Conditions attached hereto as Exhibit B and subject solely to the satisfaction of the conditions set forth in Exhibit C hereto. In connection with the foregoing, the Initial Commitment Parties commit to provide the percentage of the Facility set forth opposite their name under the column titled “Commitment Percentage” in the table below.

Commitment Party	Commitment Percentage
EICF Agent LLC	40%
Chardan Commitment Party	60%

In the event that the Facility closes without Chardan Commitment Party having assigned its obligations as an Initial Commitment Party to one or more assignees, then, for purposes of all voting, consent and approval matters under this Commitment Letter or the Loan Documents, Chardan Commitment Party shall be disenfranchised and have no such rights, subject to exceptions to be agreed and set forth in the Loan Documents.

Titles.

It is agreed that EICF will act as the sole and exclusive administrative agent (“**Agent**”), and the lead arranger and book manager (“**Lead Arranger**”), and in each such capacity, perform the duties and exercise the authority customarily performed and exercised by it in such roles. You agree that no other agents, co-agents, underwriters or arrangers will be appointed, no other titles will be awarded and no compensation (other than that expressly contemplated by this Commitment Letter and the Fee Letter referred to below) will be paid in connection with the Facility unless you and the Initial Commitment Parties shall so agree. The Lead Arranger and the Initial Commitment Parties intend to syndicate the Facility to a group of financial institutions (together with EICF and Chardan Commitment Party, the “**Lenders**”) identified by us in consultation with you. EICF and Chardan Commitment Party intend to commence syndication efforts promptly and you hereby authorize the Lead Arranger and Initial Commitment Parties to commence syndication efforts immediately in consultation with you, and until ninety (90) days after the Closing Date, you hereby agree to use commercially reasonable efforts to actively assist us in completing a syndication satisfactory to us and you. Notwithstanding any other provision of this Commitment Letter to the contrary, (a) no Initial Commitment Party shall be relieved or novated from its obligations hereunder (including its obligation to fund the Facility on the Closing Date) in connection with any syndication, assignment or participation of the Facility, including its commitments in respect thereof, until after the Closing Date (except as set forth under the “Miscellaneous” heading below with respect to the Chardan Assignment), (b) no assignment or novation shall become effective with respect to all or any portion of any Initial Commitment Parties’ commitments in respect of the Facility until the initial funding of the Facility on the Closing Date (except as set forth under the “Miscellaneous” heading below with respect to the Chardan Assignment), (c) unless you and we agree in writing, the Initial Commitment Parties shall retain exclusive control over all rights and obligations with respect to their commitments in respect of the Facility, including all rights with respect to consents, modifications, supplements and amendments, until the Closing Date has occurred (except as set forth under the “Miscellaneous” heading below with respect to the Chardan Assignment), and (d) syndication of the Facility is not a condition to the availability of the Facility. For the avoidance of doubt, from and after the Closing Date, the Loan Documents shall permit assignments of the loans and commitments by the Lenders to their controlled affiliates and related funds on customary terms to be agreed.

Information.

You hereby represent and warrant that (with respect to Information and Projections relating to the Credit Parties and their subsidiaries, to your knowledge) (a) all written information and written data, other than (x) the Projections (as defined below) and (y) information of a general economic or industry specific nature (the “**Information**”), that has been or will be made available to us by you or, at your direction, by any of your representatives on your behalf in connection with the Transactions, when taken as a whole, is or will be, when furnished, correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (giving effect to all supplements and updates thereto) and (b) the Projections will be prepared in good faith based upon assumptions that are believed by you to be reasonable at the time such Projections are so furnished; it being understood that the Projections are as to future events and are not to be viewed as facts, the Projections are subject to significant uncertainties and contingencies, many of which are beyond your control, that no assurance can be given that any particular Projections will be realized and that actual results during the period or periods covered by any such Projections may differ significantly from the projected results and such differences may be material. You agree that, if at any time prior to the Closing Date, you become aware that any of the representations and warranties in the preceding sentence would be incorrect in any material respect if the Information and the Projections were being furnished, and such representations were being made, at such time, then you will promptly supplement prior to the Closing Date the Information and such Projections such that (with respect to Information and Projections relating to the Credit Parties, such representations and warranties are correct in all material respects under those circumstances; *provided that* any such supplementation made prior to the Closing Date shall cure any breach of such representations and/or warranties. In arranging the Facility, we will be entitled to use and rely primarily on the Information and the Projections without responsibility for independent verification thereof. As used herein, “**Projections**” means customary forecasts of financial statements of the Credit Parties (giving effect to the Transactions) for each month for the first twenty four months following the Closing Date and for each year commencing with the first fiscal year following the Closing Date for the term of the Facility.

Fees.

As consideration for the commitments of the Initial Commitment Parties hereunder and for the agreement of the Lead Arranger and the Initial Commitment Parties to perform the services described herein, the Credit Parties agree to pay the nonrefundable fees set forth in this Commitment Letter and in the Fee Letter dated the date hereof and delivered herewith (the “**Fee Letter**”).

Conditions.

The commitments of the Initial Commitment Parties hereunder to fund the Facility on the Closing Date and the agreements of the Lead Arranger and the Initial Commitment Parties to perform the services described herein are subject solely to the conditions set forth in Exhibit C hereto, and upon satisfaction (or waiver by the Initial Commitment Parties) of such conditions, the funding of the Facility shall occur; it being understood that there are no other conditions (implied or otherwise) to the commitments hereunder.

Notwithstanding anything in this Commitment Letter (including each of the exhibits attached hereto), the Fee Letter, the Loan Documents, or any other letter agreement or other undertaking concerning the financing of the Transactions to the contrary, (a) the only representations and warranties the accuracy of which shall be a condition to the availability and funding of the Facility on the Closing Date shall be (i) such of the representations and warranties made by or on behalf of the Credit Parties and their related parties in the Merger Agreement as are material to the interests of the Lenders, but only to the extent that you (or any of your affiliates) have the right to terminate your or any of their obligations under the Merger Agreement or to decline to consummate the Transactions as a result of a breach of such representations or warranties in the Merger Agreement (to such extent, the “**Specified Merger Agreement Representations**”) and (ii) the Specified Representations (as defined below) and (b) the terms of the Loan Documents shall be in a form such that they do not impair the availability or funding of the Facility on the Closing Date if the conditions set forth in Exhibit C hereto are satisfied (it being understood that to the extent any security interest in any Collateral (as defined in Exhibit D) (other than to the extent that a security interest in such Collateral may be perfected by (x) the filing of a financing statement under the Uniform Commercial Code, (y) taking delivery and possession of certificated equity interests of the Borrower and any domestic subsidiaries of the Borrower pledged under the Loan Documents and (z) the filing of short form intellectual property filings with the United States Patent and Trademark Office or the United States Copyright Office) is not or cannot be provided or perfected on the Closing Date after Borrower’s use of commercially reasonable efforts to do so, then the perfection and/or provision of a security interest in such Collateral shall not constitute a condition precedent to the availability of the Facility on the Closing Date but instead shall be required to be delivered after the Closing Date within forty-five (45) days. For purposes hereof, “**Specified Representations**” means the representations and warranties of the Credit Parties set forth in the Loan Documents relating to organizational existence of the Credit Parties; good standing and qualification of the Credit Parties; power and authority of the Credit Parties as to execution, delivery and performance of the Loan Documents; due authorization, execution and delivery of the Credit Parties and enforceability against the Credit Parties, in each case, with respect to the Loan Documents; the absence of any third-party litigation or other proceeding enjoining the entry into or performance of the Loan Documents; no conflicts with material applicable law and no conflicts with, or consent under, organizational documents of the Credit Parties related to the entering into and the performance of the Loan Documents and the incurrence of the extensions of credit thereunder; solvency as of the Closing Date (after giving effect to the Transactions) of Guarantor and its subsidiaries on a consolidated basis (in form and scope consistent with the solvency certificate in the form attached as Exhibit E hereto); status of the Facility as senior debt; Federal Reserve margin regulations; the use of loan proceeds not violating the PATRIOT Act; the Investment Company Act; use of loan proceeds not violating OFAC and other anti-terrorism laws; use of loan proceeds not violating FCPA; certain SBA representations and warranties and delivery of SBA Documents described in Exhibit B; assets and holding company only status of CNTQ; and, subject to the limitations set forth in clause (b) above and liens permitted under the Loan Documents, creation, validity and perfection of security interests in the Collateral. This paragraph, and the provisions herein, shall be referred to as the “**Certain Funds Provisions**”.

For the avoidance of doubt, neither compliance by you and/or your affiliates with the terms and conditions of this Commitment Letter (other than the conditions set forth in Exhibit C hereto) nor the syndication of the Facility is a condition to either Initial Commitment Party's several commitment to fund the Facility in the amounts described above or the obligations of the Lead Arranger and the Initial Commitment Parties hereunder, in each case, on the terms set forth herein. Without limiting the Certain Funds Provisions, the Lead Arranger and the Initial Commitment Parties will cooperate with you as reasonably requested in coordinating the timing and procedures for the funding of the Facility in a manner consistent with the Merger Agreement; *provided, however*, in no event shall the Initial Commitment Parties be required to fund the Facility after the Expiration Date.

Indemnity.

To induce us to enter into this Commitment Letter and the Fee Letter and to proceed with the documentation of the Facility, you agree, jointly and severally, whether or not the Facility Closes, (a) to indemnify and hold harmless each Initial Commitment Party, its affiliates and the respective officers, directors, employees, agents, advisors and other representatives and the successors and assigns of each of the foregoing (each, an **"Indemnified Person"**), from and against any and all losses, claims, damages and liabilities of any kind or nature and reasonable and documented or invoiced out-of-pocket fees and expenses, joint or several, to which any such Indemnified Person may become subject to the extent arising out of, resulting from or in connection with, this Commitment Letter, the Fee Letter, the Transactions or any related transaction contemplated hereby, the Facility or any use of the proceeds thereof or any claim, litigation, investigation or proceeding (including any inquiry or investigation) relating to any of the foregoing (any of the foregoing, a **"Proceeding"**), regardless of whether any such Indemnified Person is a party thereto, whether or not such Proceedings are brought by you, your equity holders, affiliates, creditors or any other third person, and to reimburse each such Indemnified Person upon demand for any reasonable and documented or invoiced out-of-pocket legal expenses of one firm of counsel for all such Indemnified Persons, taken as a whole, if necessary, one specialty intellectual property counsel, and, if necessary, a single local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all such Indemnified Persons, taken as a whole, and, solely in the case of a conflict of interest, one additional counsel in each applicable jurisdiction to the affected Indemnified Persons) or other reasonable and documented or invoiced out-of-pocket fees and expenses incurred in connection with investigating or defending any of the foregoing; *provided* that the foregoing indemnity will not (i) (x) apply to any losses, claims, damages and liabilities that do not involve an act or omission by you or any of your affiliates and (y) arise from a dispute among the Indemnified Persons (other than in connection with any Initial Commitment Party acting in its capacity as Lead Arranger, an Agent or any other agent or co-agent (if any) designated by the Lead Arranger, in each case in their respective capacities as such), or (ii) as to any Indemnified Person, apply to losses, claims, damages, liabilities or related expenses to the extent that they have resulted from the gross negligence, bad faith or willful misconduct of such Indemnified Person or any of such Indemnified Person's controlled affiliates (as determined by a court of competent jurisdiction in a final and non-appealable judgment) and (b) to reimburse us on the Closing Date and from time to time, upon presentation of a summary statement, for all expenses (including due diligence expenses, syndication expenses, consultant's fees and expenses, travel expenses, and its fees, charges and disbursements of counsel (limited to one firm of counsel for each of the Initial Commitment Parties; one specialty intellectual property counsel to the Initial Commitment Parties; if necessary, one counsel for a third party administrative agent; if necessary, a single local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions), in each case, incurred in connection with (i) the Loan Documents and (ii) the preparation, administration, amendment, modification or waiver, negotiation and enforcement of this Commitment Letter, the Fee Letter, the Loan Documents and any security arrangements in connection therewith (collectively, the **"Expenses"**)).

