

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): **October 7, 2022 (October 7, 2022)**

DRAGONFLY ENERGY HOLDINGS CORP.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

001-40730

(Commission File Number)

85-1873463

(IRS Employer
Identification No.)

1190 Trademark Drive #108

Reno, Nevada 89521

(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **(775) 622-3448**

Chardan NexTech Acquisition 2 Corp.

17 State Street, 21st Floor

New York, New York 10004

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

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

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

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

Title of Each Class:	Trading Symbol(s)	Name of Each Exchange on Which Registered:
Common stock, par value \$0.0001 per share	DFLI	The Nasdaq Global Market
Redeemable warrants, exercisable for common stock at an exercise price of \$11.50 per share, subject to adjustment	DFLIW	The 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. ☐

INTRODUCTORY NOTE

On October 7, 2022 (the “Closing Date”), Dragonfly Energy Holdings Corp., a Delaware corporation (the “Company”) (f/k/a Chardan NexTech Acquisition 2 Corp. (“Chardan”)), consummated the previously announced merger (the “Closing”) pursuant to the Business Combination Agreement, dated May 15, 2022, as amended by the Amendment to the Business Combination Agreement, dated July 12, 2022 (as so amended, the “Business Combination Agreement”), by and among Chardan, Bronco Merger Sub, Inc., a Nevada corporation and a wholly owned subsidiary of Chardan (“Merger Sub”), and Dragonfly Energy Corp., a Nevada corporation (“Legacy Dragonfly”). Chardan’s stockholders approved the Transactions (as defined below) at a special meeting of stockholders held on October 6, 2022 (the “Special Meeting”).

Pursuant to the Business Combination Agreement, Merger Sub merged with and into Legacy Dragonfly (the “Merger” and, together with the other transactions contemplated by the Business Combination Agreement, the “Transactions”), with Legacy Dragonfly continuing as the surviving corporation in the Merger and a wholly-owned subsidiary of Chardan. On the Closing Date, the registrant changed its name from Chardan NexTech Acquisition 2 Corp. to Dragonfly Energy Holdings Corp.

Merger Consideration

At the Closing, by virtue of the Merger and without any action on the part of Chardan, Merger Sub, Legacy Dragonfly or the holders of any of the following securities:

- (a) Each outstanding share of Legacy Dragonfly’s common stock, par value \$0.001 per share (“Legacy Dragonfly Common Stock”), converted into (i) a certain number of shares of the Company’s common stock, par value \$0.0001 per share (“Common Stock”), totaling 41,500,000 shares (including the conversion and assumption of the options to purchase shares of Legacy Dragonfly Common Stock described below), which is equal to (x) \$415,000,000 divided by (y) \$10.00 (the “Merger Consideration”) and (ii) the contingent right to receive Earnout Shares (as defined below) (which may be zero) following the Closing.
- (b) Each option to purchase shares of Legacy Dragonfly Common Stock, was assumed and converted into options to acquire shares of Common Stock. The portion of the Merger Consideration reflecting the conversion of the Legacy Dragonfly options was calculated assuming that all the Company options are net-settled. With respect to the Company options received in respect of Legacy Dragonfly options that are outstanding immediately prior to the Closing and cash exercised after the Closing, up to 627,498 additional shares of Common Stock may be issued. At the Closing, approximately 38,576,648 shares of the Merger Consideration was allocated to holders of outstanding shares of Legacy Dragonfly Common Stock and 3,664,975 shares of the Merger Consideration was allocated to holders of the assumed Legacy Dragonfly options.

Earnout Merger Consideration

In addition to the Merger Consideration set forth above, additional contingent shares (“Earnout Shares”) may be payable to each holder of shares of Legacy Dragonfly Common Stock in the Merger, subject to achieving specified milestones, up to an aggregate of 40,000,000 additional shares of Common Stock in three tranches.

The first tranche of 15,000,000 shares is issuable if the Company’s 2023 total audited revenue is equal to or greater than \$250 million and the Company’s 2023 audited operating income is equal to or greater than \$35 million. The second tranche of 12,500,000 shares is issuable upon achieving a volume-weighted average trading price threshold of Common Stock over any 20 Trading Days (which may or may not be consecutive) within any 30 consecutive Trading Day period of at least \$22.50 on or prior to December 31, 2026, and the third tranche of 12,500,000 shares is issuable upon achieving a volume-weighted average trading price threshold of Common Stock over any 20 Trading Days (which may or may not be consecutive) within any 30 consecutive Trading Day period of at least \$32.50 on or prior to December 31, 2028. To the extent not previously earned, the second tranche is issuable if the \$32.50 price target is achieved by December 31, 2028.

Upon the consummation of a change of control transaction during either the second milestone earnout period or the third milestone earnout period, any earnout milestone with respect to such earnout period that has not yet been achieved shall automatically be deemed to have been achieved if a change of control transaction is announced with an imputed share price of Common Stock of at least \$22.50 on or prior to the end of second earnout period or \$32.50 on or prior to the third earnout period.

A description of the Merger and the terms of the Business Combination Agreement are included in the proxy statement/prospectus, dated September 16, 2022 (the “Proxy Statement/Prospectus”) as filed with the Securities and Exchange Commission (the “SEC”) in the section entitled “*Proposal No. 1 — The Business Combination Proposal*” of the Proxy Statement/Prospectus.

The foregoing description of the Business Combination Agreement is a summary only and is qualified in its entirety by the full text of the Business Combination Agreement, a copy of which is attached hereto as Exhibit 2.1, and 2.1(a), which are incorporated herein by reference.

PIPE Investment

Pursuant to the subscription agreement, dated as of May 15, 2022 (the “Subscription Agreement”), by and between Chardan and Chardan NexTech Investments 2 LLC (or an affiliate thereof if assigned pursuant to the Subscription Agreement, the “Sponsor”), the Sponsor agreed to purchase, and Chardan agreed to sell to the Sponsor, an aggregate of 500,000 shares of Chardan common stock (“Chardan Common Stock”) for gross proceeds to Chardan of \$5 million in a private placement. On September 28, 2022, the Sponsor and Chardan Capital Markets LLC, a New York limited liability company (“CCM LLC”), entered into an assignment, assumption and joinder agreement, pursuant to which the Sponsor assigned all of the Sponsor’s rights, benefits and obligations under the Subscription Agreement to CCM LLC.

Under the Subscription Agreement, the number of shares of Chardan Common Stock that CCM LLC was obligated to purchase was to be reduced by the number of shares of Chardan Common Stock that CCM LLC purchased in the open market, provided that such purchased shares were not redeemed, and the aggregate price to be paid under the Subscription Agreement was to be reduced by the amount of proceeds received by the Company because such shares are not redeemed (the “Offset”). During the week of September 26, 2022 CCM LLC acquired in the open market in total 485,000 shares of Common Stock at purchase prices per share ranging from \$10.33 to \$10.38 (such shares, the “Purchased Shares”). The Purchased Shares were not redeemed, resulting in (i) the Company’s receipt of \$5,016,547 from the Trust Account (based on a per share redemption price of \$10.34) and (ii) a reduction in CCM LLC’s purchase commitment under the Subscription Agreement to zero in accordance with the Offset.

The foregoing description of the Subscription Agreement is a summary only and is qualified in its entirety by the full text of the Subscription Agreement, a copy of which is attached hereto as Exhibit 10.4, which is incorporated herein by reference.

Capitalized terms used but not defined in this Report have the meanings set forth in the Proxy Statement/Prospectus.

Item 1.01 Entry into a Material Definitive Agreement.

Debt Financing

Loan Agreement

Consistent with the previously disclosed commitment letter (the “Debt Commitment Letter”) between Chardan and Legacy Dragonfly, CCM Investments 5 LLC, an affiliate of CCM LLC (“CCM 5”), and in connection with the Term Loan, the “Chardan Lender”), and EICF Agent LLC (“EIP” and, collectively with the Chardan Lender, the “Initial Term Loan Lenders”), in connection with the Closing, Chardan, Legacy Dragonfly and the Initial Term Loan Lenders entered into the Term Loan, Guarantee and Security Agreement (the “Term Loan Agreement”) setting forth the terms of a senior secured term loan facility in an aggregate principal amount of \$75 million (the “Term Loan”). The Chardan Lender backstopped its commitment under the Debt Commitment Letter by entering into a backstop commitment letter, dated as of May 20, 2022 (the “Backstop Commitment Letter”), with a certain third-party financing source (the “Backstop Lender” and collectively with EIP, the “Term Loan Lenders”), pursuant to which the Backstop Lender committed to purchase from the Chardan Lender the aggregate amount of the Term Loan held by the Chardan Lender (the “Backstopped Loans”) immediately following the issuance of the Term Loan on the Closing Date. Pursuant to an assignment agreement, the Backstopped Loans were assigned by CCM 5 to the Backstop Lender on the Closing Date.

Pursuant to the terms of the Term Loan Agreement, the Term Loan was advanced in one tranche on the Closing Date. The proceeds of the Term Loan were used (i) to refinance on the Closing Date prior indebtedness, (ii) to support the Transaction under the Business Combination Agreement, (iii) for working capital purposes and other corporate purposes, and (iv) to pay any fees associated with transactions contemplated under the Term Loan Agreement and the other loan documents entered into in connection therewith, including the transactions described in the foregoing clauses (i) and (ii) and fees and expenses related to the business combination. The Term Loan amortizes in the amount of 5% per annum beginning 24 months after the Closing Date and matures on the fourth anniversary of the Closing Date (“Maturity Date”). The Term Loan accrues interest (i) until April 1, 2023, at a per annum rate equal to the adjusted Secured Overnight Financing Rate (“SOFR”) plus a margin equal to 13.5%, of which 7% will be payable in cash and 6.5% will be paid in-kind, (ii) thereafter until October 1, 2024, at a per annum rate equal to adjusted SOFR plus 7% payable in cash plus an amount ranging from 4.5% to 6.5%, depending on the senior leverage ratio of the consolidated company, which will be paid-in-kind and (iii) at all times thereafter, at a per annum rate equal to adjusted SOFR plus a margin ranging from 11.5% to 13.5% payable in cash, depending on the senior leverage ratio of the consolidated company. In each of the foregoing cases, adjusted SOFR will be no less than 1%.

The Company may elect to prepay all or any portion of the amounts owed prior to the Maturity Date; provided that the Company provides notice to the Administrative Agent and the amount is accompanied by the applicable prepayment premium, if any. Prepayments of the Term Loan are required to be accompanied by a premium of 5% of the principal amount so prepaid if made prior to the first anniversary of the Closing Date, 3% if made on and after the first anniversary but prior to the second anniversary of the Closing Date, 1% if made after the second anniversary of the Closing Date but prior to the third anniversary of the Closing Date, and 0% if made on or after the third anniversary of the Closing Date. If the Term Loan is accelerated following the occurrence of an event of default, Legacy Dragonfly is required to immediately pay to lenders the sum of all obligations for principal, accrued interest, and the applicable prepayment premium.

In addition to the foregoing, Legacy Dragonfly is required to prepay the Term Loan with the net cash proceeds of certain asset sales and casualty events (subject to certain customary exceptions), with the net cash proceeds of the issuance of indebtedness that is not otherwise permitted to be incurred under the Term Loan Agreement, upon the receipt of net cash proceeds from an equity issuance in an amount equal to 25% of such net cash proceeds, and commencing with the fiscal year ending December 31, 2023, with the excess cash flow for each such fiscal year in an amount equal to either 25% or 50% of such excess cash flow depending on the senior leverage ratio of the consolidated company less the amount of any voluntary prepayments made during such fiscal year.

Pursuant to the Term Loan Agreement, the obligations of Legacy Dragonfly are guaranteed by the Company and will be guaranteed by any of the Company’s subsidiaries that are party thereto from time to time as guarantors. Pursuant to the Term Loan Agreement, each of the Company and Legacy Dragonfly granted Alter Domus (US) LLC, as administrative agent for the lenders (the “Administrative Agent”), a security interest in substantially all of its personal property, rights and assets to secure the payment of all amounts owed to lenders under the Term Loan Agreement. In addition, the Company entered into a Pledge Agreement (the “Pledge Agreement”) pursuant to which the Company pledged to the Administrative Agent its equity interests in Legacy Dragonfly as further collateral security for the obligations under the Term Loan Agreement.

The Term Loan Agreement contains affirmative and restrictive covenants and representations and warranties. The Company and its subsidiaries are bound by certain affirmative covenants setting forth actions that are required during the term of the Term Loan Agreement, including, without limitation, certain information delivery requirements, obligations to maintain certain insurance, and certain notice requirements. Additionally, the Company, Legacy Dragonfly and each of its subsidiaries that are guarantors from time to time will be bound by certain restrictive covenants setting forth actions that are not permitted to be taken during the term of the Term Loan Agreement without prior written consent, including, without limitation, incurring certain additional indebtedness, consummating certain mergers, acquisitions or other business combination transactions, and incurring any non-permitted lien or other encumbrance on assets. The Term Loan Agreement also contains other customary provisions, such as confidentiality obligations and indemnification rights for the benefit of the administrative agent and lenders. The Term Loan Agreement contains financial covenants requiring the credit parties to (a) maintain minimum liquidity (generally, the balance of unrestricted cash and cash equivalents in the Company's account that is subject to a control agreement in favor of the Administrative Agent) of at least \$10,000,000 as of the last day of each fiscal month commencing with the fiscal month ending December 31, 2022, (b) if the daily average liquidity for any fiscal quarter ending on December 31, 2022, March 31, 2023, June 30, 2023, or September 30, 2023 is less than \$17,500,000 and for each fiscal quarter thereafter (commencing with the fiscal quarter ending December 31, 2023), maintain a senior leverage ratio (generally, aggregate debt minus up to \$500,000 of unrestricted cash of Chardan and its subsidiaries divided by consolidated EBITDA for the trailing twelve month period just ended) of not more than 6.75 to 1.00 for fiscal quarters ending December 31, 2022 to March 31, 2023, 6.00 to 1.00 for fiscal quarters ending June 30, 2023 to September 30, 2023, 5.00 to 1.00 for fiscal quarters ending December 1, 2023 to March 31, 2024, 4.00 to 1.00 for fiscal quarters ending June 30, 2024 to September 30, 2024, 3.25 to 1.00 for fiscal quarters ending December 31, 2024 to March 31, 2025, and 3.00 to 1.00 for fiscal quarters ending June 30, 2025 and thereafter, (c) if liquidity is less than \$15,000,000 as of the last day of any fiscal quarter (commencing with the fiscal quarter ending December 31, 2022), maintain a fixed charge coverage ratio for the trailing four fiscal quarter period of no less than 1.15:1.00 as of the last day of such fiscal quarter, and (d) if consolidated EBITDA is less than \$15,000,000 for any trailing twelve month period ending on the last day of the most recently completed fiscal quarter, cause capital expenditures to not exceed \$500,000 for the immediately succeeding fiscal quarter (subject to certain exceptions set forth in the Term Loan Agreement).

The foregoing description of the Debt Financing is a summary only and is qualified in its entirety by the full text of the Term Loan Agreement and the Pledge Agreement, copies of which are attached hereto as Exhibit 10.12 and Exhibit 10.13, respectively, and are incorporated herein by reference.

Warrant Agreements

In connection with the entry into the Term Loan Agreement, and as a required term and condition thereof, the Company entered into (i) the penny warrant to issue penny warrants to the Term Loan Lenders under the Term Loan exercisable to purchase 2,593,056 shares, which is equal to approximately 5.6% of Common Stock calculated on an agreed fully diluted outstanding basis on the issuance date (the “Penny Warrants”) and (ii) the \$10 warrant to issue warrants to the Term Loan Lenders under the Term Loan exercisable to purchase 1,600,000 shares of Common Stock at \$10 per share (the “\$10 Warrants” and, together with the Penny Warrants, the “Warrants”). The additional shares of Common Stock will dilute the pro forma ownership of the other Company stockholders of proportionately.

The Penny Warrants have an exercise period of 10 years from the date of issuance.

The \$10 Warrants have an exercise period of five years from the date of issuance and have customary cashless exercise provisions. In addition, in the event the registration statement registering the shares of Common Stock related to the ChEF Equity Facility (defined below) has not been declared effective by the SEC on or before the date that is 121 days after the issuance date, the number of shares of Common Stock to be issued pursuant to the \$10 Warrants shall increase by an additional 200,000 shares on such date and at the beginning of each subsequent 30 day period, until such registration statement is declared effective.

The Warrants have specified anti-dilution protection against subsequent equity sales or distributions, subject to 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, issuances pursuant to employee benefit plans and similar arrangements, issuances in joint ventures, strategic arrangements or other non-financing type transactions and issuances pursuant to any public equity offerings. In addition, no anti-dilution adjustment will be made with respect to issuances of Common Stock pursuant to the Company's \$150 million ChEF Equity Facility (or replacement thereof) sold at a per share price above \$5.00.

The shares issuable upon exercise of the Warrants have customary registration rights, which are contained in the respective forms of the Warrants, requiring the Company to file and keep effective a resale registration statement registering the resale of the shares of Common Stock underlying the Warrants.

The foregoing description of the \$10 Warrants and the Penny Warrants is a summary only and is qualified in its entirety by reference to the full text of the \$10 Warrant and Penny Warrant, copies of which are attached hereto as Exhibit 4.2 and Exhibit 4.3, respectively, and are incorporated herein by reference.

ChEF Equity Facility

Consistent with the previously disclosed equity facility letter agreement between Legacy Dragonfly and CCM 5, the Company and CCM LLC entered into a purchase agreement (the “Purchase Agreement”) and a Registration Rights Agreement (the “ChEF RRA”) in connection with the Closing. Pursuant to the Purchase Agreement, the Company has the right to sell to CCM LLC an amount of shares of Common Stock, up to a maximum aggregate purchase price of \$150 million, from time to time, pursuant to the terms of the Purchase Agreement. In addition, the Company appointed LifeSci Capital, LLC as “qualified independent underwriter” with respect to the transactions contemplated by the Purchase Agreement.

Pursuant to, on the terms of, and subject to the satisfaction of the conditions in the Purchase Agreement, including the filing and effectiveness of a registration statement registering the resale by CCM LLC of the shares of Common Stock issued to it under the Purchase Agreement, the Company will have the right from time to time at its option to direct CCM LLC to purchase up to a specified maximum amount of shares of Common Stock, up to a maximum aggregate purchase price of \$150 million, over the term of the equity facility (“ChEF Equity Facility”).

Under the terms of the Purchase Agreement, CCM LLC will not be obligated to (but may, at its option, choose to) purchase shares of Common Stock to the extent the number of shares to be purchased would exceed the lowest of the number of shares of Common Stock (i) which would result in beneficial ownership (as calculated pursuant to Section 13(d) of the Exchange Act and Rule 13d-3 promulgated thereunder) by CCM LLC, together with its affiliates, of more than 9.9%, (ii) which would cause the aggregate purchase price on the applicable VWAP Purchase Date (as defined in the Purchase Agreement) for such purchases to exceed \$3 million and (iii) equal to 20% of the total number of shares of Common Stock that would count towards VWAP on the applicable Purchase Date of such purchase.

The net proceeds from any sales under the Purchase Agreement will depend on the frequency with, and prices at, which shares of Common Stock are sold to CCM LLC. To the extent the Company sells shares of Common Stock under the Purchase Agreement, it currently plans to use any proceeds therefrom for working capital and other general corporate purposes.

CCM LLC is an affiliate of the Sponsor. In light of the beneficial ownership limitation set forth above, the Sponsor has agreed that the private placement warrants held by Chardan NexTech 2 Warrant Holdings LLC (“Warrant Holdings”), also an affiliate of the Sponsor, may not be exercised to the extent an affiliate of the Sponsor (including CCM LLC) is deemed to beneficially own, or it would cause such affiliate to be deemed to beneficially own, more than 7.5% of Common Stock.

In addition, pursuant to the ChEF RRA, the Company has agreed to provide CCM LLC with certain registration rights with respect to the shares of Common Stock issued subject to the Purchase Agreement.

The Purchase Agreement will automatically terminate on the earliest to occur of (i) the 36-month anniversary of the later of (x) the closing of the Business Combination and (y) effective date of the Initial Registration Statement (as defined in the Purchase Agreement), (ii) the date on which CCM LLC shall have purchased \$150,000,000 of shares of Common Stock pursuant to the Purchase Agreement, (iii) the date on which Common Stock shall have failed to be listed or quoted on Nasdaq or any successor principal market and (iv) the commencement of certain bankruptcy proceedings or similar transactions with respect to the Company or all or substantially all of its property.

The foregoing description of the ChEF Equity Facility is a summary only and is qualified in its entirety by the full text of the Purchase Agreement and the ChEF RRA, copies of which are attached hereto as Exhibit 10.10 and Exhibit 10.11, respectively, and are incorporated herein by reference.

Related Agreements

Concurrently with the execution of the Business Combination Agreement, Chardan, Legacy Dragonfly and the Sponsor entered into a sponsor support agreement, a copy of which is attached as Exhibit 10.1 and is incorporated herein by reference.

Indemnification of Directors and Officers

On the Closing Date, in connection with the consummation of the Transactions, the Company entered into indemnification agreements with each of its directors and executive officers. These agreements, among other things, will require the Company to indemnify the Company's directors and executive officers for certain expenses, including attorneys' fees, judgments and fines incurred by a director or executive officer in any action or proceeding arising out of their services as one of the Company's directors or executive officers or any other company or enterprise to which the person provides services at the Company's request.

The foregoing description of the indemnification agreements does not purport to be complete and is qualified in its entirety by reference to the full text of the form of indemnification agreement, a copy of which is attached hereto as Exhibit 10.7 and is incorporated herein by reference.

Registration Rights Agreement

On the Closing Date, in connection with the consummation of the Transactions, the Company entered into the Amended and Restated Registration Rights Agreement (the "Registration Rights Agreement") with the Sponsor, Chardan's officers, directors, initial stockholders, CCM LLC and Warrant Holdings, an affiliate of the Sponsor (collectively, the "Insiders") and certain Legacy Dragonfly stockholders.

The foregoing description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Registration Rights Agreement, a copy of which is attached hereto as Exhibit 10.21 and is incorporated herein by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The disclosure set forth in the "Introductory Note" above is incorporated by reference into this Item 2.01.

As previously reported by the Company on a Current Report on Form 8-K filed with the SEC, on October 6, 2022, at the Special Meeting, Chardan's stockholders approved the Business Combination Agreement, the Transactions and the other related proposals presented in the Proxy Statement/Prospectus. On October 7, 2022, the parties to the Business Combination Agreement consummated the Transactions.

In connection with the Business Combination, holders of an aggregate of 2,071,910 public shares of Common Stock properly exercised their right to have such shares redeemed for a full pro rata portion of the trust account holding the proceeds from Chardan's initial public offering, which was approximately \$10.24 per share, or approximately \$21,216,358 in the aggregate, calculated as of two (2) business days prior to the Closing. The remaining amount in the trust account of approximately \$10,978,873 was used to fund expenses incurred by Legacy Dragonfly and Chardan in connection with the Business Combination and will be used for general corporate purposes of the Company following the Business Combination.

As a result of the Business Combination, each share of Legacy Dragonfly Common Stock outstanding immediately prior to the effective time of the Business Combination was converted into the right to receive approximately 1.18209 shares of Common Stock. Immediately following consummation of the Transactions, including the redemption of public shares as described above, there were 44,848,686 shares of Common Stock issued and outstanding. Common Stock is expected to commence trading on the Nasdaq Global Market under the symbol "DFLI" and the warrants are expected to commence trading on the Nasdaq Capital Market under the symbol "DFLIW" on October 10, 2022, subject to ongoing review of the Company's satisfaction of all listing criteria following the Business Combination.

FORM 10 INFORMATION

Item 2.01(f) of Form 8-K states that if the registrant was a “shell company” (as such term is defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)), as the Company was immediately before the Business Combination, then the registrant must disclose the information that would be required if the registrant were filing a general form for registration of securities on Form 10 with the SEC. Accordingly, the Company is providing below the information that would be included in a Form 10 if it were to file a Form 10 with the SEC. Please note that the information provided below relates to the combined company after the consummation of the Business Combination, unless otherwise specifically indicated or the context otherwise requires.

Cautionary Note Regarding Forward-Looking Statements

Certain statements contained in this Report may constitute “forward-looking statements” within the meaning of the “safe harbor” provisions of the United States Private Securities Litigation Reform Act of 1995. In addition, any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. Forward-looking statements may be identified by the use of words such as “estimate,” “plan,” “project,” “forecast,” “intend,” “will,” “expect,” “anticipate,” “believe,” “seek,” “target,” “designed to” or other similar expressions that predict or indicate future events or trends or that are not statements of historical matters. The Company cautions readers of this Report that these forward-looking statements are subject to risks and uncertainties, most of which are difficult to predict and many of which are beyond the Company’s control, that could cause the actual results to differ materially from the expected results. These forward-looking statements include, but are not limited to, statements regarding estimates and forecasts of financial and performance metrics, projections of market opportunity and market share, potential benefits and the commercial attractiveness to its customers of the Company’s products and services, the potential success of the Company’s marketing and expansion strategies, the potential for the Company to achieve design awards, and the potential benefits of the Business Combination (including with respect to shareholder value). These statements are based on various assumptions, whether or not identified in this Report, and on the current expectations of the Company’s management and are not predictions of actual performance. These forward-looking statements are provided for illustrative purposes only and are not intended to serve as, and must not be relied on by any investor as, a guarantee, an assurance, a prediction or a definitive statement of fact or probability. Actual events and circumstances are difficult or impossible to predict and will differ from assumptions. These forward-looking statements are subject to a number of risks and uncertainties, including:

- the ability to maintain the listing of Common Stock on the Nasdaq;
 - the inability to recognize the anticipated benefits our Business Combination may be affected by, among other things, the ability of the Company to grow and manage growth profitably, maintain relationships with customers, compete within its industry and retain its key employees;
 - changes in financial estimates and recommendations by securities analysts concerning the Company or the market in general;
 - the Company’s ability to successfully increase market penetration into its target markets;
 - the addressable markets that the Company intends to target do not grow as expected;
 - the loss of any members of the Company’s senior management team or other key personnel;
 - the loss of any relationships with key suppliers including suppliers in China;
 - the loss of any relationships with key customers;
 - the inability to protect the Company’s patents and other intellectual property;
 - 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;
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- changes in applicable laws or regulations;
- the possibility that the Company may be adversely affected by other economic, business and/or competitive factors (including an economic slowdown or inflationary pressures);
- the impact of the novel coronavirus disease pandemic, including any mutations or variants thereof, and its effect on business and financial conditions;
- the inability to timely and successfully access the equity line (ChEF) in desired amounts and prices;
- the potential for events or circumstances that result in the Company's failure to timely achieve the anticipated benefits of the Company's customer arrangements with THOR and its affiliate brands (including Keystone);
- the Company's ability to raise additional capital to fund its operations;
- the Company's ability to generate revenue from future product sales or its ability to achieve and maintain profitability;
- the accuracy of the Company's projections and estimates regarding its expenses, capital requirements, cash utilization, and need for additional financing;
- the potential scope and value of the Company's intellectual property and proprietary rights;
- developments relating to the Company's competitors and its industry;
- the Company's ability to engage target customers and successfully convert these customers into meaningful orders in the future;
- the Company's reliance on two suppliers for its LFP cells and a single supplier for the manufacture of its battery management system;
- the Company's likely dependence on a single manufacturing facility;
- the Company's increasing reliance on software and hardware that is highly complex and technical; and
- other risks and uncertainties described in the Proxy Statement/Prospectus in the section entitled "*Risk Factors*" beginning on page 52 thereof and incorporated herein by reference.

If any of these risks materialize or any of the Company's assumptions prove incorrect, actual results could differ materially from the results implied by these forward-looking statements. There may be additional risks that the Company is not presently aware of or that the Company currently believes are immaterial that could also cause actual results to differ from those contained in the forward-looking statements. In addition, forward-looking statements reflect the Company's expectations, plans or forecasts of future events and views as of the date of this Report. The Company anticipates that subsequent events and developments will cause the Company's assessments to change. However, while the Company may elect to update these forward-looking statements at some point in the future, the Company specifically disclaims any obligation to do so. These forward-looking statements should not be relied upon as representing the Company's assessments as of any date subsequent to the date of this Report. Accordingly, undue reliance should not be placed upon the forward-looking statements. Actual results, performance or achievements may, and are likely to, differ materially, and potentially adversely, from any projections and forward-looking statements and the assumptions on which those forward-looking statements were based. There can be no assurance that the data contained herein is reflective of future performance to any degree. You are cautioned not to place undue reliance on forward-looking statements as a predictor of future performance as projected financial information and other information are based on estimates and assumptions that are inherently subject to various significant risks, uncertainties and other factors, many of which are beyond the Company's control.

Business

The business of Chardan and Legacy Dragonfly before the Merger and the business of the Company following the Merger are described in the Proxy Statement/Prospectus in the sections entitled “*Other Information Related to Chardan*” beginning on page 171 thereof and “*Information About Dragonfly*” beginning on page 189 thereof and are incorporated herein by reference.

Risk Factors

The risks associated with the Company’s business are described in the Proxy Statement/Prospectus in the section entitled “*Risk Factors*” beginning on page 52 thereof and are incorporated herein by reference. A summary of the risks associated with the Company’s business are also described on pages 41-43 of the Proxy Statement/Prospectus under the heading “*Risk Factors*” and are incorporated herein by reference.

Financial Information

The financial information of Chardan is described in the Proxy Statement/Prospectus in the sections entitled “*Summary Historical Financial Information of Chardan*” and “*Chardan’s Management’s Discussion and Analysis of Financial Condition and Results of Operations*” beginning on pages 46 and 183 thereof, respectively, and are incorporated herein by reference.

The financial information of Legacy Dragonfly is described in the Proxy Statement/Prospectus in the sections entitled “*Summary Historical Financial Information of Dragonfly*” and “*Dragonfly’s Management’s Discussion and Analysis of Financial Condition and Results of Operations*” beginning on pages 44 and 237 thereof, respectively, and are incorporated herein by reference.

Reference is made to the disclosure set forth in Item 9.01 of this Report relating to financial information of Chardan and Legacy Dragonfly, which is incorporated herein by reference.

Properties

The facilities of the Company are described in the Proxy Statement/Prospectus in the section entitled “*Information About Dragonfly—Headquarters, Manufacturing and Production*” beginning on page 202 thereof and is incorporated herein by reference.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth information known to the Company regarding the beneficial ownership of Common Stock immediately following consummation of the Transactions by:

- each person who is known by the Company to be the beneficial owner of more than 5% of the outstanding shares of Common Stock;
- each of the Company’s named executive officers and directors; and
- all of the Company’s executive officers and directors as a group.