Sharing of Information, Absence of Fiduciary Relationships, Affiliate Activities.

You acknowledge that the Initial Commitment Parties and their affiliates (the term “Initial Commitment Parties” as used below in this paragraph being understood to include such affiliates) may be providing debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which you may have conflicting interests regarding the Facility, the Transactions and otherwise. You also acknowledge that the Initial Commitment Parties have no obligation to use in connection with the Facility, the Transaction, or to furnish to you, confidential information obtained from other companies.

You acknowledge that neither this Commitment Letter, the Fee Letter, nor any other proposed transaction shall give rise to any fiduciary duty or exclusive relationship on the part of the Initial Commitment Parties or any lender or any of their respective affiliates and that they may continue to conduct their respective businesses in the ordinary course.

Miscellaneous.

This Commitment Letter and the Fee Letter shall not be assignable by any party hereto (other than by each Initial Commitment Party to its respective controlled affiliates or affiliates under common control with the applicable Initial Commitment Party engaged in making, purchasing, holding or investing in commercial loans and similar extensions of credit in the ordinary course upon written notice to you and upon the execution by such affiliate of customary joinder documentation to this Commitment Letter) without the prior written consent of the other parties hereto (and any purported assignment without such consent shall be null and void), are intended to be solely for the benefit of the parties hereto and are not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto and the Indemnified Persons. Notwithstanding anything herein to the contrary, this Commitment Letter and the Fee Letter shall be assignable by Chardan Commitment Party (but, for the avoidance of doubt, not any assignee of Chardan Commitment Letter) to other financing sources reasonably acceptable to the Lead Arranger (it being agreed that BP Holdings XVII LP (or any affiliate, fund, account, or lending vehicle managed or advised by Beach Point Capital Management LP) is a financing source reasonably acceptable to the Lead Arranger) upon written notice to you and upon the execution by such financing source of customary joinder documentation to this Commitment Letter (the “**Chardan Assignment**”). Upon effectiveness of any such assignment, all references hereunder to Chardan Commitment Party will automatically and without the necessity of further action be deemed to refer to such other financing sources. This Commitment Letter may not be amended or waived except by an instrument in writing signed by you and the Initial Commitment Parties.

In no event shall any Credit Party, the Agent, Lead Arranger, Initial Commitment Parties or Lenders be liable for any indirect, special, punitive or consequential damages (including, without limitation, any loss of profits, business or anticipated savings) in connection with this Commitment Letter, the Fee Letter, the Transactions (including the Facility and the use of proceeds thereunder), or with respect to any activities related to the Facility, including the preparation of this Commitment Letter, the Fee Letter and the Loan Documents; provided, that, nothing contained in this sentence shall limit the indemnification and reimbursement obligations of any Credit Party to the extent expressly set forth herein.

Each Initial Commitment Party acknowledges that, as described in the final prospectus relating to CNTQ's initial public offering (the "**IPO**") filed with the Securities and Exchange Commission on August 10, 2021 (the "**Prospectus**"), CNTQ has established a trust account (the "**Trust Account**") containing the proceeds of the IPO and the over-allotment securities acquired by its underwriters and from certain private placements occurring simultaneously with the IPO (including interest accrued from time to time thereon) for the benefit of CNTQ's public stockholders (including over-allotment shares acquired by CNTQ's underwriters), and that, except as otherwise described in the Prospectus, CNTQ may disburse monies from the Trust Account only upon certain conditions. Each Initial Commitment Party hereby agrees that in connection with such Initial Commitment Party's commitment under this Commitment Letter, no Indemnified Person shall seek to enforce any right of set-off or any right, title, interest or claim of any kind (a "**Claim**") in or to any monies in the Trust Account prior to the consummation of CNTQ's initial business combination. In the event that an Indemnified Person has any Claim against CNTQ under this Commitment Letter such Indemnified Person shall pursue such Claim solely against CNTQ and its assets outside the Trust Account and not against the Trust Account or any monies or other assets in the Trust Account prior to the consummation of CNTQ's initial business combination. CNTQ hereby agrees that any such Claim any Indemnified Person may have arising at any time prior to the consummation of its initial business combination is not waived or released pursuant to this paragraph but may be preserved and initiated against CNTQ at any time after its initial business combination and, notwithstanding anything to the contrary set forth herein, nothing in this paragraph shall preclude any claims by any Indemnified Person against (x) CNTQ or any of the CNTQ's affiliates seeking recourse against any assets of CNTQ other than the Trust Account or the contents thereof or (y) assets released from the Trust Account upon the consummation of the CNTQ's initial business combination to parties other than CNTQ's public stockholders in connection with their redemption rights pursuant to the CNTQ's certificate of incorporation as currently in effect.

This Commitment Letter may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. Delivery of an executed signature page of this Commitment Letter by facsimile transmission shall be effective as a delivery of a manually executed counterpart hereof. This Commitment Letter together with the Fee Letter are the only agreements that have been entered into among the Credit Parties and the Initial Commitment Parties with respect to the Facility and set forth the entire understanding of the parties with respect thereto. THIS COMMITMENT LETTER MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ACTUAL OR ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT UNDERSTANDINGS OR AGREEMENTS OF THE PARTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, OTHER THAN A WRITING EXECUTED BY THE PARTIES HERETO WHICH EXPRESSLY AMENDS OR SUPERSEDES THIS COMMITMENT LETTER. ALL OTHER WRITINGS ISSUED BY THE INITIAL COMMITMENT PARTIES TO YOU PRIOR TO THE DATE HEREOF WITH RESPECT TO THE FACILITY, ARE NULL AND VOID AND OF NO EFFECT. THERE ARE NO UNWRITTEN ORAL UNDERSTANDINGS OR AGREEMENTS BETWEEN THE PARTIES.

THIS COMMITMENT LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

WITH RESPECT TO THIS COMMITMENT LETTER, THE FEE LETTER, ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR ANY ACT OR OMISSION COMMITTED OR OMITTED IN CONNECTION THEREWITH, THE INITIAL COMMITMENT PARTIES AND THE BORROWER HEREBY EXPRESSLY (A) WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION PERTAINING THERETO OR ARISING IN CONNECTION THEREWITH, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, (B) CONSENT AND AGREE THAT THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR ANY STATE COURTS SITTING IN NEW YORK CITY, SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN OR AMONG ANY OF THE PARTIES PERTAINING TO OR ARISING IN CONNECTION THEREWITH, PROVIDED, THAT THE INITIAL COMMITMENT PARTIES AND THE CREDIT PARTIES ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF SUCH JURISDICTION, (C) CONSENT TO SUCH JURISDICTION FOR ANY ACTION COMMENCED IN ANY SUCH COURT, AND (D) WAIVE ANY OBJECTIONS BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR INCONVENIENT FORUM.

The Initial Commitment Parties hereby notify you that pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law October 26, 2001) the “**PATRIOT Act**”), the Initial Commitment Parties and each other lender may be required to obtain, verify and record information that identifies the Credit Parties, which information includes the name, address, tax identification number and other information regarding the Credit Parties that will allow the Initial Commitment Parties and any such lender to identify the Credit Parties in accordance with the PATRIOT Act. This notice is given in accordance with the requirements of the PATRIOT Act and is effective as to the Initial Commitment Parties and each such other lender.

If the foregoing correctly sets forth our agreement, please indicate your acceptance of the terms hereof and the Fee Letter by returning to us executed counterparts hereof and of the Fee Letter, together with the amounts agreed upon pursuant to the Fee Letter to be payable upon the acceptance hereof, not later than 5:00 p.m., New York City time, on May 16, 2022. This Commitment Letter will expire at 5:00 p.m., New York City time, on May 16, 2022 (time being of the essence as to all time periods specified herein), unless previously accepted by you in the manner described above. If this Commitment Letter is accepted but the Closing Date shall not have occurred by October 31, 2022, or such later date reasonably acceptable to the Initial Commitment Parties, all commitments hereunder will expire and neither Commitment Party will have any liability or further obligation for such commitments. In the event that (i) the Merger Agreement is terminated without the consummation of the Combination having occurred or (ii) the closing of the Combination occurs without the use of the Facility, then this Commitment Letter and the Initial Commitment Parties' commitments hereunder shall automatically terminate without further action or notice and without further obligation to you unless we shall, in our sole discretion, agree to an extension. The compensation, reimbursement, indemnification, trust account waiver, Fee Letter, absence of fiduciary duty, jurisdiction, governing law, venue and waiver of jury trial provisions contained herein shall remain in full force and effect in accordance with their terms notwithstanding the termination of this Commitment Letter or the Initial Commitment Parties' commitments hereunder.

The Initial Commitment Parties are pleased to have been given the opportunity to assist you in connection with this important financing.

[Signature Page Follows]

Very truly yours,

EICF AGENT LLC, as EICF and an Initial Commitment Party

By: /s/ Harry Giovanni

Name: Harry Giovanni

Title: Authorized Signatory

CCM INVESTMENTS 5 LLC, as Chardan Commitment Party and an Initial
Commitment Party

By: /s/ Jonas Grossman

Name: Jonas Grossman

Title: Manager

Commitment Letter Signature Page

Accepted and agreed to as of the date first written above by:

DRAGONFLY ENERGY CORP.

By: /s/ Denis Phares
Name: Denis Phares
Title: Chief Executive Officer

CHARDAN NEXTECH ACQUISITION 2 CORP.

By: /s/ Jonas Grossman
Name: Jonas Grossman
Title: Chief Executive Officer

EXHIBIT A

Transaction Description

Capitalized terms used but not defined in this Exhibit A shall have the meanings set forth in the Commitment Letter to which this Exhibit A is attached or in the other Exhibits to such Commitment Letter.

Chardan NexTech Acquisition 2 Corp., a blank check company incorporated as a Delaware corporation and incorporated for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses (“**CNTQ**”), intends to engage in a business combination transaction (the “**Combination**”) with Dragonfly Energy Corp., a Nevada corporation (the “**Borrower**”), by having its direct wholly owned subsidiary, Bronco Merger Sub, Inc., a Nevada corporation (“**Merger Sub**”), merge with and into the Borrower, with the Borrower continuing as the surviving corporation and as a wholly owned subsidiary of CNTQ, in each case in accordance with the Merger Agreement, dated as of May 15, 2022 (the “**Merger Agreement**”), by and among CNTQ, Merger Sub and Dragonfly.

In connection with the foregoing, it is intended that:

- (a) the Borrower shall obtain a senior secured term loan facility in an aggregate principal amount of \$75 million, and the proceeds of the Term Loan will be available to (i) support the Combination, (ii) consummate the Refinancing (as defined below), (iii) fund the Transaction Costs (as defined below), (iv) provide additional growth capital and (v) for other general/corporate purposes;
 - (b) CNTQ will enter into a subscription agreement (as amended or modified from time to time, the “**Subscription Agreement**”) with Chardan Capital Markets, LLC (the “**Initial PIPE Investor**”) pursuant to which, and on the terms and subject to the conditions of which, the Initial PIPE Investor will agree to purchase from CNTQ or in the open market shares of CNTQ Common Stock, par value \$0.0001 per share, with the aggregate purchase price under the Subscription Agreement being at least \$5,000,0000 (the “**PIPE Investment**”), such purchase to be consummated prior to or substantially concurrently with the Closing Date;
 - (c) the Borrower will repay (or will cause to be repaid) all outstanding indebtedness and other obligations incurred and outstanding in connection with the issuance and disbursement of proceeds of Dragonfly’s Fixed Rate Senior Notes, Series 2021-6 issued pursuant to that Trust Indenture, dated as of November 24, 2021, between Dragonfly and UMB Bank, and with respect to which proceeds thereof were disbursed pursuant to the Proceeds Disbursing and Security Agreement, dated as of November 24, 2021, among Dragonfly, as issuer, UMB Bank, National Association, as disbursing agent, and Newlight Capital LLC, as servicer, and all related security interests, liens and guarantees in respect thereof shall be terminated and released; and
-

- (d) the fees, premiums, expenses (including without limitation, legal fees and expenses and recording taxes and fees) and other transaction costs incurred in connection with the Transactions (the “**Transaction Costs**”) will be paid.

The transactions described above and the payment of related fees and expenses are collectively referred to herein as the “**Transactions**”, and the transactions described in clause (c) above are referred to herein as the “**Refinancing**”. For purposes of this Commitment Letter and the Fee Letter, “**Closing Date**” shall mean the date of the initial funding under the Facility, the consummation of the PIPE Investment and the consummation (substantially concurrently with such initial funding) of the Transactions.

EXHIBIT B

Summary of Terms and Conditions

See attached.

**Dragonfly Energy Corp. and Chardan NexTech Acquisition 2 Corp.
Senior Credit Facility
Summary of Terms and Conditions**

May 15, 2022

Terms used in this Summary of Terms and Conditions (this “**Term Sheet**”) without definition have the meanings assigned to such terms in the Commitment Letter to which this Term Sheet is attached (including the exhibits attached thereto). In the case of any such capitalized term that is subject to multiple and differing definitions, the appropriate meaning thereof in this Term Sheet shall be determined by reference to the context in which it is used.

- Borrower:** Dragonfly Energy Corp. (“**Dragonfly**” or the “**Borrower**”).
- Guarantor:** (a) Dragonfly’s existing and future domestic subsidiaries, (b) Chardan NexTech Acquisition 2 Corp. (“**CNTQ**”) and (c) CNTQ’s existing and future domestic subsidiaries (the Borrower, together with any Guarantors, the “**Credit Parties**”).
- Facility:** \$75.0 million Term Loan Facility (the “**Term Loan**”).
- Agent:** Either EICF Agent LLC (directly or through an affiliate) or a third-party agent reasonably acceptable to the Borrower (in such capacity, “**Agent**”). If a third-party agent is used, the Borrower will pay all reasonable and documented out-of-pocket fees and expenses associated with the use of that third-party agent.
- Lead Arranger:** EICF Agent LLC, either directly or through an affiliate (“**EICF**” and in such capacity, the “**Lead Arranger**”).
- Initial Commitment Parties:** (i) CCM Investments 5 LLC (“**CCM**”) and (ii) EICF.
- Lenders:** (a) EICF, either directly or through an affiliate, (b) CCM, either directly or through an affiliate and (c) any successors and permitted assigns of EICF and CCM (collectively, the “**Lenders**”).
- Use of Proceeds:** To support a business combination transaction between CNTQ and Dragonfly (the “**Combination**”), repay outstanding indebtedness or other obligations under the that certain Proceeds Disbursing and Security Agreement, dated as of November 24, 2021, among Dragonfly, as issuer, UMB Bank, National Association, as disbursing agent, and Newlight Capital LLC, as servicer (the “**Dragonfly Term Loan**”), pay for fees and expenses in connection with the foregoing, provide additional growth capital and for other general/corporate purposes.
-

Loan Documents:

The Term Loan will be documented pursuant to a Term Loan, Guarantee and Security Agreement (the “**Loan Agreement**”) and other usual and customary definitive documents (collectively, the “**Loan Documents**”), all of which shall be negotiated in good faith promptly after the date hereof and will reflect the terms and conditions set forth in this Exhibit B. Such Loan Documents will include the Fee Letter, promissory notes, a pledge agreement, one or more control agreements, landlord or mortgagee waivers executed in favor of Agent, and all other agreements, instruments, documents and certificates executed and delivered to, and in favor of, Agent.

Merger Agreement:

That certain Agreement and Plan of Merger, dated as of May 15, 2022, by and among CNTQ, Bronco Merger Sub, Inc., a wholly owned subsidiary of CNTQ created to effectuate the Transaction, and Dragonfly.

Security:

· First priority (subject to certain customary exceptions to be agreed) perfected lien on and security interest in all Collateral; *provided that* the Collateral shall not include the following (collectively, “**Excluded Assets**”):

(i) any fee owned real property with a fair market value less than an amount to be agreed, and any real property leasehold rights and interests (provided, that the classification of leasehold interests in real property as Excluded Assets shall not affect the Credit Parties’ obligations with respect to the provision of landlord waivers or similar collateral access agreements);

(ii) (A) motor vehicles, aircraft and other assets subject to certificates of title with a value of less than an amount to be agreed (except to the extent perfection of a security interest therein may be accomplished by filing of a Uniform Commercial Code financing statement) and (B) commercial tort claims with a value of less than an amount to be agreed;

(iii) letter of credit rights (other than to the extent consisting of supporting obligations that can be perfected solely by the filing of a Uniform Commercial Code financing statement) with a value of less than an amount to be agreed;

(iv) any governmental licenses or state or local franchises, charters and authorizations, to the extent a security interest in any such license, franchise, charter or authorization is prohibited or restricted by the terms thereof (excluding any prohibition or restriction that is ineffective under the Uniform Commercial Code or any other applicable law), but only to the extent, and for as long as, such prohibition or restriction is in effect;

(v) pledges and security interests prohibited or restricted by applicable law, rule or regulation (including any requirement to obtain the consent of any governmental authority, regulatory authority or third party (excluding, for the avoidance of doubt, any Credit Party) unless such consent has been obtained (it being understood that the applicable Credit Parties shall use commercially reasonable efforts to obtain such consent)) except to the extent that such restrictions are either (x) rendered ineffective under the Uniform Commercial Code or any other applicable law, or (y) no longer in effect;

(vi) equity interests in non-wholly owned subsidiaries which cannot be pledged without the consent of third parties (other than Credit Parties) pursuant to prohibitions or restrictions by contract or under the organizational documents of the equity issuer of such non-wholly owned subsidiary and which such prohibition or restriction was not included in contemplation of the financing contemplated hereby (unless such consent has been obtained (it being understood that the applicable Credit Party shall use commercially reasonable efforts obtain such consent for all non-wholly owned subsidiaries)), except to the extent that such restrictions or prohibitions are rendered ineffective under applicable anti-assignment provisions of the Uniform Commercial Code of any applicable jurisdiction or other applicable law;

(vii) any lease, license or agreement, or any property subject to a purchase money security interest, capital lease obligation or similar arrangement, in each case, permitted to be incurred by the Loan Documents to the extent that a grant of a security interest therein to secure the obligations under the Loan Documents would violate or invalidate such lease, license or agreement or purchase money security interest or similar arrangement or create a right of termination in favor of any other party thereto (other than any Credit Party) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or any other applicable law, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code notwithstanding such prohibition;

(viii) any assets to the extent a security interest in such assets would result in material adverse tax consequences to the Credit Parties as reasonably determined between the Borrower and the Agent;

(ix) any intent-to-use application trademark application prior to the filing, and acceptance by the U.S. Patent and Trademark Office, of a “Statement of Use” or “Amendment to Allege Use” with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law;

(x) assets where the cost of obtaining a security interest therein is excessive in relation to the practical benefit to the lenders afforded thereby as reasonably determined by the Borrower and the Agent; or

(xii) other exceptions to be mutually agreed upon.

- First priority lien on and security interest in all ownership interests in and of Dragonfly owned by CNTQ upon consummation of the Combination and in all ownership interests of each of the Credit Parties (other than CNTQ), subject to customary exceptions to be agreed.
- Subordination to the Facility of any intercompany indebtedness owing by a Credit Party to a subsidiary of the Borrower that is not a Credit Party.

Commitment Date: May 15, 2022 (the “**Commitment Date**”).

Expiration Date: October 31, 2022 (the “**Expiration Date**”).

Closing Date: The date that the Loan Agreement is executed and the Term Loan is funded (the “**Closing Date**”).

Maturity: The Facility shall mature 4 years from the Closing Date (“**Maturity Date**”).

Availability: The Term Loan must be fully drawn on the Closing Date.

Amortization: Quarterly amortization of the original outstanding principal amount of the Facility will be due and payable as per the following schedule with a balloon payment of all remaining principal due on the Maturity Date:

Year 1 and Year 2: 0% principal amount.

Year 3 and Year 4: 5% per annum of the original principal funded amount of the Term Loan, based on a straight-line quarterly amortization schedule.