Beneficial ownership is determined according to the rules of the SEC, which generally provide that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power over that security, which includes the power to dispose of or to direct the disposition of the security or has the right to acquire such powers within 60 days. In computing the number of shares of Common Stock beneficially owned by a person or entity and the percentage ownership, the Company deemed outstanding shares of Common Stock subject to options and warrants held by that person or entity that are currently exercisable or exercisable within 60 days of the Closing Date. The Company did not deem these shares outstanding, however, for the purpose of computing the percentage ownership of any other person or entity.

Unless otherwise noted, the address of each beneficial owner is c/o Dragonfly Energy Holdings Corp., 1190 Trademark Dr. #108, Reno, Nevada 89521.

The beneficial ownership of Common Stock is based on 44,848,686 shares of Common Stock issued and outstanding immediately following consummation of the Transactions, including the redemption of public shares of Common Stock as described above.

Beneficial Ownership Table		
	Number of Shares of Common Stock Beneficially Owned	%
5% Holders:		
Dynavolt Technology (HK) Ltd.	11,820,900	26.4%
Chardan NexTech Investments 2 LLC ⁽¹⁾	3,662,500	8.2%
Jonas Grossman ⁽¹⁾⁽²⁾⁽³⁾	3,662,500	8.2%
Chardan NexTech 2 Warrant Holdings LLC ⁽⁴⁾	4,627,858	—
David Gong	2,364,180	5.3%
Executive Officers and Directors:		
Dr. Denis Phares ⁽⁵⁾⁽⁶⁾	15,899,110	35.5%
Sean Nichols ⁽⁵⁾⁽⁷⁾	3,558,683	7.9%
Nicole Harvey	11,821	*
John Marchetti	—	—
Luisa Ingargiola	—	—
Brian Nelson	—	—
Perry Boyle	22,000	*
Jonathan Bellows	—	—
Rick Parod	—	—
Karina Edmonds	—	—
* Less than one percent.		
(1) Includes 485,000 shares purchased by Chardan Capital Markets LLC in the open market in satisfaction of its purchase commitment under the Subscription Agreement. Jonas Grossman is the managing member of Chardan Capital Markets LLC. As such, Mr. Grossman may be deemed to have beneficial ownership of Common Stock held directly by Chardan Capital Markets LLC. Mr. Grossman disclaims any beneficial ownership of the reported shares other than to the extent of any pecuniary interest they may have therein, directly or indirectly. Certain other employees of Chardan or its affiliates, including each of its executive officers, have direct or indirect membership interests in Chardan Capital Markets LLC, and thus have pecuniary interests in certain of the reported shares.		
(2) Includes the 3,030,500 shares held by the Sponsor, which may be deemed to be beneficially owned by Jonas Grossman as the managing member of the Sponsor.		
(3) Excludes 4,627,858 Chardan private warrants, which Warrant Holdings has agreed not to exercise to the extent an affiliate of Warrant Holdings is deemed to beneficially own, or it will cause such affiliate to be deemed, to beneficially own, more than 7.5% of Common Stock.		
(4) Includes 4,627,858 Chardan private warrants, which the Warrant Holdings has agreed not to exercise to the extent an affiliate of Warrant Holdings is deemed to beneficially own, or it will cause such affiliate to be deemed, to beneficially own, more than 7.5% of Common Stock.		
(5) Excludes 40,000,000 Earnout Shares of Common Stock as the earnout contingencies have not yet been met.		
(6) Includes 1,217,906 shares held on behalf of the Phares 2021 GRAT dated July 9, 2021, of which Dr. Phares is trustee.		
(7) Includes 54,393 shares held on behalf of the Nichols GRAT I dated June 14, 2021, and 3,383,142 held on behalf of the Nichols Living Trust 2015, each of which Mr. Nichols is trustee.		

Directors and Executive Officers

Directors

In connection with the Closing, Kerry Propper, Jonas Grossman, Alex Weil, Jonathan Biele, Roderick Hardamon, Jory Des Jardins, Hitesh Thakrar and Todd Thomson resigned as directors of Chardan, the size of the board of directors of Chardan (the “Chardan Board”) was decreased from eight to seven, Dr. Denis Phares, Luisa Ingargiola, Brian Nelson, Jonathan Bellows, Rick Parod and Karina Edmonds were appointed to the board of directors of the Company (the “Board”), and Perry Boyle continued as a director, in each case, as described in the Proxy Statement/Prospectus in the section entitled “*Management of New Dragonfly After the Business Combination*,” which is incorporated herein by reference.

On October 7, 2022, Rick Parod and Karina Edmonds were designated to serve as Class A Directors of the Board, with their terms expiring at the first annual meeting of the stockholders following the Closing. Brian Nelson and Jonathan Bellows were designated to serve as Class B Directors of the Board, with their terms expiring at the second annual meeting of the stockholders following the Closing. Dr. Denis Phares, Luisa Ingargiola and Perry Boyle were designated to serve as Class C Directors of the Board with their terms expiring at the third annual meeting of the stockholders following the Closing. Biographical information for these individuals is set forth in the Proxy Statement/Prospectus in the section titled “*Management of New Dragonfly After the Business Combination*” beginning on page 209, which is incorporated herein by reference. Dr. Denis Phares was appointed to serve as the Chairman of the Board.

Independence of Directors

The Nasdaq listing standards require that a majority of the Board be independent. An “independent director” is defined generally as a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which in the opinion of the Board, would interfere with the director’s exercise of independent judgment in carrying out the responsibilities of a director. The Board has determined that Luisa Ingargiola, Brian Nelson, Perry Boyle, Jonathan Bellows, Rick Parod and Karina Edmonds are “independent directors” as defined in the Nasdaq listing standards and applicable SEC rules. The Company’s independent directors will have regularly scheduled meetings at which only independent directors are present.

The Board created the position of Lead Independent Director and appointed Luisa Ingargiola to serve in that role. As Lead Independent Director, Ms. Ingargiola will have the authority and responsibilities described in our Corporate Governance Guidelines and will generally help coordinate the efforts of our non-employee directors.

Director Compensation

The executive compensation of the Company’s directors is described in the Proxy Statement/Prospectus in the section entitled “*Executive and Director Compensation of Dragonfly Energy Corp.*” beginning on page 216 thereof and is incorporated herein by reference.

Committees of the Board of Directors

The standing committees of the Board consist of an audit committee (the “Audit Committee”), a compensation committee (the “Compensation Committee”) and a nominating and corporate governance committee (the “Nominating and Corporate Governance Committee”). Each of the committees reports to the Board.

The Board appointed Luisa Ingargiola, Rick Parod and Perry Boyle to serve on the Audit Committee, with Luisa Ingargiola as chair. The Board appointed Luisa Ingargiola, Brian Nelson and Rick Parod to serve on the Compensation Committee, with Brian Nelson as chair. The Board appointed Brian Nelson, Jonathan Bellows and Karina Edmonds to serve on the Nominating and Corporate Governance Committee, with Karina Edmonds as chair. Biographical information for Luisa Ingargiola, Brian Nelson, Perry Boyle, Jonathan Bellows, Rick Parod and Karina Edmonds is set forth in the Proxy Statement/Prospectus in the section titled “*Management of New Dragonfly After the Business Combination*” beginning on page 209, which is incorporated herein by reference.

Executive Officers

Effective immediately prior to the Closing, Jonas Grossman resigned as President and Chief Executive Officer and Alex Weil resigned as Chief Financial Officer. The Board appointed Dr. Denis Phares to serve as President and Chief Executive Officer, John Marchetti to serve as Chief Financial Officer, Sean Nichols to serve as Chief Operating Officer and Nicole Harvey to serve as General Counsel, Compliance Officer and Corporate Secretary. Biographical information for Dr. Denis Phares, John Marchetti, Sean Nichols and Nicole Harvey is set forth in the Proxy Statement/Prospectus in the section titled “*Management of New Dragonfly After the Business Combination*” beginning on page 209, which is incorporated herein by reference.

Executive Compensation

Executive Compensation

The executive compensation of the Company’s named executive officers is described in the Proxy Statement/Prospectus in the section entitled “*Executive and Director Compensation of Dragonfly Energy Corp.*” beginning on page 216 thereof and is incorporated herein by reference.

Compensation Committee Interlocks and Insider Participation

None of our executive officers serves as a member of the Board or Compensation Committee (or other committee performing equivalent functions) of any entity that has one or more executive officers serving on the Board or Compensation Committee.

Certain Relationships and Related Transactions

Certain Relationships and Related Person Transactions

Certain relationships and related person transactions are described in the Proxy Statement/Prospectus in the section entitled “*Certain Relationships and Related Person Transactions*” beginning on page 271 thereof, respectively, and is incorporated herein by reference.

Risk Oversight

Our risk management oversight is described in the Proxy Statement/Prospectus in the section entitled “*Management of New Dragonfly After the Business Combination—Role of the New Dragonfly Board in Risk Oversight/Risk Committee*” beginning on page 211 thereof and that information is incorporated herein by reference.

Legal Proceedings

Reference is made to the disclosure regarding legal proceedings in the section of the Proxy Statement/Prospectus entitled “*Information About Dragonfly—Legal Proceedings*” on page 206, which is incorporated herein by reference.

Market Price of and Dividends on the Registrant’s Common Equity and Related Stockholder Matters

Price Range of Securities and Dividends

The market price of and dividends on Chardan’s common equity, warrants and units and related stockholder matters is described in the Proxy Statement/Prospectus in the section entitled “*Price Range of Securities and Dividends*” beginning on page 267 thereof and that information is incorporated herein by reference.

Prior to the Closing, Chardan’s publicly traded units, common stock and public warrants were listed on the Nasdaq under the symbols “CNTQU,” “CNTQ” and “CNTQW,” respectively. Upon the Closing, Common Stock and warrants are expected to be listed on the Nasdaq under the symbols “DFLI” and “DFLIW,” respectively. Publicly traded units automatically separated into their component securities upon the Closing, and as a result, no longer trade as a separate security and were delisted from the Nasdaq.

The Company has not paid any cash dividends on shares of Common Stock to date. The payment of cash dividends in the future will be dependent upon the Company’s revenue and earnings, if any, capital requirements and general financial condition. The payment of any cash dividends will be within the discretion of the Board.

Holders of Record

As of the Closing and following the completion of the Transactions, including the redemption of public shares as described above, the Company had 44,848,686 shares of Common Stock outstanding held of record by 8 holders, and no shares of preferred stock outstanding. Such amounts do not include DTC participants or beneficial owners holding shares through nominee names.

Securities Authorized for Issuance Under Equity Compensation Plans

Reference is made to the disclosure described in the Proxy Statement/Prospectus in the sections entitled “*Proposal No. 4 – The Incentive Plan Proposal*” and “*Proposal No. 5 – The ESPP Proposal*” beginning on pages 153 and 159, respectively, thereof, which are incorporated herein by reference.

At the Special Meeting, Chardan stockholders approved the Dragonfly Energy Holdings Corp. 2022 Incentive Plan (the “2022 Plan”), which is intended to replace the Dragonfly Energy, Inc. 2019 Stock Incentive Plan and the Dragonfly Energy, Inc. 2021 Stock Incentive Plan (collectively, the “Prior Plans”), and the Employee Stock Purchase Plan (the “ESPP”) and the material terms thereunder, including the authorization of the initial share reserve thereunder. In accordance with the terms of the 2022 Plan and the ESPP, 2,785,950 shares and 2,464,400 shares, respectively, were initially reserved for issuance thereunder. Each of the 2022 Plan and the ESPP will terminate ten years from their respective initial effective dates.

Description of Registrant’s Securities to be Registered

The Company’s securities are described in the Proxy Statement/Prospectus in the section entitled “*Description of Securities*” beginning on page 261 thereof and that information is incorporated herein by reference. As described below, the Company’s Amended and Restated Certificate of Incorporation (the “A&R Charter”) was approved by Chardan’s stockholders at the Special Meeting and became effective on October 7, 2022 in connection with the consummation of the Transactions.

Indemnification of Directors and Officers

The indemnification of our directors and officers is described in the Proxy Statement/Prospectus in the section entitled “*Management of New Dragonfly After the Business Combination—Limitation on Liability and Indemnification of Directors and Officers*” beginning on page 214 thereof and that information is incorporated herein by reference. The disclosure set forth in Item 1.01 of this Report is incorporated herein by reference.

Changes in Accountants on Accounting and Financial Disclosure

The disclosure set forth in Item 4.01 of this Report is incorporated herein by reference.

Financial Statements and Supplementary Data

The information set forth in Item 9.01 of this Report is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosures set forth under the “*Introductory Note—PIPE Investment* and Item 2.01 of this Report are incorporated herein by reference.

The Company issued the foregoing securities under Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), and/or Rule 506 of Regulation D promulgated under the Securities Act, as a transaction not requiring registration under Section 5 of the Securities Act. The parties receiving the securities represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution, and appropriate restrictive legends were affixed to the certificates representing the securities (or reflected in restricted book entry with the Company’s transfer agent). The parties also had adequate access, through business or other relationships, to information about the Company.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth in Item 5.03 of this Report is incorporated herein by reference.

Item 4.01 Changes in Registrant's Certifying Accountant.

(a) Dismissal of independent registered public accounting firm.

On October 7, 2022, the Audit Committee informed WithumSmith+Brown, PC ("Withum"), Chardan's independent registered public accounting firm prior to the Transactions, that Withum will be dismissed effective following the completion of Chardan's review for the nine-month period ended September 30, 2022, which consists only of the pre-Transactions accounts of Chardan.

The report of Withum on Chardan's financial statements as of December 31, 2021, and for the fiscal years ended December 31, 2021 and December 31, 2020, did not contain an adverse opinion or a disclaimer of opinion, and were not qualified or modified as to uncertainties, audit scope or accounting principles except for an explanatory paragraph regarding substantial doubt about Chardan's ability to continue as a going concern.

During the fiscal years ended December 31, 2021 and December 31, 2020, and the subsequent period through October 7, 2022, there were no disagreements with Withum on any matter of accounting principles or practices, financial statement disclosures or audited scope or procedures, which disagreements if not resolved to Withum's satisfaction would have caused Withum to make reference to the subject matter of the disagreement in connection with its report. During the fiscal years ended December 31, 2021 and December 31, 2020, and the subsequent period through October 7, 2022, there were no reportable events as defined in Item 304(a)(1)(v) of Regulation S-K under the Exchange Act.

The Company provided Withum with a copy of the foregoing disclosures prior to the filing of this Report and requested that Withum furnish a letter addressed to the SEC, which is attached hereto as Exhibit 16.1, stating whether it agrees with such disclosures, and, if not, stating the respects in which it does not agree.

(b) Disclosures regarding the new independent auditor.

On October 7, 2022, the Audit Committee approved the engagement of BDO USA, LLP ("BDO") as the Company's independent registered public accounting firm to audit the Company's consolidated financial statements for the year ending December 31, 2022. BDO served as the independent registered public accounting firm of Legacy Dragonfly prior to the Transactions, including the audit of the consolidated financial statements of Legacy Dragonfly for the fiscal year ending December 31, 2021. During the fiscal years ended December 31, 2020 and December 31, 2021, Chardan did not consult with BDO with respect to (i) the application of accounting principles to a specified transaction, either completed or proposed, the type of audit opinion that might be rendered on Chardan's financial statements, and neither a written report nor oral advice was provided to Chardan that BDO concluded was an important factor considered by Chardan in reaching a decision as to any accounting, auditing or financial reporting issue, or (ii) any other matter that was the subject of a disagreement or a reportable event (each as defined in Item 304(a)(1)(v) of Regulation S-K under the Exchange Act).