Mandatory Prepayments:	The Facility shall be prepaid upon the occurrence of any of the following, subject to customary carve-outs to be agreed: Asset Sales and Casualty Events – 100% of cash proceeds from the sale or exchange of assets or casualty events (other than the sale of inventory in the ordinary course of business, a de minimis amount of sale proceeds on a fiscal year basis and other customary exceptions to be agreed); <i>provided</i>, that such cash proceeds shall not be required to be prepaid (x) if no Default has occurred and is continuing or would result therefrom, and (y) the Borrower shall have delivered an officer’s certificate to the Agent stating that such cash proceeds are expected to be reinvested in fixed or capital assets within 12 months following the date of such asset sale or casualty event; <i>provided</i> further, that if all or any portion of such Net Cash Proceeds is not so reinvested within such 12-month period, such unused portion shall be applied on the last day of such relevant period as a mandatory prepayment. Debt Incurrence – 100% of the net cash proceeds from issuances of debt, other than permitted indebtedness. Excess Cash Flow – Percentage of Excess Cash Flow payable annually for the prior fiscal year commencing for fiscal year 2023 (paid in fiscal year 2024): * If senior leverage > 3.0x: 50% of Excess Cash Flow * If senior leverage is ≤ 3.0x: 25% of Excess Cash Flow “Excess Cash Flow” will be defined in the Loan Agreement as set forth on Exhibit D. Lenders will have the option to decline their pro rata portion of any mandatory prepayments.
Application of Mandatory Prepayments:	All mandatory prepayments shall be applied first in direct order of maturity to the next four installments of scheduled amortization payments due under the Term Loan and then remaining installments of amortization payments due under the Term Loan in inverse order of maturity until paid in full.
Optional Prepayments:	The Borrower has the option to prepay the outstanding balance on the Facility, in whole or in part, so long as Agent receives fifteen (15) days’ advance notice (or such shorter notice as the Agent may agree in its sole discretion) in writing and the following prepayment premium: 105% of the outstanding principal balance during the first 12 months 103% of the outstanding principal balance during months 13 – 24 101% of the outstanding principal balance during months 25 – 36 At par, thereafter.

All voluntary prepayments shall be applied as directed by the Borrower.

Rates of Interest:

The interest rate for the first 24 months following the Closing Date will be comprised of (i) Adjusted SOFR (to be defined in a customary and mutually agreed manner) plus 6.5% per annum (or 7.0% per annum in the event the Closing Date does not occur on or before September 30, 2022) payable quarterly in cash, in arrears and (ii) paid-in-kind ("**PIK**") interest as set forth in the pricing table below:

Senior Leverage Ratio	PIK	Applicable Margin
Greater than or equal to 5.00x	5.50% per annum	12% per annum
Less than 5.00x and greater than or equal to 4.00x	4.50% per annum	11% per annum
Less than 4.00x	3.50% per annum	10% per annum

PIK interest will be capitalized, compounded and added to the unpaid outstanding principal amount of the Facility on a quarterly basis. After the first 24 months following the Closing Date, interest will be payable in cash, and the interest rate will be comprised of Adjusted SOFR plus the Applicable Margin set forth above based on the applicable Senior Leverage Ratio payable quarterly in cash, in arrears. Interest shall be calculated on the basis of a year of 360 days and charged on the actual number of days elapsed. Adjusted SOFR shall be no less than 1.0%. If the Closing Date and the funding of the Facility does not occur on or before September 30, 2022, the interest rate references in the table above under the heading "PIK" shall be increased by an additional one percent (1.0%) per annum and the interest rate references in the table above under the heading "Applicable Margin" shall be increased by an additional one and one half percent (1.50%) per annum.

Default Interest Rate:

Upon the occurrence of an Event of Default and for so long as such Event of Default continues, a default rate of interest equal to an additional 2% *per annum* in excess of the rate otherwise applicable will be payable.

Representations And Warranties: Limited to the following: (a) corporate existence and compliance with law; (b) executive offices and corporate or other names; (c) corporate power, authorization and enforceable obligations; (d) valid liens; (e) absence of material adverse change in business, condition, operations, or properties of the Credit Parties and their subsidiaries, taken as a whole; (f) subsidiary information and equity interests; (g) government regulation and margin regulations; (h) payment of taxes and other charges; (i) government contracts; (j) ERISA matters; (k) absence of litigation that could reasonably be expected to result in a material adverse effect; (l) intellectual property; (m) full disclosure; (n) absence of environmental hazards that could reasonably be expected to result in a material adverse effect; (o) insurance coverage reasonable for similarly situated companies; (p) solvency of the Credit Parties and their subsidiaries taken as whole; (q) title to Collateral; (r) USA PATRIOT Act matters; (s) assets and holding company only status of CNTQ; (t) bonding and licenses; (u) investment company act; (v) Merger Agreement and related documentation; (w) receipt of all necessary and required third-party and governmental consents, permits and approvals; (x) customer and trade relations; (y) certain SBA representations and warranties (as noted in greater detail below under the SBA Documents heading); and (z) affiliate transactions; subject, in the case of each of the foregoing representations and warranties, to customary qualifications and limitations to be agreed.

SBA Documents: The Borrower agrees to execute and/ or provide information for required SBA forms 480, 652 and 1031 and the SBA Side Letter. In the SBA Side Letter, the Borrower will also make representations, warranties, and covenants required by the SBA, primarily relating to the following: its status as a Small (or Smaller) Business Concern under the SBIC Act; informational requirements; use of proceeds (Credit Parties do not engage in business, or use loan proceeds for any purpose, for which a licensee under the SBIC Act is prohibited from providing funds; Loan proceeds not used for a foreign operation); future activities (Credit Parties' primary business activity does not involve providing funds to others, purchasing debt obligations, factoring, or long-term equipment leasing; Credit Parties are not a passive business; Credit Parties are not a real estate business; Credit Parties are not a project finance business; no farm land purchases; at least 51% of assets and employees are in USA); NAICS code; and inspection rights.

Reporting Requirements: The Borrower will furnish the following:

- Monthly unaudited consolidated financial statements of the Borrower and all subsidiaries, operating statements and any other information reasonably required by the Lenders, each delivered to Agent within 30 days of the end of each month. Compliance certificates that include financial covenant calculations will be required on a quarterly basis and due within 45 days of the end of each quarter (except 120 days after the end of each fiscal year).
- Bank statements of the Borrower for each month shall be delivered to the Agent within five business days after the later of the end of the applicable month and the date on which such statements are made available to the Borrower from the applicable bank.

- Annual audited consolidated financial statements and certificate of compliance for the Borrower and all subsidiaries within 120 days of the end of each fiscal year, prepared in accordance with GAAP.
- Promptly (and in any event within 5 business days) after approval by the Board of Directors of the Borrower (but no later than the 45th day of each fiscal year of the Borrower), the annual budget for the Borrower, including forecasts of the income statement, balance sheet, cash flow statement and capital expenditure budget for such year, on a monthly basis.
- Promptly provide such ESG data and information as Agent may reasonably request in connection with its annual ESG reporting commitment and any further SBA requests or requirements.
- Such other information as the Agent may reasonably request.

Affirmative Covenants:

Limited to the following (subject to customary baskets and thresholds to be agreed upon): (a) maintenance of corporate existence and properties; (b) compliance with laws (including environmental matters and USA PATRIOT Act matters); (c) government regulation and margin regulations; (d) payment of taxes; (e) maintenance of proper books and records; (f) notification regarding material ERISA matters; (g) notification regarding material litigation; (h) notification regarding material environmental matters; (i) maintenance of customary insurance protection, naming Agent as additional insured or lender's loss payee, as applicable; (j) conduct of business; (k) further assurances; (l) deposit accounts and cash collateral accounts; (m) assets and holding company only status of CNTQ; (n) after-acquired property and additional collateral; (o) notification of change in investment company status; (p) notice of change in ownership and organizational charts; (q) ESG data, (r) use reasonable best efforts to obtain landlord waivers and/or similar collateral access agreements; and (s) rights of inspection, access to offices, facilities, management and auditors and participation in periodic (but no more frequently than quarterly absent an Event of Default) Lenders' meetings.

The Credit Parties shall use best efforts to (a) file with the U.S. Securities and Exchange Commission (“**SEC**”) within 30 days after the Closing Date a registration statement (the “**Registration Statement**”) registering the resale of the shares of common stock to be issued pursuant to a \$150 million committed equity facility on terms substantially similar to those set forth in the letter agreement, dated May 15, 2022, by and among CNTQ, Dragonfly and CCM Investments 5 LLC referred to on Exhibit C to the Commitment Letter, and (b) cause such Registration Statement to become effective within 120 days after the Closing Date. If the Registration Statement does not become effective by the date that is 121 days after the Closing Date, then CNTQ shall issue to the Lenders (other than CCM) 200,000 \$10 Per Share Warrants (as defined below under the heading “Warrants”) on such date. If such Registration Statement has not become effective by the date that is 30 days after such 121st day, CNTQ shall issue to the Lenders (other than CCM) an additional 200,000 \$10 Per Share Warrants on the day that is 30 days after such 121st day, and on each date that is 30 days thereafter (i.e., the date that is 151 days after the Closing Date, 181 days after the Closing Date, etc.), until the Registration Statement has become effective. The covenants under this paragraph are referred to as the “**Equity Line Registration Covenant**”.

Financial Covenants:

Financial covenants shall be limited to a Springing Fixed Charge Coverage Ratio, a Maximum Senior Leverage Ratio and Minimum Liquidity as set forth below. All financial covenants shall be calculated for the Borrower and its subsidiaries on a consolidated basis and tested as of the final day of each fiscal quarter for the prior 12 months (except for Minimum Liquidity, which shall be tested as of the final date of each month, based on bank statements delivered to the Agent as provided above). The first testing period will end on December 31, 2022. All financial definitions not defined in Exhibit D will be defined in a customary and mutually agreed manner. Covenant levels for each testing period are as follows:

- **Springing Fixed Charge Coverage Ratio (“FCCR”)**: If Liquidity is below \$15.0 million as of the final day of any fiscal quarter, then the Borrower must maintain a FCCR of at least 1.15x as of such date. The FCCR will be defined in the Loan Documentation and will be calculated based on the most recently ended four consecutive fiscal quarters.

- **Maximum Senior Leverage Ratio:**

<u>Test Period Ending</u>	<u>Senior Leverage Ratio</u>
December 31, 2022 – March 31, 2023:	6.75x
April 1, 2023 – September 30, 2023:	6.00x
October 1, 2023 – March 31, 2024:	5.00x
April 1, 2024 – September 30, 2024:	4.00x
October 1, 2024 – March 31, 2025:	3.25x
April 1, 2025, and thereafter	3.00x

- **Minimum Liquidity**: \$10.0 million.