Item 5.01 Changes in Control of the Registrant.

The information set forth above under the "*Introductory Note*" and in the section entitled "*Security Ownership of Certain Beneficial Owners and Management*" in Item 2.01 of this Report is incorporated herein by reference.

Holders of uncertificated shares of Chardan Common Stock immediately prior to the Closing have continued as holders of uncertificated shares of Common Stock. Holders of Chardan Common Stock who have filed reports under the Exchange Act with respect to those shares should indicate in their next filing, or any amendment to a prior filing, filed on or after the Closing Date that the Company is the successor to Chardan.

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

The information set forth above in the sections entitled “*Directors and Officers*,” “*Executive Compensation*,” “*Certain Relationships and Related Transactions*” and “*Indemnification of Directors and Officers*” in Item 2.01 of this Report is incorporated herein by reference.

As previously disclosed, at the Special Meeting, the stockholders of Chardan considered and approved (i) the 2022 Plan, which is intended to replace the Prior Plans, and (ii) the ESPP. The 2022 Plan and the ESPP were both initially approved effective May 13, 2022, subject to the occurrence of the Closing. Each of the 2022 Plan and the ESPP will terminate on the date that is ten years from their respective initial effective dates. A description of the 2022 Plan and the ESPP is included in the Proxy Statement/Prospectus in the sections entitled “*Proposal No. 4 – The Incentive Plan Proposal*” and “*Proposal No. 5 – The ESPP Proposal*” beginning on pages 153 and 159, respectively, thereof, which is incorporated herein by reference.

The description of the 2022 Plan and the ESPP in the Proxy Statement/Prospectus is qualified in its entirety by the full text of the 2022 Plan and the ESPP, which are attached hereto as Exhibit 10.5 and Exhibit 10.6, respectively, and incorporated herein by reference.

Reference is made to the disclosure in the section entitled “*Executive and Director Compensation of Dragonfly Energy Corp.—Executive Employment Agreements*” beginning on page 218 of the Proxy Statement/Prospectus, which are incorporated herein by reference. The description in the Proxy Statement/Prospectus of the employment agreements, and the applicable amendments thereto, is qualified in its entirety by the full text of the employment agreements, and the applicable amendments thereto, of Dr. Denis Phares, Sean Nichols and John Marchetti, copies of which are attached hereto as Exhibit 10.14, Exhibit 10.15, Exhibit 10.16, Exhibit 10.17 and Exhibit 10.18, respectively, and incorporated herein by reference.

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

Amendments to Certificate of Incorporation and Bylaws

On October 6, 2022, in connection with the consummation of the Transactions, the Company’s A&R Charter, and Amended and Restated Bylaws (the “A&R Bylaws”) were approved by Chardan’s stockholders at the Special Meeting and became effective.

Copies of the A&R Charter and the A&R Bylaws are attached as Exhibit 3.1 and Exhibit 3.2, respectively, to this Report, and are incorporated herein by reference.

The material terms of each of the A&R Charter and the A&R Bylaws and the general effect upon the rights of holders of the Company’s capital stock are included in the Proxy Statement/Prospectus under the sections entitled “*Proposal No. 2 – The Charter Proposal*,” “*Description of Securities*” and “*Comparison of Stockholders’ Rights*” beginning on pages 147, 261, and 253 of the Proxy Statement/Prospectus, respectively, which are incorporated herein by reference.

Item 5.05 Amendments to the Registrant’s Code of Ethics, or Waiver of a Provision of the Code of Ethics.

On the Closing Date, the Board adopted a new Code of Conduct and Code of Ethics (together, the “Revised Code”). The Revised Code applies to all employees, executive officers and directors of the Company. The Revised Code was adopted to reflect what the Company considers to be current best practices and policies for an operating company and to make certain technical, administrative, non-substantive amendments to the prior Code of Conduct and Code of Ethics. The adoption of the Revised Code did not relate to or result in any waiver, explicit or implicit, of any provision of the prior Code of Conduct and Code of Ethics.

The above description of the Revised Code does not purport to be complete and is qualified in its entirety by reference to the full text of the Code of Conduct and the Code of Ethics, copies of which are attached as Exhibit 14.1 and Exhibit 14.2 hereto, respectively, and incorporated herein by reference. The Revised Code is also available on the Investor section of the Company's website at www.dragonflyenergy.com. The contents of the Company's website are not incorporated by reference in this Report or made a part hereof for any purpose.

Item 5.06 Change in Shell Company Status.

The disclosure set forth in the "Introductory Note" above is incorporated by reference into this Item 5.06.

As a result of the Business Combination, the Company ceased to be a shell company. Reference is made to the disclosure in Item 2.01 of this Report and the Proxy Statement/Prospectus in the section entitled "*Proposal No. 1 – The Business Combination Proposal*" beginning on page 112 thereof, which is incorporated herein by reference.

Item 9.01 Financial Statement and Exhibits.

(a) Financial Statements of Businesses Acquired.

The consolidated financial statements of Legacy Dragonfly as of and for the years ended December 31, 2021 and December 31, 2020, and the related notes are included in the Proxy Statement/Prospectus beginning on page F-50 of the Proxy Statement/Prospectus and are incorporated herein by reference.

The unaudited interim condensed consolidated financial statements of Legacy Dragonfly as of and for the six months ended June 30, 2022 and June 30, 2021, and the related notes are included in the Proxy Statement/Prospectus beginning on page F-73 of the Proxy Statement/Prospectus and are incorporated herein by reference.

(b) Pro forma financial information.

The unaudited pro forma condensed combined financial information of the Company for the year ended December 31, 2021, as of June 30, 2022, and for the six months ended June 30, 2022 are included in the Proxy Statement/Prospectus under the section titled "*Unaudited Pro Forma Condensed Combined Financial Information*", attached as Exhibit 99.2 hereto and incorporated herein by reference.

(d) Exhibits.

Exhibit No.	Description	Incorporated By Reference		
		Form	Exhibit	Filing Date
2.1#	Agreement and Plan of Merger, dated as of May 15, 2022, by and among Chardan NexTech Acquisition 2 Corp., Bronco Merger Sub, Inc. and Dragonfly Energy Corp.	S-4	2.1	07/22/2022
2.1(a)	Amendment to Agreement and Plan of Merger, dated as of July 12, 2022, by and among Chardan NexTech Acquisition 2 Corp., Bronco Merger Sub, Inc. and Dragonfly Energy Corp.	S-4	2.1(a)	07/22/2022
3.1	Amended and Restated Certificate of Incorporation.			
3.2	Amended and Restated Bylaws.			
4.1	Specimen Common Share Certificate of the Company.			
4.2	Form of \$10 Warrant of the Company.			
4.3	Form of Penny Warrant of the Company.			
4.4	Form of Second Amended and Restated Warrant Agreement between Chardan NexTech Acquisition 2 Corp. and Continental Stock Transfer & Trust Company.	S-4/A	4.8	09/14/2022
4.5	Specimen Warrant Certificate of the Company.	S-1/A	4.3	08/05/2021
10.1	Sponsor Support Agreement, dated as of May 15, 2022, by and among Chardan NexTech Investments 2 LLC, Dragonfly Energy Corp. and Chardan NexTech Investments 2 LLC (included as Annex E to the proxy statement/prospectus).	S-4	10.4	07/22/2022
10.2	Commitment Letter, dated as of May 15, 2022, by and among Chardan NexTech Acquisition 2 Corp., Dragonfly Energy Corp., CCM Investments 5 LLC and EICE Agent LLC (included as Annex I to the proxy statement/prospectus).	S-4	10.5	07/22/2022
10.3	Equity Facility Letter Agreement, dated as of May 15, 2022, by and among Dragonfly Energy Corp., Chardan NexTech Acquisition 2 Corp. and CCM Investments 5 LLC (included as Annex K to the proxy statement/prospectus).	S-4	10.6	07/22/2022
10.4	Subscription Agreement, dated as of May 15, 2022, between Chardan NexTech Acquisition 2 Corp. and Chardan NexTech Investments 2 LLC (included as Annex F to the proxy statement/prospectus).	S-4	10.7	07/22/2022
10.5++	Dragonfly Energy Holdings Corp.'s 2022 Equity Incentive Plan.			
10.6++	Dragonfly Energy Holdings Corp.'s Employee Stock Purchase Plan.			
10.7++	Form of Director Indemnification Agreement.	S-4/A	10.10	09/14/2022
10.8	Multi-tenant Industrial Triple Net Lease, dated as of March 1, 2021, between Dragonfly Energy Corp. and Icon Reno Property Owner Pool 3 Nevada, LLC.	S-4	10.11	07/22/2022
10.9	Lease, dated as of February 8, 2022, between Dragonfly Energy Corp. and Prologis, L.P.	S-4	10.12	07/22/2022
10.10#	Purchase Agreement, dated as of October 7, 2022, between the Company and CCM LLC.			
10.11	Registration Rights Agreement, dated as of October 7, 2022, between the Company and CCM LLC.			

10.12#	Term Loan Agreement, dated as of October 7, 2022, by and among the Company, Dragonfly Energy Corp., the lenders from time to time party thereto and Alter Domus (US) LLC.
10.13	Pledge Agreement, dated as of October 7, 2022, by and among the Company and Alter Domus (US) LLC.
10.14++	Employment Agreement, dated as of January 1, 2022, by and between Legacy Dragonfly and Denis Phares.
10.15++	Amendment to Employment Agreement, dated as of May 15, 2022, by and between Legacy Dragonfly and Denis Phares.
10.16++	Employment Agreement, dated as of January 1, 2022, by and between Legacy Dragonfly and Sean Nichols.
10.17++	Amendment to Employment Agreement, dated as of May 15, 2022, by and between Legacy Dragonfly and Sean Nichols.
10.18++	Employment Agreement, dated as of August 17, 2021, by and between Legacy Dragonfly and John Marchetti.
10.19++	Dragonfly Energy Corp.'s 2019 Stock Incentive Plan.
10.20++	Dragonfly Energy Corp.'s 2021 Stock Incentive Plan.
10.21	Amended and Restated Registration Rights Agreement, by and among the Company and each of the stockholders thereto.
14.1	Dragonfly Energy Holdings Corp. Code of Conduct
14.2	Dragonfly Energy Holdings Corp. Code of Ethics
16.1	Letter from WithumSmith+Brown, PC to the SEC, dated October 7, 2022.
21.1	List of Subsidiaries.
99.2	Unaudited pro forma condensed combined financial information of the Company for the year ended December 31, 2021, as of June 30, 2022, and for the six months ended June 30, 2022.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

++ Indicates a management or compensatory plan.

Portions of exhibit have been omitted pursuant to Regulation S-K Item 601(a)(5) promulgated under the Exchange Act. The Registrant agrees to furnish supplementally a copy of any omitted schedule to the SEC upon request.

SIGNATURES

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.

DRAGONFLY ENERGY HOLDINGS CORP.

Date: October 7, 2022

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

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
CHARDAN NEXTECH ACQUISITION 2 CORP.**

Pursuant to the provisions of § 242 and § 245 of the
General Corporation Law of the State of Delaware

Chardan NexTech Acquisition 2 Corp. (the “Corporation”), a corporation organized under the General Corporation Law of the State of Delaware (the “DGCL”), does hereby certify as follows:

FIRST: The present name of the Corporation is Chardan NexTech Acquisition 2 Corp. The original certificate of incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 23, 2020 under the name Chardan Global Acquisition 3 Corp. (the “Original Certificate”).

SECOND: The certificate of incorporation of the Corporation as heretofore in effect is hereby amended and restated in its entirety as set forth in this Amended and Restated Certificate of Incorporation (this “Certificate of Incorporation”).

THIRD: This Certificate of Incorporation herein certified has been duly adopted by the Corporation in accordance with Sections 242 and 245 of the DGCL and has been adopted by the requisite vote of the stockholders of the Corporation in accordance with the DGCL.

FOURTH: This Certificate of Incorporation shall become effective upon the filing of this Certificate of Incorporation with the Secretary of State of the State of Delaware.

FIFTH: This Certificate Incorporation of the Corporation shall, at the effective time, read as follows:

ARTICLE I.

Name

The name of the Corporation is Dragonfly Energy Holdings Corp.

ARTICLE II.

Registered Office

The address of the Corporation’s registered office in the State of Delaware is 251 Little Falls Drive, in the City of Wilmington, County of New Castle, State of Delaware, 19808, and the name of the Corporation’s registered agent at such address is Corporation Service Company.

ARTICLE III.

Purpose and Powers

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the DGCL as the same exists or may hereafter be amended.

ARTICLE IV.

Capital Stock

(A) Authorized Capital Stock.

The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is one hundred seventy-five million (175,000,000) shares of capital stock, consisting of (i) one hundred seventy million (170,000,000) shares of common stock, par value \$0.0001 per share (the "Common Stock"), and (ii) five million (5,000,000) shares of preferred stock, par value \$0.0001 per share (the "Preferred Stock").

Notwithstanding anything to the contrary contained herein, the rights and preferences of the Common Stock shall at all times be subject to the rights and preferences of the Preferred Stock as may be set forth in the Certificate of Incorporation or one or more certificates of designations filed with the Secretary of State of the State of Delaware from time to time in accordance with the DGCL and this Certificate of Incorporation. The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) from time to time by the affirmative vote of the holders of at least a majority of the voting power of the Corporation's then outstanding shares of capital stock entitled to vote thereon, voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of the Common Stock or the Preferred Stock voting separately as a class or series shall be required therefor unless a vote of any such holder is required pursuant to this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock).

(B) Common Stock.

The voting powers, designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions of the Common Stock, in addition to those set forth elsewhere herein, are as follows:

- (1) *Voting Rights.* Each holder of shares of Common Stock shall be entitled to vote at all meetings of the stockholders and to cast one vote for each outstanding share of Common Stock held by such holder on all matters on which stockholders are entitled to vote generally. Notwithstanding the foregoing, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) or pursuant to the DGCL.

- (2) *Dividends and Distributions.* Subject to the prior rights of the holders of all series of Preferred Stock at the time outstanding having prior rights or preferences as to dividends or other distributions, the holders of shares of Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of the assets or funds of the Corporation legally available therefor, such dividends and other distributions as may be declared from time to time by the Board of Directors and shall share equally on a per share basis in all such dividends and other distributions.
- (3) *Liquidation.* Subject to the prior rights of creditors of the Corporation, including without limitation the payment of expenses relating to any liquidation, dissolution or winding up of the Corporation, and the holders of all series of Preferred Stock at the time outstanding having prior rights as to distributions upon liquidation, dissolution or winding up of the Corporation, in the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of shares of Common Stock shall be entitled to receive their ratable and proportionate share of the remaining assets of the Corporation. A merger or consolidation of the Corporation with any other corporation or other entity, or a sale or conveyance of all or any part of the assets of the Corporation (which shall not in fact result in the liquidation of the Corporation and the distribution of assets to its stockholders) shall not be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

(C) Preferred Stock.

The Board of Directors is hereby expressly authorized, without any action or vote by the Corporation's stockholders (except as may otherwise be provided by the terms of any series of Preferred Stock then outstanding), to provide for the issuance of all or any shares of the Preferred Stock in one or more series of Preferred Stock, and to fix for each such series the voting powers, if any, designations, preferences and relative, participating, optional or other rights and qualifications, limitations or restrictions thereof, if any, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such series and the number of shares constituting each such series, and to increase or decrease the number of shares of any such series to the extent permitted by the DGCL.