Negative Covenants:

Limited to the following (subject to customary baskets and carve outs to be agreed): (a) prohibition of additional Indebtedness; (b) restrictions on liens and negative pledge on all unencumbered assets of the Credit Parties, subject to customary permitted liens; (c) restrictions on investments and fundamental changes; (d) restrictions on sales and disposition of assets; (e) limitations on restricted payments; (f) limitations on changes in the nature of the business; (g) restrictions on transactions with officers, directors and affiliates; (h) limitations on third-party restrictions on indebtedness, liens, investments or restricted payments; (i) limitations on the modification of organizational documents, or the Denis Phares and Sean Nichols employee restrictive covenant agreements, dated May 15, 2022, in a manner materially adverse to the Lenders; (j) limitations on accounting changes or fiscal year changes; (k) limitations on changes to name or location; (l) prohibition on establishing bank accounts (other than Excluded Accounts) prior to implementation of an account control agreement in form and substance reasonably acceptable to Agent; (m) prohibition on using the loan proceeds to purchase margin stock; (n) restrictions against failure to comply with USA PATRIOT Act matters; (o) prohibition on ERISA Events resulting in liabilities in excess of a certain amount to be mutually agreed; (p) prohibition on hazardous material releases that would reasonably be expected to have a material adverse effect; and (q) limitations on acquisitions, mergers, consolidations, liquidations, dissolutions and sale and leaseback transactions.

Cash Management:

On or shortly after the Closing Date, the Agent, for the benefit of itself and Lenders, shall have account control agreements perfecting Agent's security interest in all deposit accounts and securities accounts of each Borrower and its subsidiaries (other than Excluded Accounts) providing for springing control over such accounts exercisable by Agent by notice to the account depository upon the occurrence of any Event of Default. "**Excluded Accounts**" means, collectively, (a) payroll and other employee wage and benefit accounts, (b) tax accounts, including sales tax accounts, (c) petty cash accounts funded in the ordinary course of business to the extent the average balance on deposit therein does not exceed an amount to be mutually agreed, (d) escrow, fiduciary or trust accounts, (e) cash collateral accounts holding solely deposits subject to permitted liens, (f) zero balance disbursement accounts to the extent amounts therein are automatically transferred on a daily basis to accounts that are not Excluded Accounts, and (g) non-U.S. bank accounts to the extent the balance on deposit therein does not exceed an amount to be mutually agreed.

Conditions Precedent to Closing:	Limited to the conditions precedent set forth in <u>Exhibit C</u> .
Events of Default:	Limited to the following, subject to thresholds and grace period to be agreed: (a) non-payment of principal, interest or other amounts; (b) inaccuracy of representations and warranties in any material respect; (c) non-compliance with any covenants in the Loan Agreement or any other Loan Document (including SBA Documents) (including non-compliance with the Equity Line Registration Covenant, which shall have no grace period); (d) cross-default to other material indebtedness; (e) unsatisfied or unstayed material judgments; (f) bankruptcy of the Credit Parties; (g) invalidity or termination of (i) any lien in favor of Agent with respect to any material Collateral or (ii) any Loan Documents; (h) Change of Control; (i) ERISA Events; (j) the obligation of any Guarantor under its Guarantee or under any of the Loan Documents is limited or terminated by operation of law.
Required Lenders:	The Required Lenders shall be the Lenders holding more than 50% of the total amount of the Facility; <i>provided</i> , that at any time that there are two or more Lenders that are not affiliates of each other and each hold at least 15% of the total amount of the Facility, Required Lenders shall also require at least two non-affiliated Lenders; <i>provided further</i> that, CCM shall have limited voting rights (to be agreed in the Loan Documents) so long as it is a Lender.
Indemnification:	On and after the Closing Date, the Credit Parties will indemnify and hold harmless the Lenders, the Lead Arranger, the Agent, all other agents, and their respective subsidiaries, officers, employees, attorneys, advisors and agents against all claims, demands, liabilities and expenses incurred or asserted in connection with this Term Sheet, the Facility, any commitment letters issued by the Lenders, the documents relating to the Facility or any claims by third parties relating to the Credit Party's use of the Facility's proceeds, other than claims, demands, liabilities and expenses (i) that do not involve an act or omission by the Credit Parties and (y) arises from a dispute among the indemnified persons (other than in connection with any Initial Commitment Party acting in its capacity as Lead Arranger, an Agent or any other agent or co-agent (if any) designated by the Lead Arranger, in each case in their respective capacities as such) or (ii) caused by the gross negligence, bad faith or willful misconduct of the applicable indemnified persons.
Expenses:	The Credit Parties will pay all customary and documented out-of-pocket fees and expenses incurred by the Lenders, the Agent, the Lead Arranger (including but not limited to fees and expenses incurred by their attorneys (limited to one primary outside counsel for each lead lender and, if necessary, one counsel for the third party administrative agent, and one local counsel in each relevant jurisdiction) and consultants, environmental audit fees and appraisal costs) in connection with the analysis, structuring, negotiation, preparation, documentation and execution of the Facility, whether or not the Facility closes.

Warrants:

On the Closing Date, CNTQ (the public holding company parent of Dragonfly) will issue to Lenders penny warrants (collectively, the “**Penny Warrants**”) exercisable to purchase 3.6% of the Borrower’s common stock on a fully-diluted basis, calculated as of the Closing Date. For purposes hereof, calculation of ownership of common stock “on a fully diluted basis” includes (i) all outstanding common stock, (ii) shares of common stock issuable upon conversion of outstanding convertible bonds, preferred stock and other securities convertible to common stock on an as-converted to common stock basis, and (iii) all shares of common stock subject to outstanding options. The Penny Warrants will have an exercise period of 10 years from the date of issuance. In addition, on the Closing Date, CNTQ will issue to Lenders (except for CCM) warrants (collectively, the “**\$10 Per Share Warrants**” and collectively with the Penny Warrants, the “**Warrants**”) exercisable to purchase 1.6 million shares of the Borrower’s common stock at \$10 per share. The \$10 Per Share Warrants will have an exercise period of 5 years from the date of issuance and will have customary cashless exercise provisions. The Warrants will have weighted average anti-dilution protection against subsequent equity sales or distributions at less than the Warrant exercise price, subject to customary exclusions including for issuances upon conversion exercise or exchange of securities outstanding as of the Closing Date, issuances pursuant to agreements in effect as of the Closing Date (provided such issuances are taken into account in the calculation of “on a fully diluted basis” as provided above), issuances pursuant to employee benefit plans and similar arrangements, issuances in joint ventures, strategic arrangements or other non-financing type transactions, issuances in debt financings as equity kickers, issuances in public offerings and similar transactions.

The shares issuable upon exercise of the Warrants shall have customary registration rights requiring the Company to file and keep effective a resale registration statement registering the resale of the shares of common stock underlying the Warrants.

Notwithstanding the foregoing, (i) no Warrants shall be issued to Chardan Commitment Party or any of its affiliates and (ii) upon prior notice to the Credit Parties, a Lender may request that the Warrants otherwise payable to such Lender be issued to a designee that will become a Lender no later than 10 business days after the Closing Date.

Additional Security Deposit:	If expenses exceed the previously delivered expense deposit, at the request of Agent, Dragonfly will provide an additional security deposit in an amount reasonably requested by Agent but not to exceed \$150,000.
Confidentiality:	The confidentiality and use provisions set forth in the Commitment Letter to which this Term Sheet is attached (including as such terms are incorporated therein by reference) shall apply with respect to this Term Sheet, such letter and the parties to such letter and this Term Sheet as if set forth herein.
Exclusivity Period:	The Credit Parties agree that following the mutual execution and delivery of the Commitment Letter and through and including the Expiration Date, neither the Credit Parties nor any of their directors, officers, employees, agents or representatives will solicit, encourage or entertain proposals from or enter into negotiations with or furnish any nonpublic information to any other person or entity regarding the sale or issuance of any debt securities or loans in connection with this transaction, in whatever form (the “ Exclusivity Period ”); <i>provided</i> that such exclusivity shall automatically terminate with respect to a particular Initial Commitment Party (without affecting the exclusivity obligations made in favor of any other Initial Commitment Party) upon (x) such Initial Commitment Party indicating to any Credit Party that it is unable or unwilling to fund its committed portion of the Facility or (y) upon material breach by such Initial Commitment Party of its obligations under the Commitment Letter. During the Exclusivity Period, (i) the Credit Parties shall deal in good faith exclusively with the Initial Commitment Parties and (ii) the Initial Commitment Parties shall deal in good faith with the Credit Parties, in each case with respect to the financing described in the Term Sheet. For the avoidance of doubt, this provision shall not restrict the Credit Parties from (i) negotiating and entering into amendments of its existing debt obligations, (ii) soliciting, encouraging, or entertaining proposals from, entering into negotiations with or furnishing information to any provider of equity financing, or (iii) negotiating, entering into or providing information in connection with the Combination.
Governing Law:	New York governing law (without giving effect to principles of conflicts of law that would require the application of the law of any other jurisdiction).
Jurisdiction:	All claims arising under, or related to the subject matter of, this Term Sheet, the Facility and the Loan Documentation shall be submitted to the exclusive jurisdiction of the state and federal courts located in New York County, New York; <i>provided</i> , that Agent and Credit Parties shall be permitted to bring claims in other courts to enforce judgments, bring claims and/or or exercise remedies against the Collateral or Guarantors.
Jury Trial Waiver:	The parties shall waive all rights to jury trial.

EXHIBIT C

Summary of Conditions Precedent

The initial borrowing and availability under the Facility shall be subject solely to the satisfaction or waiver (by the Initial Commitment Parties) of the following conditions, which shall be subject to the Certain Funds Provisions in all respects:

1. The Combination shall have been consummated (or shall be consummated substantially concurrently with the borrowing under the Facility) in accordance with the Merger Agreement in all material respects, but without giving effect to any modifications, amendments, waivers or consents to the Merger Agreement as in effect on the date hereof that are material and adverse to Agent, Lead Arranger or the Lenders without the consent of the Initial Commitment Parties; *provided* that any amendment or waiver to the terms of the Merger Agreement that has the effect of increasing the cash consideration required to be paid thereunder on the Closing Date will not be deemed to be adverse to the Lenders if such increase is funded with an increase in the aggregate amount of the equity contribution required by the terms hereof.
2. Agent shall have received the following: (a) duly executed Loan Documents, which shall be substantially consistent with the Commitment Letter and Term Sheet, (b) customary legal opinions, (c) customary evidence of authority, (d) customary officer's certificates, (e) good standing certificates (to the extent applicable) in the respective jurisdictions of organization of the Credit Parties, (f) a customary funding request for each Initial Commitment Party, (g) a solvency certificate in the form attached as Exhibit E hereto, (h) the SBA Documents described in Exhibit B, (i) substantially concurrently with the borrowing under the Facility, the warrants described in Exhibit B, and (j) a completed customary perfection certificate, in each case subject to the Certain Funds Provision.
3. The Borrower shall have paid (or caused to be paid), to the extent invoiced at least one (1) business day prior to the Closing Date, all fees and expenses due to Initial Commitment Parties and the Lenders under the Commitment Letter required to be paid on the Closing Date.
4. The Specified Representations and the Specified Merger Agreement Representations shall be true in all material respects; *provided* that any such Specified Representation or Specified Merger Agreement Representation that is qualified by materiality shall be true in all respects (except in the case of any Specified Representation or Specified Merger Agreement Representation which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects as of the respective date or for the respective period, as the case may be).
5. There shall not have occurred a Company Material Adverse Effect (as defined in the Merger Agreement) after the date of the Merger Agreement.
6. The Agent shall have received (i) no later than (30) days of the end of each such calendar month, internal monthly financials for the Borrower for each calendar month beginning with April, 2022 through the calendar month ended at least thirty (30) days before the Closing Date and (ii) a pro forma consolidated balance sheet of Guarantor as of the last day of the most recent fiscal month ended at least thirty (30) days before the Closing Date, prepared after giving effect to the Combination as if the Combination has occurred as of such date.