ARTICLE V.

Board of Directors

(A) Powers of the Board of Directors.

Except as otherwise provided by the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

(B) Number of Directors.

Subject to any rights of the holders of Preferred Stock to elect directors, the Board of Directors shall consist of one or more members, the exact number of which shall be fixed by, or in the manner provided in, the Corporation's Amended and Restated Bylaws (as may be further amended, restated, modified or supplemented from time to time, the "Bylaws").

(C) Classification of the Board of Directors.

The directors of the Corporation (other than those directors elected by the holders of any series or class of Preferred Stock provided for or fixed pursuant to the provisions of Article IV hereof (the "Preferred Stock Directors")) shall be and are divided into three (3) classes, designated Class A, Class B and Class C. Each class shall consist, as nearly as may be possible, of one-third (1/3) of the total number of directors constituting the entire Board of Directors. The Board of Directors may assign members of the Board of Directors already in office upon the effectiveness of the filing of the Certificate of Incorporation with the Secretary of State of the State of Delaware (the "Effective Time") to such classes. Subject to the rights of holders of any series or class of Preferred Stock to elect directors, each director shall serve for a term ending on the date of the third annual meeting of stockholders following the annual meeting of stockholders at which such director was elected; provided that each director initially assigned to Class A shall serve for a term expiring at the Corporation's first annual meeting of stockholders held after the Effective Time; each director initially assigned to Class B shall serve for a term expiring at the Corporation's second annual meeting of stockholders held after the Effective Time; and each director initially assigned to Class C shall serve for a term expiring at the Corporation's third annual meeting of stockholders held after the Effective Time; provided further, that the term of each director shall continue until the election and qualification of his or her successor and be subject to his or her earlier death, disqualification, resignation or removal. If the number of such directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any such additional director of any class elected to fill a newly created directorship resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case shall a decrease in the number of directors remove or shorten the term of any incumbent directors. A director may resign at any time upon notice to the Corporation as provided in the Bylaws.

(D) Removal of Directors.

Except for any Preferred Stock Director, any director or the entire Board of Directors may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the total voting power of the outstanding shares of capital stock entitled to vote in the election of directors, voting together as a single class.

(E) Vacancies.

Except as otherwise required by law and subject to the rights of any series of Preferred Stock then outstanding, any vacancy on the Board of Directors, by reason of death, resignation, retirement, disqualification or removal or otherwise, and any newly created directorship that results from an increase in the number of directors, shall be filled only by a majority of the Board of Directors then in office, even if less than a quorum, or by a sole remaining director. Any director of any class elected to fill a vacancy resulting from an increase in the number of directors of such class shall hold office for a term that shall coincide with the remaining term of that class. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his or her predecessor.

(F) Preferred Stock Directors.

During any period when the holders of any series of Preferred Stock have the right to elect Preferred Stock Directors, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, disqualification, resignation or removal. Except as otherwise provided by the Board of Directors in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect Preferred Stock Directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such Preferred Stock Directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate and the total authorized number of directors of the Corporation shall be reduced accordingly.

(G) Powers and Authority.

In addition to the powers and authority expressly conferred upon them herein or by statute, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL and this Certificate of Incorporation.

ARTICLE VI.

Stockholder Action

(A) Election of Directors.

Elections of directors need not be by written ballot except and to the extent provided in the Bylaws.

(B) Advance Notice.

Advance notice of nominations for the election of directors or proposals or other business to be considered by stockholders, which are made by any stockholder of the Corporation, shall be given in the manner and to the extent provided in the Bylaws.

(C) Stockholder Action by Written Consent.

Any action required or permitted to be taken by the stockholders of the Corporation may be effected only at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders in lieu of a meeting of stockholders. Subject to the special rights of the holders of any series of Preferred Stock, and to the requirements of applicable law, special meetings of the stockholders of the Corporation may be called for any purpose or purposes, at any time only by a resolution adopted by any three or more directors, and shall not be called by any other person or persons. Any such special meeting so called may be postponed, rescheduled or cancelled by the Board of Directors. The ability of the stockholders to call a special meeting of the stockholders of the Corporation is hereby specifically denied.

Notwithstanding the foregoing, any action required or permitted to be taken by the holders of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable certificate of designation relating to such series of Preferred Stock.

ARTICLE VII.

Limitation of Director Liability; Indemnification

(A) No director of the Corporation shall be personally liable to the Corporation or to any of its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such elimination from liability or limitation thereof is not permitted under the DGCL as the same exists or may hereafter be amended. If the DGCL is amended hereafter to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent authorized by the DGCL, as so amended. Any repeal or modification of this Article VII, because of amendments or modifications of the DGCL or otherwise, shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to the effective date of such repeal or modification.

(B) To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who is or was made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a “proceeding”) by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (an “indemnitee”), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys’ fees, judgments, fines, taxes and penalties and amounts paid in settlement) reasonably incurred by such indemnitee in connection with such proceeding. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys’ fees) incurred by an indemnitee in defending or otherwise participating in any proceeding in advance of its final disposition; provided, however, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking, by or on behalf of the indemnitee, to repay all amounts so advanced if it shall ultimately be determined that the indemnitee is not entitled to be indemnified under this Section VII(B) or otherwise. The rights to indemnification and advancement of expenses conferred by this Section VII(B) shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators.

ARTICLE VIII.

Amendment of Bylaws

In furtherance and not in limitation of the powers conferred upon it by the laws of the State of Delaware, the Board of Directors shall have the power to adopt, amend, alter or repeal the Bylaws by the affirmative vote of a majority of the entire Board of Directors (assuming no vacancies on the Board of Directors). The Bylaws may also be adopted, amended, altered or repealed by the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the total voting power of the Corporation’s issued and outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE IX.

Amendment of Certificate of Incorporation

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed in this Certificate of Incorporation or the DGCL, and all rights herein conferred upon stockholders are granted subject to such reservation; provided, however, that, notwithstanding any other provision of this Certificate of Incorporation (and in addition to any other vote that may be required by law), the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the Corporation's issued and outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter, change or repeal or to adopt any provision of this Certificate of Incorporation inconsistent with any provision of Article V, Article VI, Article VII, Article VIII, this Article IX, or Article X.

ARTICLE X.

Corporation Opportunity

In the event that a member of the Board of Directors who is not an employee of the Corporation or its subsidiaries, or any employee or agent of such member, other than someone who is an employee of the Corporation or its subsidiaries (collectively, the "Covered Persons"), acquires knowledge of any business opportunity matter, potential transaction, interest or other matter, unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in connection with such individual's service as a member of the Board of Directors of the Corporation (a "Corporate Opportunity"), then the Corporation to the maximum extent permitted from time to time under the DGCL (including Section 122(17) thereof): (a) renounces any expectancy that such Covered Person offer an opportunity to participate in such Corporate Opportunity to the Corporation; and (b) waives any claim that such opportunity constituted a Corporate Opportunity that should have been presented by such Covered Person to the Corporation or any of its affiliates. No amendment or repeal of this paragraph shall apply to or have any effect on the liability or alleged liability of any officer, director or stockholder of the Corporation for or with respect to any opportunities of which such officer, director or stockholder becomes aware prior to such amendment or repeal.

ARTICLE XI.

Forum Selection

Unless the Corporation consents in writing to the selection of an alternative forum, (A) (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, this Certificate of Incorporation or the Bylaws (as either may be amended or restated) or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (iv) any action asserting a claim governed by the internal affairs doctrine of the law of the State of Delaware shall, to the fullest extent permitted by law, be exclusively brought in the Court of Chancery of the State of Delaware or, if such court does not have subject matter jurisdiction thereof, the federal district court of the State of Delaware; and (B) the federal district courts of the United States of America shall, to the fullest extent permitted by applicable law, be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to this Article XI.

* * *

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Incorporation to be executed on its behalf this 7th day of October, 2022.

CHARDAN NEXTECH ACQUISITION 2 CORP.

By: /s/ Denis Phares

Name: Denis Phares

Title: Chief Executive Officer

AMENDED AND RESTATED BYLAWS
OF
DRAGONFLY ENERGY HOLDINGS CORP.
A Delaware Corporation
Effective October 7, 2022

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**AMENDED AND RESTATED BYLAWS
OF
DRAGONFLY ENERGY HOLDINGS CORP.**

ARTICLE I

OFFICES

- 1.1 Principal Executive Office. The principal executive office of Dragonfly Energy Holdings Corp. (the “Corporation”) shall be at such place established by the board of directors of the Corporation (the “Board”) in its discretion. The Board shall have full power and authority to change the location of the principal executive office.
- 1.2 Registered Office. The registered office of the Corporation shall be as set forth in the Corporation’s Third Amended and Restated Certificate of Incorporation (as may be amended, restated, modified or supplemented from time to time, the “Certificate of Incorporation”).
- 1.3 Other Offices. The Corporation may also have offices at such other places, both within and outside of the State of Delaware, as the Board may from time to time determine.

ARTICLE II

STOCKHOLDERS’ MEETINGS

- 2.1 Place of Meetings. Meetings of stockholders of the Corporation shall be held at such place, if any, either within or outside of the State of Delaware, as shall be designated from time to time by the Board and specified in the notice of the meeting. In the absence of such designation, stockholders’ meetings shall be held at the principal executive office of the Corporation.
 - 2.2 Annual Meetings. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held at such time and date as shall be designated from time to time by the Board and stated in the Corporation’s notice of the meeting. The Board may postpone, reschedule or cancel any previously scheduled annual meeting of stockholders, before or after the notice for such meeting has been sent to the stockholders.
 - 2.3 Special Meetings. Special meetings of the stockholders for any purpose or purposes may be called at any time by a resolution adopted by any three or more directors, and may not be called by any other person or persons. The Board acting pursuant to a resolution may postpone, reschedule or cancel any previously scheduled special meeting of stockholders, before or after the notice for such meeting has been sent to the stockholders. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.
-

2.4 Notice. Whenever stockholders are required or permitted to take any action at a meeting, whether annual or special, a written notice of the meeting shall be given by the Corporation to each stockholder of record entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of such meeting. Such notice shall state the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting), and, in the case of a special meeting, the purpose or purposes for which the meeting was called. Unless otherwise required by law, the Certificate of Incorporation or these Bylaws (as may be further amended, restated, modified or supplemented from time to time, these "Bylaws"), notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to notice of and to vote at such meeting.

2.5 Adjournments. Any meeting of stockholders, annual or special, whether or not a quorum is present, may be adjourned from time to time for any reason by either the chairman of the meeting, by a resolution adopted by the majority of the Board or in accordance with Section 2.6. Notwithstanding the provisions in Section 2.4 hereof, notice need not be given of any such adjourned meeting if the time, place, if any, and date of the meeting and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting and the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining stockholders entitled to notice of the meeting) are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally called or a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given in conformity with Section 2.4. At such adjourned meeting, any business may be transacted that might have been transacted at the original meeting if such meeting had been held as originally called.

2.6 Quorum. Unless otherwise required by applicable law or the Certificate of Incorporation, the holders of a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, then either the chairman of the meeting or the stockholders entitled to vote thereon, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 2.5 hereof, until a quorum shall be present or represented. A quorum, once established, shall not be broken by the withdrawal of enough stockholders to leave less than a quorum.

2.7 Voting.

(a) Unless otherwise required by law or the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one (1) vote for each share of stock held by such stockholder which has voting power on all matters submitted to a vote of stockholders of the Corporation.

(b) Unless otherwise required by law, the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or any regulation applicable to the Corporation or its securities, (i) every matter brought before any meeting of the stockholders, other than the election of directors, shall be decided by the affirmative vote of the holders of a majority of the voting power of the shares of stock entitled to vote on such matter that are present in person or represented by proxy at the meeting and are voted for or against the matter, voting as a single class, and (ii) directors shall be elected by vote of the holders of a plurality of the votes cast. Notwithstanding the foregoing, two (2) or more classes or series of stock shall only vote together as a single class if and to the extent the holders thereof are entitled to vote together as a single class at a meeting. Where a separate vote by class is required, the vote of the holders of a majority in total voting power of each class of Corporation's outstanding capital stock represented at the meeting and entitled to vote on such matter and are voted for or against the matter shall be the act of such class, except as otherwise provided by law, the Certificate of Incorporation or these Bylaws. The Board, in its discretion, or the Chairman of the Board, or the presiding officer of a meeting of the stockholders, in such person's discretion, may require that any votes cast (including election of directors) at such meeting shall be cast by written ballot.

2.8 Participation at Stockholder Meetings by Remote Communications. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211(a)(2) of the General Corporation Law of the State of Delaware (the "DGCL") or any successor provision. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication, (a) participate in a meeting of stockholders, and (b) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by remote communication, provided that (x) the Corporation may implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (y) the Corporation may implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (z) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

2.9 Proxies. Each stockholder entitled to vote at a meeting of stockholders has the right to do so either in person or by one (1) or more agents authorized by a proxy, which may be in the form of a telegram, cablegram or other means of electronic transmission, filed with the Secretary of the Corporation, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering an instrument in writing stating that the proxy is revoked or by filing another proxy bearing a later date with the Secretary of the Corporation.

2.10 No Stockholder Action by Written Consent. Subject to the rights of the holders of any class or series of preferred stock then outstanding, as may be set forth in the certificate of designations for such class or series of preferred stock, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken only upon the vote of stockholders at an annual or special meeting duly noticed and called in accordance with the DGCL and may not be taken by written consent of stockholders without a meeting.

2.11 Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of the stockholders or any adjournment thereof, the Board may fix a record date for the determination of the stockholders entitled to notice of any meeting or adjournment thereof. The record date so fixed shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of the stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to notice of or to vote at the adjourned meeting.

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

2.12 Stockholders' List. A complete list of the stockholders entitled to vote at any meeting of stockholders (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order and showing the address of each stockholder, and the number of shares registered in the name of each stockholder, shall be prepared by the officer having charge of the stock ledger. Such list shall be open to examination by any stockholder, for any purpose germane to the meeting, for a period of at least ten (10) days before such meeting (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours at the principal place of business of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.12 or to vote in person or by proxy at any meeting of stockholders.

2.13 Conduct of Meetings. The meetings of the stockholders shall be presided over by the Chairman of the Board, or if he or she is not present, by the Chief Executive Officer, or if neither the Chairman of the Board, nor the Chief Executive Officer is present, by a chairman elected by a resolution adopted by the majority of the Board. The order of business at all meetings of stockholders shall be as determined by the chairman of the meeting.

2.14 Advance Notice of Stockholder Business and Director Nominations.

(a) *Annual Meetings of Stockholders.*

(1) Nominations of persons for election to the Board and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (i) pursuant to the Corporation's notice of meeting (or any supplement thereto) delivered pursuant to Section 2.4 and Article VI hereof, (ii) by or at the direction of the Board or any duly authorized committee thereof, or (iii) by any stockholder of the Corporation who (x) is a stockholder of record at the time of delivery by the stockholder of the notice provided for in Section 2.14(a)(2) to the Secretary of the Corporation and at the time of the annual meeting, (y) who is entitled to vote at the meeting and upon such election, and (z) who complies with the notice procedures set forth in Section 2.14(a)(2); clause (iii) shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and included in the Corporation's notice of meeting) before an annual meeting of stockholders. Except as otherwise required by law, any failure to comply with these procedures shall result in the nullification of such nomination or proposal. Notwithstanding the foregoing, if a stockholder is entitled to vote only for a specific class or category of directors at a meeting of the stockholders, such stockholder's right to nominate one (1) or more individuals for the election of a director at the meeting shall be limited to such class or category of directors.