7. The Refinancing shall have been consummated substantially concurrently with the initial borrowing under the Facility on the Closing Date and all liens and security interests (including UCC financing statements filed to secure present or future obligations) encumbering any of the Collateral shall substantially concurrently be terminated.

8. Subject to the Certain Funds Provision, all documents and instruments required to create and perfect the Agent's security interests in the Collateral under the Loan Documents shall have been delivered (and if applicable, executed) and be in the proper form for filing and shall otherwise be in form and substance reasonably satisfactory to the Agent and the Agent shall have received bringdown UCC, tax and judgment lien searches with respect to the Credit Parties which results shall be consistent in all material respects with such lien search results reviewed by Agent on or before the date of this Commitment Letter.

9. The Agent shall have received, all documentation and other information about the Credit Parties required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the PATRIOT Act.

10. On the Closing Date and after giving effect to the Facility and payment of all expenses related to the Combination, Borrower shall have minimum unrestricted cash of at least \$22.5 million.

11. Contribution to Borrower on or prior to the Closing Date of \$5 million of gross cash proceeds in the form of additional equity in connection with the Combination.

12. Entry into definitive documentation to establish a \$150 million committed equity facility on terms substantially similar to those set forth in the letter agreement, together with the Summary of Indicative Terms attached as an exhibit thereto, dated May 15, 2022, duly executed by CNTQ, Dragonfly and CCM Investments 5 LLC.

13. Agent shall have received any amendments or modifications to the Merger Agreement.

14. Denis Phares and Sean Nichols shall continue to be employed by Borrower as of the Closing Date in their current capacities as chief executive officer and chief operating officer, respectively.

EXHIBIT D¹

Certain Financial Definitions²

The following definitions will be set forth in the Loan Documents as provided below:

“**Collateral**” shall mean all of the following property and assets of the Credit Parties, whether real or personal, tangible or intangible, and whether now owned or hereafter acquired, or in which it now has or at any time in the future may acquire any right, title, or interest:

- (a) all Accounts;
- (b) all deposit accounts;
- (c) all other bank accounts and all funds on deposit therein; all money, cash and cash equivalents;
- (d) all investment property;
- (e) all Stock and all Distributions in respect thereof;
- (f) all goods (including, without limitation, inventory, equipment, and fixtures);
- (g) all chattel paper, documents and instruments;
- (h) all Books and Records;
- (i) all general intangibles (including, without limitation, all Intellectual Property, Intellectual Property applications, contract rights, choses in action, payment intangibles, licenses, Permits, and software, and all rights and interests under any key man life insurance policies);
- (j) all letter-of-credit rights;
- (k) all commercial tort claims;
- (l) all property, including all property of every description, in custody or in transit for any purpose, including safekeeping, collection or pledge, for the account of Borrower or any Credit Party or to which Borrower or any Credit Party may have any right or power, including but not limited to cash;

¹ Capitalized terms used but not defined in this Exhibit D or in the Commitment Letter to be defined in a customary and mutually agreed manner.

² The parties agree that the definitions set forth in Exhibit D shall remain subject to changes to be agreed.

- (m) all other goods (including but not limited to fixtures) and personal property, whether tangible or intangible and wherever located;
- (n) all supporting obligations and consents and agreements of any kind or nature that are material to the operation, management, maintenance and conduct of any Credit Party;
- (o) all Real Property of every kind and nature, including leases; and
- (p) to the extent not otherwise included, all Proceeds, tort claims, insurance claims and other rights to payment not otherwise included in the foregoing and products of all and any of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing.

Notwithstanding the foregoing or anything herein to the contrary, in no event shall the “**Collateral**” include any Excluded Asset (as defined in the Term Sheet).

“**Consolidated Amortization Expense**” shall mean, for any period, the amortization expense of the Credit Parties for such period, determined on a consolidated basis in accordance with GAAP.

“**Consolidated Depreciation Expense**” shall mean, for any period, the depreciation expense of the Credit Parties for such period, determined on a consolidated basis in accordance with GAAP.

“**Consolidated EBITDA**” shall mean, for any period, Consolidated Net Income for such period, adjusted by (x) adding thereto, in each case, other than with respect to clause (n) below, only to the extent (and in the same proportion) deducted in determining such Consolidated Net Income and without duplication:

- (a) Consolidated Interest Expense for such period,
- (b) Consolidated Amortization Expense for such period,
- (c) Consolidated Depreciation Expense for such period,
- (d) Consolidated Tax Expense for such period,
- (e) one-time, non-recurring, customary and documented costs and expenses incurred in connection with the negotiation, execution and delivery of (i) the Loan Documents and the transactions contemplated thereby (including without limitation the Acquisition) incurred on or before the Closing Date, or within one hundred eighty (180) days after the Closing Date, in an aggregate amount not to exceed \$[_____] ³ or such greater amount as agreed to by Required Lenders in their reasonable discretion, and (ii) any amendments, restatements or other modifications to the Loan Documents in an aggregate amount not to exceed \$500,000 for such period,

³ To be filled in shortly before the Closing Date based on the amount of expenses incurred and reasonably expected to be incurred prior to 180 days after closing.

- (f) the aggregate amount of all other non-cash charges, expenses or losses reducing Consolidated Net Income (including for certainty all unrealized foreign exchange losses but excluding any non-cash charge, expense or loss that results in an accrual of a reserve for cash charges in any future period and any non-cash charge, expense or loss relating to write-offs, write-downs or reserves with respect to accounts or inventory) for such period,
- (g) Permitted Board Fees paid or accrued for such period,
- (h) fees and expenses paid in connection with Permitted Acquisitions (whether or not consummated) in an aggregate amount not to exceed \$1,000,000 in any twelve-month period (or such higher amount as approved by Required Lenders in their reasonable discretion),
- (i) (i) growth related costs and expenses or (ii) non-recurring costs, charges and expenses including in connection with (A) severance, (B) restructuring or integration (including reduction in force), (C) senior executive recruiting (including recruiting fees, signing costs, retention or completion bonuses and transition costs) and (D) office closures, relocation costs, facilities start-up costs, etc., in an aggregate amount for sub-clauses (i) and (ii) of this clause (i) not to exceed \$1,000,000 for any twelve-month period,
- (j) permitted earnout obligations paid or accrued with respect to Permitted Acquisitions,
- (k) fees and expenses under the Loan Documents paid to Agent and Lenders,
- (l) any non-cash costs or non-cash expenses incurred pursuant to any management equity plan, stock option plan or any other management or employee benefit plan, agreement or any stock subscription or shareholder agreement,
- (m) any expenses, charges or losses to the extent covered by insurance that are, directly or indirectly, reimbursed or (or reasonably expected to be reimbursed) by a third party, and any expenses, charges or losses that are covered by indemnification or other reimbursement provisions to the extent that such amount is in fact reimbursed within 180 days of the date of such determination; provided, that (x) if any amount reasonably expected to be reimbursed and added back in a period is not received within such 180 day period, such charges, expenses or losses shall be subtracted in the subsequent calculation period, and (y) in the case of any amount reasonably expected to be reimbursed and added back prior to receipt thereof, if actually reimbursed or received in a subsequent period, such amount shall not be added back in calculating Consolidated EBITDA in such subsequent period (and, to the extent included in Consolidated Net Income, shall be subtracted),
- (n) non-cash charges for goodwill write offs and write downs,

(o) any other extraordinary, unusual or non-recurring cash charges or expenses incurred outside the ordinary course of business, provided that the aggregate amount added shall not exceed 10% of Consolidated EBITDA (determined prior to giving effect to such add-backs) for such period,

(p) other addbacks mutually agreed to by Required Lenders and Borrower, and

(y) subtracting therefrom the aggregate amount of all non-cash items increasing Consolidated Net Income (including for certainty all unrealized foreign exchange gains but excluding the accrual of revenue or recording of receivables in the ordinary course of business) for such period.

Consolidated EBITDA shall be calculated on a Pro Forma Basis to give effect to any Asset Sales (other than any dispositions in the ordinary course of business) or Permitted Acquisitions consummated at any time on or after the first day of the measuring period and prior to the date of determination as if each such Asset Sale or Permitted Acquisition had been consummated on the day prior to the first day of such period.

“Consolidated Fixed Charges” means, for any period, the sum, without duplication, of (a) Consolidated Interest Expense, (b) Permitted Board Fees to the extent paid in cash, (c) United States, state, local and foreign income taxes including Permitted Tax Distributions, in each case, paid in cash and (d) the aggregate amount of scheduled principal payments in respect of Indebtedness, including that portion of rental payments with respect to Capital Leases which is or should be applied as a reduction to the principal of such Capital Leases, determined on a consolidated basis for the Credit Parties and their respective Subsidiaries in conformity with GAAP. Notwithstanding the foregoing, for all testing periods ending on or before the one (1) year anniversary of the Closing Date, the amounts set forth in clauses (a) and (d) of this definition shall be calculated by multiplying the actual amounts of such Consolidated Interest Expense and principal payments since the Closing Date by (x) 360, *divided by* (y) the number of days elapsed from the Closing Date until applicable the date of determination.

“Consolidated Indebtedness” shall mean, as at any date of determination, the aggregate amount of all Indebtedness of the Credit Parties described in clauses (a), (b), (g), (i), (j) (to the extent such reimbursement obligations are actually due and payable) and (l) of the definition of Indebtedness, determined on a consolidated basis in accordance with GAAP; provided, however, that any earnout payments pursuant to a Permitted Acquisition shall only constitute Consolidated Indebtedness to the extent the conditions to payment of such earnout have been satisfied.