(2) Without qualification, for any nominations or other business to be properly brought before an annual meeting of stockholders by a stockholder pursuant to clause (iii) of Section 2.14(a)(1), the stockholder must have given timely notice thereof, in proper written form as provided in Section 2.14(c), to the Secretary of the Corporation and any such proposed business (other than nominations of persons for the election to the Board) must constitute a proper matter for stockholder action under the DGCL. To be timely, such a stockholder's notice shall be delivered to the Secretary at the principal executive office of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary date of the preceding year's annual meeting (which date shall, for purposes of the Corporation's annual meeting of stockholders in the year of the closing of the merger contemplated by that certain Merger Agreement, entered into by and among the Corporation, Dragonfly Energy Corp. and Bronco Merger Sub, Inc., dated as of May 15, 2022, as amended from time to time (the "Merger Agreement") be deemed to have occurred on October 7 of such year); provided, however, that in the event that the date of the annual meeting is advanced more than thirty (30) days prior to such anniversary date or delayed more than seventy (70) days after such anniversary date then to be timely such notice must be so delivered, or mailed and received, not later than the ninetieth (90th) day prior to such annual meeting or, if later, the tenth (10th) day following the day on which public announcement of the date of such annual meeting was first made. In no event shall the adjournment or postponement of any meeting, or any announcement thereof, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. The number of nominees a stockholder may nominate for election at the annual meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected as such annual meeting.

(b) *Special Meetings of Stockholders.* Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting delivered pursuant to Section 2.4 and Article VI hereof. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board or any duly authorized committee thereof or (2) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who (x) is a stockholder of record at the time of delivery by the stockholder of the notice provided for in this Section 2.14(b) to the Secretary of the Corporation and at the time of the special meeting, (y) who is entitled to vote at the meeting and upon such election, and (z) who complies with the notice procedures set forth in this Section 2.14(b). In the event the Corporation calls a special meeting of stockholders for the purpose of electing one (1) or more directors to the Board, any such stockholder entitled to vote in such election of directors may nominate a person or persons for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice, in proper written form as set forth in Section 2.14(c), shall be delivered to the Secretary at the principal executive office of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Notwithstanding the foregoing, if a stockholder is entitled to vote only for a specific class or category of directors at a special meeting of the stockholders, such stockholder's right to nominate one (1) or more individuals for the election of a director at the meeting shall be limited to such class or category of directors.

(c) *Form of Notice.* To be in proper written form, such stockholder's notice to the Secretary (whether pursuant to clauses (a)(2) or (b) of this Section 2.14) must set forth:

(1) as to each person, if any, whom the stockholder proposes to nominate for election or re-election as a director (i) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act, (ii) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected and (iii) a reasonably detailed description of any compensatory, payment or other financial agreement, arrangement or understanding that such person has with any other person or entity other than the Corporation including the amount of any payment or payments received or receivable thereunder, in each case in connection with candidacy or service as a director of the Corporation;

(2) as to any other business (other than the nomination of persons for election as directors) that the stockholder desires to bring before the meeting, (i) a brief description of the business proposed to be brought before the meeting, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), (iii) the reasons why the stockholder favors the proposal, (iv) the reasons for conducting such business at the meeting, and (v) any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and

(3) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (ii) the class or series and number of shares of the Corporation's capital stock that are, directly or indirectly, owned beneficially and of record by such stockholder and by such beneficial owner, (iii) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, including, in the case of a nomination, the nominee, (iv) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation, forwards, futures, swaps, or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owner, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of such stockholder or such beneficial owner with respect to shares of capital stock of the Corporation, (v) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (vi) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (A) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (B) otherwise to solicit proxies or votes from stockholders in support of such proposal or nomination, (vii) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder and (viii) such other information relating to any proposed item of business as the Corporation may reasonably require to determine whether such proposed item of business is a proper matter for stockholder action.

The foregoing notice requirements of this Section 2.14(c) shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

If requested by the Corporation, the information required under clauses (c)(3)(ii), (iii) and (iv) of this Section 2.14 shall be supplemented by such stockholder and any such beneficial owner not later than ten (10) days after the record date for the meeting to disclose such information as of the record date.

(d) *General.*

(1) The Corporation may require any proposed nominee for election or re-election as a director to furnish such other information, in addition to the information set forth in the stockholder's notice delivered pursuant to this Section 2.14, as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation and whether such nominee qualifies as an "independent director" or "audit committee financial expert" under applicable law, securities exchange rules or regulations, or any publicly-disclosed corporate governance guideline or committee charter of the Corporation.

(2) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, only such persons who are nominated in accordance with the procedures set forth in this Section 2.14 shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors, and only such business as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.14 shall be conducted at a meeting of stockholders. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty to (i) determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 2.14 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made or solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by Section 2.14(c)(3)(vi), and, (ii) if any proposed nomination or business was not made or proposed in compliance with this Section 2.14, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.14, unless otherwise required by law, if the stockholder who has delivered a notice pursuant to this Section 2.14 (or a qualified representative of such stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. To be considered a "qualified representative" of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or by telegram, cablegram or other means of electronic transmission that is deemed valid in accordance with Section 2.9 hereof delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders, and such person must produce such writing or telegram, cablegram or electronic transmission, or a reliable reproduction of the writing or telegram, cablegram or electronic transmission, at the meeting of stockholders.

(3) For purposes of this Section 2.14, “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service, or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(4) Notwithstanding the foregoing provisions of this Section 2.14, stockholders shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.14; provided, however, that any references in these Bylaws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to clause (a)(1)(iii) or (b) of this Section 2.14. Nothing in this Section 2.14 shall be deemed to affect any rights (x) of stockholders to request inclusion of proposals or nominations in the Corporation’s proxy statement pursuant to Rule 14a-8 promulgated under the Exchange Act or (y) of the holders of any series of preferred stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

(e) *Submission of Questionnaire, Representation and Agreement.* To be eligible to be a nominee for election or re-election as a director of the Corporation nominated by a stockholder pursuant to Section 2.14(a)(1)(iii), the candidate for nomination must deliver (in accordance with the time periods prescribed for delivery of notice under clauses (a)(2) or (b) of this Section 2.14, as applicable) to the Secretary at the principal executive office of the Corporation (1) a completed written questionnaire (in a form provided by the Corporation) with respect to the background, qualifications, stock ownership and independence of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and (2) a written representation and agreement (in the form provided by the Secretary upon written request) that such person (1) is not and, if elected as a director during his or her term of office, will not become a party to (x) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question in his or her capacity as a director (a “Voting Commitment”) that has not been disclosed to the Corporation or (y) any Voting Commitment that could limit or interfere with such person’s ability to comply, if elected as a director of the Corporation, with such person’s fiduciary duties under applicable law, (2) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the Corporation that has not been disclosed therein and (3) in such person’s individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation (and, if requested by any candidate for nomination, the Secretary of the Corporation shall provide to such candidate for nomination all such policies and guidelines then in effect).

ARTICLE III

DIRECTORS

3.1 Powers and Duties. Subject to the provisions of the DGCL and to any limitations in the Certificate of Incorporation relating to action required to be approved by the stockholders, the business and affairs of the Corporation shall be managed, and all corporate powers shall be exercised, by or under the direction and control of the Board. The Board may delegate the management of the day-to-day operation of the business of the Corporation, provided that the business and affairs of the Corporation shall remain under the ultimate direction and control of the Board.

3.2 Number and Qualifications. The Board shall consist of one (1) or more members, the exact number of which shall be fixed from time to time by resolution of the Board. Unless otherwise required by law or by the Certificate of Incorporation, directors need not be stockholders of the Corporation or residents of the State of Delaware. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 Classified Board of Directors. The Board shall be divided into classes, with each such class serving for a term, as set forth in the Certificate of Incorporation.

3.4 Resignations and Removals of Directors. Any director of the Corporation may resign from the Board or any committee thereof at any time, by giving notice in writing or by electronic transmission to the Chairman of the Board, the President or the Secretary of the Corporation and, in the case of a committee, to the chairman of such committee, if there be one and if there is no such chairman, to the Chairman of the Board. Such resignation shall take effect at the time therein specified (which may be upon the happening of an event specified therein) or, if no time is specified, immediately. Unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Except as otherwise required by law or the Certificate of Incorporation and except for any director elected by the holders of any series or class of preferred stock provided for or fixed pursuant to the provisions of Article V of the Certificate of Incorporation, any director or the entire Board may be removed from office at any time, but only for cause, and only by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote in the election of directors, voting together as a single class. Unless otherwise provided by the charter of the committee, any director serving on a committee of the Board may be removed from such committee at any time by the Board.

3.5 Vacancies. Except as otherwise required by law or the Certificate of Incorporation, any vacancy on the Board, by reason of death, resignation, retirement, disqualification or removal or otherwise, and any newly created directorship that results from an increase in the number of directors, shall be filled only by a majority of the Board then in office, even if less than a quorum, or by a sole remaining director. Any director of any class elected to fill a vacancy resulting from an increase in the number of directors of such class shall hold office for a term that shall coincide with the remaining term of that class. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his or her predecessor.

3.6 Regular Meetings. Regular meetings of the Board shall be held at such place or places, within or without the State of Delaware, on such date or dates and at such time or times, as shall have been established by the Board and publicized among all directors. A notice of each regular meeting shall not be required.

3.7 Special Meetings. Special meetings of the Board for any purpose or purposes may be called at any time by the Chairman of the Board, the Chief Executive Officer, if any, the President or any two (2) directors then in office. Notice of each such meeting shall be given to each director, if by mail, addressed to such director at his or her residence or usual place of business, at least five (5) days before the day on which such meeting is to be held, or shall be sent to such director at such place by facsimile, electronic mail or other electronic transmissions, or be delivered personally or by telephone, in each case at least twenty-four (24) hours prior to the time set for such meeting. A notice of special meeting need not state the purpose of such meeting, and, unless indicated in the notice thereof, any and all business may be transacted at a special meeting.

3.8 Organization. Meetings of the Board shall be presided over by the Chairman of the Board, or in his or her absence by the Vice Chairman of the Board, if any, or in his or her absence by the Chief Executive Officer, if any, if such person is a member of the Board, or in the absence of any such person, by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

3.9 Quorum. Except as otherwise required by law, these Bylaws or the Certificate of Incorporation, at all meetings of the Board or any committee thereof, a majority of the entire Board or a majority of the directors constituting such committee, as the case may be, shall constitute a quorum for the transaction of business and the act of a majority of the directors or committee members present at any meeting at which there is a quorum shall be the act of the Board or such committee, as applicable. If a quorum shall not be present at any meeting of the Board or any committee thereof, a majority of the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

3.10 Action of the Board by Written Consent. Unless otherwise provided in the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all of the members of the Board or such committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of the Board or such committee.

3.11 Expense Reimbursement and Compensation. Directors and members of committees may receive such compensation, if any, for their services and such reimbursement of expenses as may be fixed or determined by resolution of the Board. This Section 3.11 shall not be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee or otherwise and receiving compensation for those services.

3.12 Chairman and Vice Chairman of the Board. The Corporation shall have a Chairman of the Board and, at the Board's discretion, a Vice Chairman of the Board. Any such Chairman of the Board or Vice Chairman of the Board may be an officer of this Corporation as determined by the Board pursuant to Section 4.1. The Chairman of the Board shall preside at all meetings of the stockholders and of the Board and shall exercise and perform such other powers and duties as may be from time to time assigned to him or her by the Board or as may be prescribed by these Bylaws.

3.13 Committees.

(a) The Board may, by resolution, designate from among its members one (1) or more committees, each such committee to consist of one (1) or more of the directors of the Corporation, the exact number of which shall be fixed from time to time by resolution of the Board. The Board may designate one (1) or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board establishing such committee, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; provided, however, no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the Corporation. All committees of the Board shall keep minutes of their meetings and shall report their proceedings to the Board when requested or required by the Board.

(b) Any committee of the Board may adopt such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings as such committee may deem proper.

3.14 Telephonic Meetings. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or such committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

ARTICLE IV

OFFICERS

4.1 General. The officers of the Corporation shall be chosen by the Board and shall include a President, a Chief Executive Officer, and a Secretary. The Board, in its discretion, may also appoint such additional officers as the Board may deem necessary or desirable, including a Chief Financial Officer, one (1) or more Vice Presidents, one (1) or more Assistant Vice Presidents, one (1) or more Assistant Secretaries, a Treasurer and one (1) or more Assistant Treasurers, each of whom shall hold office for such period, have such authority and perform such duties as the Board may from time to time determine. Subject to the rules or regulations of any stock exchange applicable to the Corporation or other applicable law, the Board may delegate to any officer of this Corporation or any committee of the Board the power to appoint, remove and prescribe the term and duties of any officer provided for in this Section 4.1. Any number of offices may be held by the same person, unless otherwise provided by the Certificate of Incorporation or these Bylaws.

4.2 Appointment and Term. Each officer shall serve at the pleasure of the Board and shall hold office until such officer's successor has been appointed, or until such officer's earlier death, resignation or removal. Any officer may be removed, either with or without cause, by the Board or by any officer upon whom such power of removal may be conferred by the Board.

4.3 Resignations. An officer may resign from his or her position at any time, by giving notice in writing or electronic transmission to the Corporation. Such resignation shall be without prejudice to any rights, if any, the Corporation may have under any contract to which the officer is a party. Such resignation shall take effect at the time therein specified (which may be upon the happening of an event specified therein), or, if no time is specified, immediately; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.4 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise shall be filled by the Board in the manner prescribed in these Bylaws for election or appointment to such office.

4.5 Compensation. The Board shall fix, or may appoint a committee to fix, the compensation of all officers of the Corporation appointed by the Board. Subject to the rules or regulations of any stock exchange applicable to the Corporation or other applicable law, the Board may authorize any officer upon whom the power to appoint officers may have been conferred pursuant to Section 4.1 to fix the compensation of such officers.

4.6 Authority and Duties of Officers. All officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be provided herein or designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

ARTICLE V

STOCK

5.1 Certificates. The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock in the Corporation represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Corporation by any two (2) authorized officers, representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile signature. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issuance.

5.2 Transfers. Shares of stock of the Corporation shall be transferable upon the Corporation's books by the holders thereof, in person or by their duly authorized attorneys or legal representatives, upon surrender to the Corporation of the certificate or certificates representing such shares endorsed by the appropriate person or persons (or, with respect to uncertificated shares, by delivery of duly executed instructions or in any other manner permitted by applicable law). Certificates representing such shares, if any, shall be cancelled and new certificates, if the shares are to be certificated, shall thereupon be issued. Shares of capital stock of the Corporation that are not represented by a certificate shall be transferred in accordance with applicable law. A record shall be made of each transfer. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented, both the transferor and transferee request the Corporation to do so. The Board shall have power and authority to make such rules and regulations as it may deem necessary or proper concerning the issue, transfer and registration of certificates for shares of stock of the Corporation.

5.3 Lost, Stolen, or Destroyed Certificates. The Board may direct a new certificate or uncertificated shares be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issuance of a new certificate or uncertificated shares, the Board may, in its discretion, require the owner of such lost, stolen or destroyed certificate to give the Corporation a bond (or other adequate security) in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate or uncertificated shares. The Board may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

5.4 Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

ARTICLE VI

NOTICES

6.1 Notices.

(a) Whenever notice is required by law, the Certificate of Incorporation or these Bylaws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at such person's address as it appears on the books of the Corporation or given by the stockholder for such purpose, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice may also be given personally or by facsimile, electronic mail or other means of electronic transmission in accordance with applicable law. Without limiting the foregoing, any notice to stockholders given by the Corporation pursuant to the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given.

(b) Notice to a stockholder given by a form of electronic transmission in accordance with these Bylaws shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network, together with separate notice to the stockholder of such specific posting, upon the later of such posting and the giving of such separate notice; and (iv) if by another form of electronic transmission, when directed to the stockholder. For purposes of these Bylaws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(c) Any notice to stockholders given by the Corporation may be given by a single written notice to stockholders who share an address if consented to by the stockholders at such address to whom such notice is given. Any such consent shall be revocable by the stockholders by written notice to the Corporation. Any stockholder who fails to object in writing to the Corporation, within sixty (60) days of having been given written notice by the Corporation of its intention to send the single notice as set forth in this Section 6.1(c) shall be deemed to have consented to receiving such single written notice.

6.2 Waivers of Notice. Whenever any notice is required by applicable law, the Certificate of Incorporation or these Bylaws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to notice, or a waiver thereof given by electronic transmission by the person or persons entitled to notice, in each case, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of stockholders or any regular or special meeting of the directors or members of a committee of directors need be specified in any written waiver of notice unless so required by law, the Certificate of Incorporation or these Bylaws.

ARTICLE VII

INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

7.1 Definitions. For purposes of this Article VII, the following terms shall have the meanings set forth below:

(a) "Action" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(b) "Indemnified Party," means any person who is or was a party or is threatened to be made a party to any Action by reason of the fact that such person is or was a director or officer of the Corporation (which shall include actions taken in connection with or relating to the incorporation of the Corporation) or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, including any employee benefit plan of the Corporation.

7.2 Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any Indemnified Party against any and all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Indemnified Party. Notwithstanding the preceding sentence, except as provided in Section 7.5, the Corporation shall be required to indemnify an Indemnified Party in connection with an Action (or part thereof) commenced by such Indemnified Party only if the commencement of such Action (or part thereof) by the Indemnified Party was authorized in the specific case by the Board of the Corporation.

7.3 Determination. Any indemnification under this Article VII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that the indemnification of Indemnified Party is proper in the circumstances because such Indemnified Party has met the applicable standard of conduct required by applicable law, as the case may be. Such determination shall be made, with respect to an Indemnified Party who is a director or officer at the time of such determination, (a) by a majority vote of the directors who are not parties to such Action, even though less than a quorum, (b) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (d) by the stockholders. Such determination shall be made, with respect to former directors or officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former Indemnified Party of the Corporation has been successful on the merits or otherwise in defense of any Action or in defense of any claim, issue or matter therein, such Indemnified Party shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such Indemnified Party in connection therewith, without the necessity of authorization in the specific case.

7.4 Expenses Payable in Advance. Expenses, including without limitation attorneys' fees, incurred by an Indemnified Party in defending any Action shall be paid by the Corporation in advance of the final disposition of such Action upon receipt of an undertaking by or on behalf of such Indemnified Person (if required by law) to repay such amount if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified by the Corporation as authorized in this Article VII.

7.5 Claim. If a claim for indemnification under this Article VII (following the final disposition of such proceeding) is not paid in full within sixty (60) days after the Corporation has received a claim therefor by the Indemnified Party, or if a claim for any advancement of expenses under this Article VII is not paid in full within thirty (30) days after the Corporation has received a statement or statements requesting such amounts to be advanced, the Indemnified Party shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim. If successful in whole or in part, the Indemnified Party shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action, the Corporation shall have the burden of proving that the Indemnified Party is not entitled to the requested indemnification or advancement of expenses under applicable law.

7.6 Other Indemnification or Advancement. The rights to indemnification and advancement of expenses provided by this Article VII shall not be construed to be exclusive of or limit any other rights to which any Indemnified Party or other person may be entitled under the Certificate of Incorporation or any bylaw, agreement, vote of the stockholders or disinterested directors or otherwise, both as to action in such Indemnified Party's official capacity and as to action in another capacity while holding office.

7.7 Insurance. The Corporation may purchase and maintain insurance in the amounts the Board deems appropriate or advisable on behalf of any Indemnified Party against any liability asserted against such Indemnified Party and incurred by such Indemnified Party in such Indemnified Party's capacity, or arising out of such Indemnified Party's status, as an Indemnified Party, whether or not the Corporation would have the power to indemnify such Indemnified Party against such liability under applicable provisions of law.

ARTICLE VIII

GENERAL PROVISIONS

8.1 Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board.

8.2 Corporate Seal. The Corporation may adopt and may subsequently alter the corporate seal and it may use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

8.3 Maintenance and Inspection of Records. The Corporation shall, either at its principal executive office or at such place or places as designated by the Board, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books and other records.

8.4 Reliance Upon Books, Reports and Records. Each director and each member of any committee designated by the Board shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation

8.5 Dividends. Subject to the requirements of the DGCL and the provisions of the Certificate of Incorporation, dividends on the capital stock of the Corporation may be declared by the Board at any regular or special meeting of the Board (or any action by written consent in lieu thereof in accordance with Section 3.11 hereof), and may be paid in cash, in property, or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board may modify or abolish any such reserve. In the event that the Board declares a dividend on the capital stock of the Corporation pursuant to this Section 8.5, the Board may fix a record date in order that the Corporation may determine the stockholders entitled to receive payment of any dividend, which record date shall be fixed in accordance with Section 2.11(b).

8.6 Emergency Bylaws. In the event of any emergency, disaster or catastrophe, as referred to in Section 110 of the DGCL or any successor provision, or other similar emergency condition, as a result of which a quorum of the Board or a standing committee of the Board cannot readily be convened for action, then the director or directors in attendance at the meeting shall constitute a quorum. Such director or directors in attendance may further take action to appoint one (1) or more of themselves or other directors to membership on any standing or temporary committees of the Board as they shall deem necessary and appropriate.

8.7 Certificate of Incorporation Governs. In the event of any conflict between the provisions of the Certificate of Incorporation and these Bylaws, the provisions of the Certificate of Incorporation shall govern.

8.8 Severability. Any determination that any provision of these Bylaws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these Bylaws.

8.9 Actions with Respect to Securities of Other Entities. All stock and other securities of other entities owned or held by the Corporation for itself, or for other parties in any capacity, shall be voted (including by written consent), and all proxies with respect thereto shall be executed, by the person or persons authorized to do so by resolution of the Board or, in the absence of such authorization, by the President, Chief Executive Officer, Secretary or such other officer of the Corporation designated by the Board.

ARTICLE IX

LOCK-UP

Section 1. Subject to Section 2 of this Article IX, the holders (the "Lock-up Holders") of common stock of the Corporation issued (a) as consideration pursuant to the merger of Bronco Merger Sub, Inc., a Delaware corporation, with and into Dragonfly Energy Corp., a Nevada corporation (the "Merger") or (b) to directors, officers and employees of the Corporation upon the settlement or exercise of stock options or other equity awards outstanding as of immediately following the closing of the Merger in respect of awards of Dragonfly Energy Corp. outstanding immediately prior to the closing of the Merger (excluding, for the avoidance of doubt, the Acquiror Warrants (as defined in the Merger Agreement)) (the "Dragonfly Equity Award Shares"), may not Transfer any Lock-up Shares until the end of the Lock-up Period (the "Lock-up").

Section 2. Notwithstanding the provisions set forth in Section 1 of this Article IX, the Lock-up Holders or their respective Permitted Transferees may Transfer the Lock-up Shares during the Lock-up Period (a) to (i) the Corporation's officers or directors, (ii) any affiliates or family members of the Corporation's officers or directors, (iii) any direct or indirect partners, members or equity holders of such Lock-up Holder, or any related investment funds or vehicles controlled or managed by such persons or entities or their respective affiliates, or (iv) the other Lock-up Holders or any direct or indirect partners, members or equity holders of the Lock-up Holders, any affiliates of the Lock-up Holders 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 Holder by virtue of the Lock-up Holder's organizational documents, as amended, upon dissolution of the Lock-up Holder; (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, including foreclosure thereof; (g) to the Corporation; or (h) in connection with a liquidation, merger, stock exchange, reorganization, tender offer approved by the Board of Directors or a duly authorized committee thereof or other similar transaction which results in all of the Corporation's stockholders having the right to exchange their shares of common stock for cash, securities or other property subsequent to the closing date of the Merger.

Section 3. Notwithstanding the other provisions set forth in this Article IX or these Bylaws (including Article X), the Board of Directors may, in its sole discretion, determine to waive, amend, or repeal the Lock-up obligations set forth in this Article; provided, that, any such waiver, amendment or repeal of any Lock-up obligations set forth herein shall require, in addition to any other vote of the members of the Board of Directors required to take such action pursuant to these bylaws or applicable law, the affirmative vote of at least one of the directors of the Corporation that has been designated pursuant to Section 7.6(a)(i) of the Merger Agreement, or if no such person is then serving as a director of the Corporation, one of their respective successors.

Section 4. For purposes of this Article IX:

- (a) the term “Lock-up Period” means the period beginning on the closing date of the Merger and ending on the date that is 180 days after the closing date of the Merger;
- (b) the term “Lock-up Shares” means the shares of common stock held by the Lock-up Holders immediately following the closing of the Merger (other than shares of common stock acquired in the public market or pursuant to a transaction exempt from registration under the Securities Act of 1933, as amended, pursuant to a subscription agreement where the issuance of common stock occurs on or after the closing of the Merger) and the Dragonfly Equity Awards Shares; provided, that, for clarity, shares of common stock issued in connection with the Domestication (as defined in the Merger Agreement) or the PIPE Investment (as defined in the Merger Agreement) shall not constitute Lock-up Shares;
- (c) the term “Permitted Transferees” means, prior to the expiration of the Lock-up Period, any person or entity to whom such Lock-up Holder is permitted to transfer such shares of common stock prior to the expiration of the Lock-up Period pursuant to Section 2 of this Article IX; and
- (d) the term “Transfer” means the (i) sale or assignment of, offer to sell, contract or agreement to sell, hypothecate, pledge, grant of any option to purchase or otherwise dispose of or agreement to dispose of, directly or indirectly, or establishment or increase of a put equivalent position or liquidation with respect to or decrease of a call equivalent position within the meaning of Section 16 of the Exchange Act with respect to, any security, (ii) entry into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any security, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise, or (c) public announcement of any intention to effect any transaction specified in clause (i) or (i) of this subparagraph.

Section 5. The provisions of this Article IX shall continue in effect during the Lock-Up Period, and shall thereafter terminate and be of no further force or effect.

ARTICLE X

AMENDMENTS

10.1 Amendments. These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted by the Board or by the stockholders as expressly provided in the Certificate of Incorporation.

* * *

Number A-1

SEE REVERSE FOR IMPORTANT NOTICE REGARDING OWNERSHIP AND
TRANSFER RESTRICTIONS AND CERTAIN OTHER INFORMATION

DFLI

CUSIP 26145B 106
SEE REVERSE FOR CERTAIN DEFINITIONS

DRAGONFLY ENERGY HOLDINGS CORP.
A Delaware Corporation

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE.
COMMON STOCK

SPECIMEN

FULLY PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK, PAR VALUE OF \$0.0001 PER SHARE OF
DRAGONFLY ENERGY HOLDINGS CORP.

transferable on the books of the company in person or by duly authorized attorney upon surrender of this certificate properly endorsed.

This certificate is not valid unless countersigned by the Transfer Agent and registered by the Registrar.

Witness the seal of the Company and the facsimile signatures of its duly authorized officers.

Chief Executive Officer

Chief Financial Officer

DRAGONFLY ENERGY HOLDINGS CORP.

The Company will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof of the Company and the qualifications, limitations, or restrictions of such preferences and/or rights. This certificate and the shares of common stock represented hereby are issued and shall be held subject to all the provisions of the Company’s certificate of incorporation and all amendments thereto and resolutions of the Board of Directors providing for the issue of securities (copies of which may be obtained from the secretary of the Company), to all of which the holder of this certificate by acceptance hereof assents.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	—	as tenants in common	UNIF GIFT MIN ACT —	_____Custodian _____
TEN ENT	—	as tenants by the entireties	_____	(Cust) (Minor)
IT TEN	—	as joint tenants with right of survivorship and not as tenants in common	Under Uniform Gifts to Minors Act	_____
TTEE	—	trustee under Agreement dated		(State)

Additional abbreviations may also be used though not in the above list.

For value received, _____ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS INFLUCING POSTAL ZIP CODE OF ASSIGNEE

Shares of the common stock represented by this certificate and do hereby irrevocably constitute and appoint _____, attorney, to transfer the said stock on the books of the within-named corporation with full power of substitution in the premises.

DATED _____

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration or enlargement or any change whatsoever.

SIGNATURE GUARANTEED:

THE SIGNATURES(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION, (BANKS STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15 (OR ANY SUCCESSOR RULE).

FORM OF \$10 WARRANT

THIS WARRANT HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED, SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS REGISTERED UNDER THE ACT, AND ANY APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE. THIS WARRANT MUST BE SURRENDERED TO THE COMPANY OR ITS TRANSFER AGENT AS A CONDITION PRECEDENT TO THE SALE, TRANSFER, PLEDGE OR HYPOTHECATION OF ANY INTEREST IN ANY OF THE SECURITIES REPRESENTED HEREBY.

NUMBER W-_____

_____WARRANTS

THIS WARRANT WILL BE VOID IF NOT EXERCISED PRIOR TO THE EXPIRATION DATE
(DEFINED BELOW)

DRAGONFLY ENERGY HOLDINGS CORP.

WARRANT

THIS WARRANT CERTIFIES THAT, for value received _____, is the registered holder (the “Holder”) of a warrant or warrants (the “Warrant(s)”) and is entitled to purchase up to that number of fully paid and non-assessable shares of common stock, par value \$0.0001 per share calculated in accordance with Section 1(c) below (the “Shares”), of Dragonfly Energy Holdings Corp., a Delaware corporation (the “Company”) at a purchase price per Share (the “Warrant Price”) of \$10.00 per share (as adjusted from time to time in accordance with this Warrant). This Warrant is issued in connection with that certain term loan, guarantee and security agreement among Alter Domus (US) LLC, Dragonfly Energy Corp., EICF Agent LLC and the other credit parties signatory thereto (the “Loan Agreement”). The Warrant represented by this certificate is referred to herein as the “Warrant Certificate”.