“Consolidated Interest Expense” shall mean, for any period, the total consolidated interest expense of the Credit Parties for such period determined on a consolidated basis in accordance with GAAP *plus*, without duplication:

(a) imputed interest on Capital Lease Obligations and Attributable Indebtedness of the Credit Parties for such period;

(b) commissions, discounts and other fees and charges owed by any Credit Party with respect to letters of credit securing financial obligations, bankers' acceptance financing and receivables financings for such period;

- (c) amortization of debt issuance costs, debt discount or premium and other financing fees and expenses incurred by any Credit Party for such period;
- (d) cash contributions to any employee stock ownership plan or similar trust made by any Credit Party to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than interest paid to Holdings or a wholly-owned Subsidiary of Holdings) in connection with Indebtedness incurred by such plan or trust for such period;
- (e) all interest paid or payable with respect to discontinued operations of any Credit Party for such period;
- (f) the interest portion of any deferred payment obligations of any Credit Party for such period;
- (g) all interest on any Indebtedness of the Credit Parties of the type described in clause (f) or (k) of the definition of “Indebtedness” for such period.

Consolidated Interest Expense shall be calculated on a Pro Forma Basis to give effect to any Indebtedness (other than Indebtedness incurred for ordinary course working capital needs under ordinary course revolving credit facilities) incurred, assumed or permanently repaid or extinguished at any time on or after the first day of the measuring period and prior to the date of determination in connection with any Permitted Acquisitions and Asset Sales (other than any dispositions in the ordinary course of business) as if such incurrence, assumption, repayment or extinguishing had been effected on the first day of such period.

“**Consolidated Net Income**” shall mean, for any period, the consolidated net income (or loss) of the Credit Parties determined on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded from such net income (to the extent otherwise included therein), without duplication:

- (a) the net income (or loss) of any Person (other than a Subsidiary of Holdings) in which any Person other than Holdings and its Subsidiaries has an ownership interest, except to the extent that cash in an amount equal to any such income has actually been received by the Credit Parties or (subject to clause (b) below) any of their Subsidiaries during such period;
- (b) the net income of any Subsidiary of Holdings (other than a Credit Party) during such period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of that income is not permitted by operation of the terms of its Organizational Documents or any agreement, instrument or Requirement of Law applicable to that Subsidiary during such period, except that any Credit Party’s equity in net loss of any such Subsidiary for such period shall be included in determining Consolidated Net Income except to the extent that cash in an amount equal to any such income has actually been received by the Credit Parties during such period; and

(c) gains and losses due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP for such period.

“Consolidated Tax Expense” shall mean, for any period, the tax expense of the Credit Parties, for such period, determined on a consolidated basis in accordance with GAAP.

“Consolidated Working Capital” means, as of any date of determination, the excess of consolidated current assets over consolidated current liabilities (other than the current portion of the Term Loan).

“Excess Cash Flow” means, with respect to any period,

- (a) the sum of (without duplication) of
 - (i) Consolidated Net Income during such period, *plus*
 - (ii) Consolidated Interest Expense for such period, *plus*
 - (iii) Consolidated Amortization Expense for such period, *plus*
 - (iv) Consolidated Depreciation Expense for such period, *plus*
 - (v) Consolidated Tax Expense for such period to the extent not paid for in cash, *plus*
 - (vi) the aggregate amount of all other non-cash charges, expenses or losses reducing Consolidated Net Income (including for certainty all unrealized foreign exchange losses but excluding any non-cash charge, expense or loss that results in an accrual of a reserve for cash charges in any future period and any non-cash charge, expense or loss relating to write-offs, write-downs or reserves with respect to accounts or inventory) for such period, *plus*
 - (vii) decreases in Consolidated Working Capital during such period (exclusive of current liabilities related to the Term Loans during such period solely to the extent captured in clause (b)(ii) of this definition), *less*
- (b) the sum of (without duplication),
 - (i) Capital Expenditures (excluding any Capital Expenditures financed by the incurrence of Indebtedness permitted under this Agreement and excluding any Capital Expenditures in any Fiscal Year to the extent in excess of the amount permitted to be made in such Fiscal Year pursuant to the Loan Documents), *plus*

- (ii) interest expense paid or accrued (excluding any original issue discount, interest paid in kind or amortized debt discount, to the extent included in determining interest expense) and scheduled principal payments paid or payable in respect of funded debt, *plus*
- (iii) income and franchise taxes of Credit Parties that were paid in cash, *plus*
- (iv) increases in Consolidated Working Capital (exclusive of current liabilities related to the Term Loans during such period solely to the extent captured in clause (b)(ii) of this definition) during such period,

plus or minus (as the case may be),

- (c) without duplication of any adjustment under clause (a) or (b) above, any extraordinary gains (or extraordinary loss) for such period which are cash items not included in the calculation of Consolidated Net Income.

“Fixed Charge Coverage Ratio” means, with respect to any Person for any measuring period four (4) Fiscal Quarters, the ratio of (a) (x) Consolidated EBITDA for such measuring period minus (y) Capital Expenditures for such measuring period, minus (z) Restricted Payments permitted pursuant to [the restricted payments covenant of this Agreement] for such measuring period, to (b) Consolidated Fixed Charges for such measuring period. Notwithstanding the foregoing, for all testing periods ending on or before the one (1) year anniversary of the Closing Date, the amounts set forth in clause (z) of this definition shall be calculated by using the actual amounts of such Restricted Payments since the Closing Date.

“Funded Debt” means all Indebtedness of the Credit Parties and their Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Term Loan.

“Indebtedness” of any Person shall mean, without duplication, (a) all obligations of such Person for borrowed money or advances; (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such Person upon which interest charges are customarily paid or accrued; (d) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person; (e) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable incurred in the ordinary course of business on normal trade terms and not overdue by more than 120 days, deferred compensation and accrued obligations incurred in the ordinary course of business and royalty payments payable in the ordinary course of business in respect of non-exclusive licenses); (f) all Indebtedness of others secured by any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, but limited to the fair market value of such property; (g) all Capital Lease Obligations and Purchase Money Obligations of such Person; (h) all Hedging Obligations to the extent required to be reflected on a balance sheet of such Person; (i) all Attributable Indebtedness of such Person; (j) all obligations of such Person for the reimbursement of any obligor in respect of letters of credit, letters of guarantee, bankers’ acceptances and similar credit transactions; (k) the principal balance outstanding under any synthetic lease, off-balance sheet loan or similar off-balance sheet financing product; (l) all non-contingent obligations to purchase, redeem, retire, defease or otherwise acquire for value any of its own Stock or Stock Equivalents (or any Stock or Stock Equivalent of a direct or indirect parent entity thereof) prior to the date that is 91 days after the Stated Maturity Date valued at, in the case of redeemable preferred Stock, the greater of the voluntary liquidation preference and the involuntary liquidation preference of such Stock plus accrued and unpaid dividends (excluding the obligation to redeem or repurchase such Stock upon the occurrence of a change in control if such Stock provides that the issuer thereof will not redeem or repurchase any such Stock pursuant to such provisions prior to the payment in full of all Obligations (other than any inchoate indemnification and expense reimbursement obligations for which no claim has been made); and (m) all Contingent Obligations of such Person in respect of Indebtedness or obligations of others of the kinds referred to in clauses (a) through (l) above. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except (other than in the case of general partner liability) to the extent that terms of such Indebtedness expressly provide that such Person is not liable therefor.

“Liquidity” means the sum of unrestricted cash and cash equivalents held in a deposit account that is subject to a control agreement in favor of the Agent.

“Secured Leverage Ratio” shall mean, at any date of determination, the ratio of (x) Consolidated Indebtedness secured by any Lien on any of the Collateral on such date, to (y) Consolidated EBITDA for the period of four (4) consecutive Fiscal Quarters for which financial statements have been (or are required to be) delivered.

EXHIBIT E

Form of Solvency Certificate

See attached.

May 15, 2022

Dragonfly Energy Corp.
1190 Trademark Dr. #108
Reno, Nevada 89521

Chardan NexTech Acquisition 2 Corp.
17 State Street, Suite 2130
New York, NY 10004

Re: ChEF Proposal – Establishment of Chardan Equity Facility

In connection with the transactions contemplated by the Agreement and Plan of Merger, dated as of the date hereof (the “**Merger Agreement**”), by and among Chardan NexTech Acquisition 2 Corp. (the “**SPAC**”), Bronco Merger Sub, Inc. and Dragonfly Energy Corp. (the “**Target**”), CCM Investments 5 LLC (the “**Investor**”) is pleased to present to the SPAC and the Target the Summary of Indicative Terms for the establishment of a Chardan Equity Facility (ChEF) (the “**Facility**”) attached hereto as **Exhibit A** (the “**Term Sheet**”) and, together with this letter agreement, this “**Letter Agreement**”). The Investor, the SPAC and the Target are collectively referred to in this Letter Agreement as the “**Parties**.” Capitalized terms used, but not defined, in the body of this Letter Agreement shall have the respective meanings assigned to them in the Term Sheet.

1. **Definitive Documentation.** The Target and the SPAC hereby agree, prior to the Closing, to enter into the Definitive Documentation with the Investor on terms that are (i) consistent with this Letter Agreement and (ii) customary for documentation of this nature.

2. **No Specified Transactions.** Following the execution of this Letter Agreement, the Issuer shall not effect or enter into an agreement to effect any issuance of shares of Common Stock or any securities of the Issuer or its subsidiaries which entitle the holder thereof to acquire at any time any shares of Common Stock (“**Common Stock Equivalents**”), or any combination thereof, or effect or enter into an agreement to effect a Specified Transaction, in each case other than in connection with an Exempt Issuance. The Investor shall be entitled to seek injunctive relief against the Issuer and its subsidiaries to preclude any such issuance, which remedy shall be in addition to any right to collect damages, without the necessity of showing economic loss and without any bond or other security being required. “**Specified Transaction**” means a transaction in which the Issuer (i) issues or sells any securities with a conversion price, exercise price, exchange rate or other price or rate that is based upon and/or varies with the trading price of shares of Common Stock after the date of issuance; (ii) issues or sells any securities at a price, or with a conversion price, exercise price, exchange rate or other price or rate, that is subject to being reset after the date of issuance of such security or upon the occurrence of specified or contingent events; (iii) issues or sells any securities that are subject to or contain any put, call, redemption, buy-back, price reset or other similar provision or mechanism (including a “Black-Scholes” put or call right) that provides for the issuance of additional equity securities of the Issuer or the payment of cash by the Issuer or (iv) enters into any agreement, including, but not limited to, an “equity line of credit” or “at-the-market” or other continuous offering or similar offering of shares of Common Stock or Common Stock Equivalents, whereby the Issuer may sell shares of Common Stock or Common Stock Equivalents at a future determined price, in each case, other than with the Investor or its affiliates. “**Exempt Issuance**” means the issuance of (a) shares of Common Stock, options or other equity incentive awards to employees, officers, directors or vendors of the Issuer pursuant to any equity incentive plan duly adopted for such purpose, by the Issuer’s board of directors (the “**Issuer’s Board**”) or a majority of the members of a committee of the Issuer’s Board established for such purpose, (b) (1) any shares of Common Stock issued to the Investor, Chardan NexTech Investments 2 LLC (the “**Sponsor**”), Chardan Capital Markets, LLC (“**Chardan Capital Markets**”), Chardan NexTech 2 Warrant Holdings LLC (“**Chardan NexTech 2 Warrant Holdings**”) and together with the Sponsor and Chardan Capital Markets, the “**Chardan Entities**”) or any of their respective affiliates or members pursuant to the Definitive Documentation, (2) any securities issued upon the exercise or exchange of or conversion of any shares of Common Stock or Common Stock Equivalents held by the Investor, the Chardan Entities or any of their respective affiliates or members at any time, or (3) any securities issued upon the exercise or exchange of or conversion of any Common Stock Equivalents issued and outstanding, or for which agreements to issue are in effect, as of the date hereof, provided that such securities have not been amended since the date hereof to increase the number of such securities or to decrease the conversion price, exercise price, exchange rate or other price or rate, (c) securities issued pursuant to acquisitions, divestitures, licenses, partnerships, collaborations or strategic transactions approved by the Issuer’s Board or a majority of the members of a committee of the Issuer’s Board established for such purpose which can have a Specified Transaction component provided that any such issuance shall only be to an operating company or an asset in a business synergistic with the business of the Issuer and shall provide to the Issuer additional benefits in addition to the investment of funds, but shall not include a transaction in which the Issuer is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, or (d) shares of Common Stock issued by the Issuer by any method deemed to be an “at-the-market offering” as defined in Rule 415(a)(4) under the Securities Act, exclusively to or through a registered broker dealer.

3. Documentation Fee. The Target shall pay the Investor a \$50,000 fee upon execution of this Letter Agreement.
4. Expenses. The Target will pay all reasonable and documented out-of-pocket expenses and fees, including reasonable and documented legal fees and expenses, of the parties related to the negotiation and execution of the Facility.
5. Confidentiality. This Letter Agreement shall be strictly confidential among the Investor, the SPAC and the Target and their respective advisors and shall not be disclosed, in whole or in part, by the SPAC or the Target to any other person. Notwithstanding the foregoing, the SPAC and the Target may disclose and (if agreed) file this Letter Agreement in connection with the public announcement of the Merger Agreement and the transactions contemplated thereby and related SEC filings.
6. Termination. In the event that the Merger Agreement is terminated without the Closing having occurred, then this Letter Agreement shall automatically terminate without further action or notice.
7. Assignment. This Letter Agreement shall not be assignable by the Target or the SPAC, by operation of law or otherwise, without the written consent of the other Parties (and any purported assignment without such consent shall be null and void). The Investor may assign its rights and obligations under this Letter Agreement to one or more of its affiliates.
8. Counterparts. This Letter Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. Delivery of an executed signature page of this Letter Agreement by facsimile transmission shall be effective as a delivery of a manually executed counterpart hereof.
9. Entire Agreement and Amendments. This Letter Agreement is the only agreement that has been entered into among the Parties with respect to the Transactions and set forth the entire understanding of the Parties with respect thereto. This Letter Agreement may not be amended or waived except by an instrument in writing signed by the Parties.
10. Governing Law; Waiver of Jury Trial; Jurisdiction. THIS LETTER AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION PERTAINING THERETO OR ARISING IN CONNECTION THEREWITH, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, (B) CONSENTS AND AGREES THAT THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR ANY STATE COURTS SITTING IN NEW YORK CITY, SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN OR AMONG ANY OF THE PARTIES PERTAINING TO OR ARISING IN CONNECTION THEREWITH, PROVIDED, THAT THE PARTIES ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF SUCH JURISDICTION, (C) CONSENT TO SUCH JURISDICTION FOR ANY ACTION COMMENCED IN ANY SUCH COURT, AND (D) WAIVE ANY OBJECTIONS BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR INCONVENIENT FORUM.

[Signature Page Follows]

Please indicate your agreement with the terms of this Letter Agreement by signing a copy in the space provided and returning it to the undersigned.

Very truly yours,

CCM INVESTMENTS 5 LLC

By: /s/ Jonas Grossman

Name: Jonas Grossman

Title: Manager

Agreed and Accepted as of:
May 15, 2022

TARGET:

Dragonfly Energy Corp.

By: /s/ Denis Phares

Name: Denis Phares

Title: Chief Executive Officer

SPAC:

Chardan NexTech Acquisition 2 Corp.

By: /s/ Jonas Grossman

Name: Jonas Grossman

Title: Chief Executive Officer

EXHIBIT A

Summary of Indicative Terms

See attached.

Chardan NexTech Acquisition 2 Corp.

Committed Equity Facility

May 15, 2022

Summary of Indicative Terms

\$150MM Chardan Equity Facility (ChEF)

Provision	Description
SPAC:	Chardan NexTech Acquisition 2 Corp.
Investor:	A newly formed entity by Chardan Capital Markets LLC (“ Chardan ”) or an existing affiliate of Chardan (the “ Investor ”).
Issuer:	Entity that will be the post-business combination public company (the “ Issuer ”).
Facility:	A three-year standing equity facility (the “ Facility ”) to enable the Issuer to raise a total of up to \$150MM (the “ Aggregate Commitment Amount ”) from time to time as it elects, subject to the terms of the Facility, by putting shares (the “ Facility Shares ”) of its common stock (the “ Common Stock ”) to the Investor at then-current pricing, as specified further below.
Purchase Price of Facility Shares:	VWAP on the Purchase Date (each as defined below), less three and one-half percent (3.5%). “VWAP” means the volume-weighted average price of the shares of Common Stock on the applicable trading day(s), adjusted to exclude block trades and trades that individually exceed 20,000 shares.
Put Right:	Subject to the terms of the Definitive Documentation, the Issuer has the right, from time to time at its discretion, to require (a “Put”) the Investor to purchase shares of Common Stock up to the Aggregate Commitment Amount. The Issuer will initiate a Put by delivering, during the morning prior to market open on any trading days it chooses (each, a “Purchase Date”), notice to the Investor specifying the number of Facility Shares (the “Target Number”) to be purchased by the Investor on that trading day. The Investor must purchase the Target Number of Facility Shares on the Purchase Date; provided that the Investor will not be obligated to (but may, at its option, choose to) purchase Facility Shares to the extent such purchase: (a) would exceed 20% of the number of shares of the Common Stock that would count towards VWAP on that date, (b) would cause the aggregate purchase price for that trading day’s Put to exceed \$3MM or (c) would cause the Investor, together with its affiliates, to exceed 9.9% beneficial ownership, as calculated pursuant to Section 13(d) of the Exchange Act and Rule 13d-3 promulgated thereunder; provided, further, that in such case the number of Facility Shares so required to be purchased will be cut back so as to avoid triggering any of the events in (a), (b) or (c). Promptly following the close of trading on the Purchase Date, Investor will deliver to Issuer a notice (the “Confirmation”) confirming the total number of Facility Shares purchased on that date and their aggregate purchase price. Any unsold portion of the Facility will remain outstanding so that further Puts may be initiated by the Issuer. For the avoidance of doubt, the Investor shall not be required to purchase any Facility Shares except to the extent that they are eligible to be resold pursuant to a Registration Statement (as defined below) that is at such time effective and available and FINRA, as applicable, has provided its no-objection letter, and subject to the other conditions specified in the Definitive Documentation.

Provision	Description
Term of Facility:	The Facility shall remain outstanding until three years following the later of (i) the business combination closing (the “Closing”) and (ii) the effective date of the Registration Statement, unless terminated earlier upon reasonable prior notice by the Issuer or as otherwise set forth in the Definitive Documentation (which shall only include customary termination provisions). In the event the merger agreement relating to the business combination (the “Merger Agreement”) is terminated without the Closing having occurred, the Definitive Documentation (if executed earlier) shall automatically terminate.
Definitive Documentation:	The purchase agreement and registration rights agreement (collectively, the “Definitive Documentation”) will include customary conditions, representations and warranties, registration rights (as described herein) and other covenants and indemnities. The Definitive Documentation will also contain customary termination rights and suspension events with respect to the Investor’s purchase obligation.
Commitment Fee:	On the earlier of (a) the thirtieth (30th) trading day following the Closing and (b) the effective date of the Registration Statement, the Issuer shall issue to the Investor a number of shares of Common Stock (the “Commitment Shares”) equal to the quotient obtained by dividing \$1MM by the VWAP of the Issuer’s shares of common stock for the immediately prior five (5) trading days. The Commitment Shares will be registered for resale on the Registration Statement, but will be subject, if required by the FINRA rules, to a lock-up period of six (6) months.
Registration of Shares:	The Definitive Documentation shall provide that, within thirty (30) calendar days following the Closing, the Issuer shall file with the SEC, and use commercially reasonable efforts to have declared effective as promptly as practicable thereafter, a resale registration statement registering the resale by the Investor (a “Registration Statement”) of the Commitment Shares and the Facility Shares; provided that the total number of shares registered in connection with the Facility will not exceed 19.99% of the total number of shares of Common Stock outstanding as of the execution of the Definitive Documentation. Commencement of the Facility and effectiveness of the Registration Statement are subject to receipt of a no-objection letter from FINRA. The Issuer shall be required to keep the Registration Statement effective for at least one year following the full term of the Facility. The Definitive Documentation shall provide for the Issuer to include the requisite disclosure in the Registration Statement and provide customary deliverables to the Investor for an underwritten offering of securities, including due diligence, legal opinions and comfort letters and related plan of distribution disclosure.

Provision	Description
Settlement:	The transfer agent and the Issuer will deliver the total number of Facility Shares specified in the Confirmation on a T+1 basis; the Definitive Documentation will specify remedies, including customary penalties, for lack of settlement by T+2.
Conditions Precedent to Purchases of Facility Shares:	Conditions precedent include, among other things, completion of customary due diligence for facilities of this type, preparation and execution of Definitive Documentation reasonably acceptable to both parties and Dragonfly Energy Corp. (the “ <i>Target</i> ”), filing and maintaining effectiveness of the Registration Statement, and no-objection clearance from FINRA (which the Investor will promptly obtain).
No Specified Transactions:	The Definitive Documentation will include the provision contained in paragraph 2 of the letter agreement, dated May 15, 2022, by and among the SPAC, the Target and the Investor, which provision shall be stated to apply from and after the date of the Definitive Documentation until the three-year anniversary of the Definitive Documentation.