1. Term and Exercise of Warrants.

- (a) Subject to the terms and conditions set forth herein, this Warrant shall be exercisable, in whole or in part, commencing the date hereof (the “Issuance Date”) and ending on the five-year anniversary of the issuance date of this Warrant (the “Expiration Date”).
- (b) The Warrant entitles the holder thereof to purchase that number of Shares from the Company calculated in accordance with Section 1(c) below, commencing on the Issuance Date upon surrender of this Warrant, delivery of the Notice of Exercise form attached hereto (the “Notice of Exercise”) duly executed to the office of the Company, Dragonfly Energy Holdings Corp., Attention: Chief Financial Officer, 1190 Trademark Dr. #108, Reno, NV 89521 legal@dragflyenergy.com (or such other office or agency of the Company as it may designate by notice in writing to the Holder at the address of the Holder appearing on the books of the Company) and payment of the Warrant Price (by cash or by check or bank draft payable to the order of the Company or pursuant to Section 1(d) below) whereupon the Holder shall be entitled to receive from the Company a stock certificate representing the number of Shares so purchased. In no event will the Company be required to net cash settle any warrant exercise.
- (c) The number of Shares for which this Warrant is exercisable shall be calculated as follows:
 - i. Initially, this Warrant shall be exercisable for 1,600,000 Shares.
 - ii. If the registration statement (the “Registration Statement”) registering the shares of Common Stock to be issued pursuant to that certain ChEF Purchase Agreement by and between Chardan Capital Markets LLC and Dragonfly Energy Holdings Corp., including any modification, amendment or replacement thereof (the “Committed Equity Facility”) has not been declared effective by SEC on or before the date that is 121 days after the Issuance Date, the number of Shares for which this Warrant is exercisable shall be increased by an additional 200,000 Shares.

- iii. If the Registration Statement has not been declared effective by the SEC by the date that is 151 days after the Issuance Date, the number of Shares for which this Warrant is exercisable shall be increased by an additional 200,000 Shares.
- iv. If the Registration Statement has not been declared effective by the SEC by the date that is 181 days after the Issuance Date, the number of Shares for which this Warrant is exercisable shall be increased by an additional 200,000 Shares, and an additional 200,000 Shares shall be added to the number of Shares for which this Warrant is exercisable on each date that is 30 days following the prior date on which an additional 200,000 Shares were added to the number of Shares for which this Warrant is exercisable, until the Registration Statement is declared effective.
- v. At any time after the Issuance Date and prior to the exercise in full of this Warrant, the Company shall, at the Holder's request, issue a certificate in a form and substance reasonably satisfactory to the Holder setting forth the number of Shares for which this Warrant is then exercisable.
- vi. Following the effectiveness of the Registration Statement, the Company shall, at the Holder's request, issue a replacement Warrant, on terms identical to this Warrant except that this Section 1(c) shall be replaced with a statement setting forth the aggregate number of Shares for which this Warrant is exercisable.

- (d) The Holder shall have the right, in lieu of paying the Warrant Price in cash, to surrender a number of Warrants having a Fair Market Value equal to the aggregate Warrant Price (a "Cashless Exercise").

"Fair Market Value" shall mean, as of any particular date of determination, (i) if the Shares are then traded or quoted on a nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market (a "Trading Market"), the average closing price or last sale price of the Shares reported for the five (5) business days prior to the applicable date of determination (or, if the Shares have not been actively trading during the 5 business days prior to the applicable date of determination, the last sale price of the Shares for the business day immediately prior to the applicable date of determination) and (ii) if the Shares are not traded or quoted on a Trading Market, the Board of Directors of the Company (the "Board") shall determine the fair market value of a Share in its reasonable, good faith judgment, subject to the Holder's right to dispute such determination as provided in Section 1(e) below.

In the event of such a Cashless Exercise, the number of Shares to be issued to the Holder shall be determined as follows:

$$X = Y[(A - B)/A]$$

X = the number of Shares to be issued to the Holder

Y = the number of Shares with respect to which this Warrant is being exercised

A = the Fair Market Value of one Share

B = the Warrant Price

- (e) In the case of any dispute as to the determination of Fair Market Value, any closing price or sales price of the Shares, the arithmetic calculation of the Warrant Price or the number of Shares for which this Warrant is exercisable, or any other computation required to be made hereunder, if the Holder and the Company are unable to settle such dispute within five business days (or such longer period as the parties may agree), then either party may elect to submit the disputed matter(s) for resolution by an independent accountant, appraiser or investment bank with relevant experience mutually acceptable to the Company and the Holder. Such independent party's determination of such disputed matter(s) shall be binding upon all parties absent demonstrable error, and the Company and the Holder shall each pay one half of the fees and expenses of the independent party.
-

- (f) If, upon the Expiration Date, the Fair Market Value of one Share (or other security issuable upon the exercise hereof) is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed to be exercised on a Cashless Exercise basis as of the Expiration Date as to all the Shares for which it shall not previously have been exercised, and the Company shall, within a reasonable time, deliver a certificate representing the Shares issued upon such exercise to the Holder (and if the Company's shares are uncertificated, the Company shall deliver reasonably satisfactory evidence to the Holder signifying the valid issuance of such uncertificated shares).

2. Issuance of Shares; No Fractional Shares.

- (a) Within three business days after the exercise of this Warrant and the clearance of the funds in payment of the applicable Warrant Price (if any) (the "Delivery Deadline"), the Company, at its expense, shall issue to the registered holder of such Warrant a certificate or certificates, or book entry position, for the number of Shares to which he, she or it is entitled, registered in such name or names as may be directed by him, her or it. Upon any exercise of the Warrant for less than the total number of full Shares provided for herein, there shall be issued to the registered holder hereof or the registered holder's assignee a new Warrant Certificate covering the number of Shares for which the Warrant has not been exercised.
- (b) If, at the time of exercise, the Company has a transfer agent (the "Transfer Agent"), then upon the exercise of this Warrant in whole or in part, the Company shall, at its expense, take all necessary action, including (if necessary) obtaining and delivering an opinion from its counsel, to ensure that the Transfer Agent shall issue Shares in the name of the Holder (or its nominee) or such other persons as designated by the Holder and in such denominations to be specified in the applicable Notice of Exercise. The Company represents and warrants that if the Unrestricted Conditions set forth in Section 6 below are met, the Shares will be free-trading, and freely transferable, and will not contain a legend restricting the resale or transferability of the Shares and that no instructions other than the foregoing instructions will be given to the Transfer Agent.
- (c) If the Transfer Agent is participating in the DTC Fast Automated Securities Transfer ("FAST") program, upon written request of the Holder and in lieu of delivering physical certificates representing Shares to be delivered under or in connection with this Warrant Certificate, the Company shall use its commercially reasonable efforts to cause the Transfer Agent to electronically transmit the Shares to the Holder by crediting the account of the Holder's prime broker with the DTC through its Deposit Withdrawal Agent Commission ("DWAC") system. The time periods for delivery and penalties described herein shall apply to the electronic transmittals described herein. Any delivery not effected by electronic transmission shall be effected by delivery of physical certificates.
- (d) If the Company fails to transmit, or cause the Transfer Agent to transmit, to the Holder the Shares by the Delivery Deadline, then the Holder will have the right to rescind such Warrant exercise.
- (e) In addition to any other rights available to the Holder, including the right to rescind the exercise as provided above, if as a result of a failure to deliver the Shares by the Delivery Deadline (so long as the failure to deliver the Shares is not caused by any action or inaction by the Holder) (a "Delivery Failure") the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases shares of the Company's capital stock to deliver in satisfaction of a sale anticipated to be made by the Holder of all or portion of such Shares which are the subject of such Delivery Failure (an "Anticipated Sale"), then the Company shall (i) pay in cash to the Holder the amount by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of the Company's capital stock so purchased exceeds (y) an amount equal to the product of (A) the number of Shares that the Holder anticipated to sell in such Anticipated Sale, multiplied by (B) the Warrant Price that would have been payable for such Shares, and (ii) at the option of the Holder, either reinstate the portion of this Warrant and equivalent number of Shares in respect of which such Delivery Failure occurred or deliver to the Holder the number of Shares that would have been issued had the Company timely complied with its obligations hereunder to issue such Shares upon such exercise. The Holder shall provide the Company written notice indicating the amounts payable to the Holder, together with applicable confirmations and other evidence reasonably requested by the Company.
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- (f) No fraction of a Share will be issued upon any exercise of a Warrant. If the holder of a Warrant would be entitled to receive a fraction of a Share upon any exercise of a Warrant, the Company shall, upon such exercise, issue or cause to be issued only the largest whole number of Shares issuable on such exercise (and such fraction of a Share will be disregarded).
- (g) For purposes of Rule 144, it is acknowledged and agreed that (i) the Shares issuable upon any exercise of this Warrant in any Cashless Exercise transaction shall be deemed to have been acquired on the Issuance Date, and (ii) the holding period for any of the Shares issuable upon the exercise of this Warrant in any Cashless Exercise transaction shall be deemed to have commenced on the Issuance Date.

3. Exchange and Registry of Warrant.

- (a) Warrant Certificates, when surrendered at the office of the Company by the Holder in person or by attorney duly authorized in writing, may be exchanged without payment of any service charge, for another Warrant Certificate or Warrant Certificates of like tenor and evidencing in the aggregate a like number of Warrants.
- (b) Upon due presentment for registration of transfer of the Warrant Certificate at the office of the Company, a new Warrant Certificate or Warrant Certificates of like tenor and evidencing in the aggregate a like number of Warrants shall be issued to the transferee in exchange for this Warrant Certificate, without charge except for any applicable tax or other governmental charge.
- (c) The Company shall keep and properly maintain at its principal executive offices a register for the registration of this Warrant and any transfers thereof. The Company may deem and treat the person in whose name this Warrant is registered on such register as the Holder thereof for all purposes, and the Company shall not be affected by any notice to the contrary, except any assignment, division, combination or other transfer of this Warrant effected in accordance with the provisions of this Warrant.

4. Anti-Dilution Adjustments.

(a) Adjustments for Change in Shares.

- i. In the event that, after the Issuance Date and prior to the exercise in full of this Warrant, the outstanding the number of Shares shall be subdivided (by distribution, subdivision or otherwise), into a greater number of Shares, the number of Shares issuable on the exercise of each Warrant then in effect shall, concurrently with the effectiveness of such subdivision, be equally, ratably and proportionally increased, and the Warrant Price shall be ratably and proportionally decreased, in each case as determined in good faith by the Board, which determination shall be final and binding on the Holders absent manifest error. In the event the outstanding Shares shall be combined or consolidated, by reclassification or otherwise, into a lesser number of Shares, the number of Shares issuable on the exercise of each Warrant then in effect shall, concurrently with the effectiveness of such subdivision, be equally, ratably and proportionally decreased, and the Warrant Price shall be ratably and proportionally increased, in each case as determined in good faith by the Board, which determination shall be final and binding on the Holders absent manifest error.
- ii. In the event that, after the Issuance Date and prior to the exercise in full of this Warrant, the Shares are exchanged for, or converted into, another form of equity security of the Company or of any other entity, this Warrant shall be exercisable for an equivalent number of such equity securities, at an equivalent Warrant Price, in each case as determined by the Board acting reasonably, so as to provide the Holder with rights equitably equivalent to the rights held by the Holder by virtue of this Warrant in effect immediately prior to such exchange or conversion, and each reference herein to the Shares issuable on exercise of this Warrant shall be deemed to be a reference to such other equity securities.
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- (b) Adjustment for Issuance of Applicable Shares. If, after the Issuance Date, the Company shall issue or sell any Shares (other than shares included in the Excluded Issuances, as defined below) (the “Applicable Shares”), or options, warrants, convertible securities and similar instruments exercisable or otherwise convertible or exchangeable for Applicable Shares, in each case without consideration or for a consideration per Share initially deliverable upon issuance, conversion or exchange of such securities less than the then applicable Warrant Price, then effective immediately upon such issuance or sale, the Warrant Price shall be reduced, and shall not be increased, in accordance with the following formula:

$$E_1 = E \times (O + (M/E)) / (O + D)$$

E_1 = New Warrant Price

E = then applicable Warrant Price

O = the number of Shares outstanding immediately prior to the issuance of such securities

M = the total consideration received upon issuance of such securities

D = the maximum number of Shares deliverable upon issuance of such securities

Upon any and each adjustment to the Warrant Price as provided above, the number of the Shares issuable upon the exercise of this Warrant immediately prior to any such adjustment shall be increased to a number of the Shares equal to the quotient obtained by dividing (i) the product of (A) the Warrant Price in effect immediately prior to any such adjustment multiplied by (B) the number of the Shares issuable upon exercise of this Warrant immediately prior to such adjustment; by (ii) the Warrant Price resulting from such adjustment.

- (c) Other Dividends and Distributions. If the Company shall make or declare, or fix a record date for the determination of holders of equity securities entitled to receive, a dividend or any other distribution payable in cash, securities of the Company or other property, then, and in each such event, the Company shall ensure that provisions are made so that the Holder shall receive upon exercise of this Warrant, in addition to the number of the Shares receivable thereupon, the kind and amount of cash, securities of the Company or other property which the Holder would have been entitled to receive had this Warrant been exercised in full into the Shares on the date of such event and had the Holder thereafter, during the period from the date of such event to and including the date this Warrant is exercised, retained such cash, securities or other property receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this Section with respect to the rights of the Holder; *provided*, that no such provision shall be made if the Holder receives, simultaneously with the distribution to the holders of equity securities, a dividend or other distribution of such securities, cash or other property in an amount equal to the amount of such securities, cash or other property as the Holder would have received if this Warrant had been exercised in full into the Shares on the date of such event.
- (d) Certain Events. If any event of the type contemplated by the provisions of this Section but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features) occurs, then the Board shall make an appropriate adjustment in the Warrant Price and the number of the Shares issuable upon exercise of this Warrant so as to protect the rights of the Holder in a manner consistent with the provisions of this Section; provided, that no such adjustment pursuant to this Section 4(d) shall increase the Warrant Price or decrease the number of the Shares issuable hereunder.
- (e) Exceptions to Adjustments. Except as specifically provided for herein, there shall be no adjustment or readjustment to the number of Shares issuable in the following circumstances (each of the following, an “Excluded Issuance”): (1) upon the exercise of this Warrant or any of the other Warrants issued to the Company’s other lenders on the Issuance Date; (2) upon conversion, exercise or exchange of securities, including convertible debt securities, outstanding prior to the Issuance Date; (3) pursuant to agreements in effect as of the Issuance Date (provided that such agreements are not amended after the Issuance Date to increase the number of securities, reduce the consideration payable in connection with such securities, or otherwise change the terms of such agreements so as to have a dilutive effect on this Warrant); (4) pursuant to the Company’s management, directors or other service providers as part of compensation and incentive programs approved by the Board; (5) pursuant to any joint venture arrangement, strategic arrangements, real property lease, financing transaction or other similar transaction in which equity financing is not the purpose of the transaction; and (6) pursuant to any public equity offerings. Notwithstanding the foregoing, the parties agree that any equity securities issued in “PIPE” transactions, and any equity securities issued pursuant to the Committed Equity Facility shall be “Excluded Issuances” if the securities issued in such “PIPE” transactions or pursuant to the Committed Equity Facility are issued for consideration equal to at least \$5 per share (as proportionately adjusted to account for stock splits, stock combinations, stock dividends or other distributions or recapitalizations affecting the Common Stock). For example (x) if the Company issues equity securities in a PIPE Transaction or pursuant to the Committed Equity Facility, and the consideration paid for those equity securities is \$4 per equity security, then such issuance shall not be an Excluded Issuance and the adjustment set forth in Section 4(b) shall apply, and (y) if the Company issues equity securities in a PIPE Transaction or pursuant to the Committed Equity Facility, and the consideration paid for those equity securities is \$5 per equity security, then such issuance shall be an Excluded Issuance and the adjustment set forth in Section 4(b) shall not apply.
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(f) Notice of Adjustment. Upon the occurrence of each adjustment or readjustment of the Warrant Price or the number of Shares issuable on the exercise of each Warrant, the Company (at its expense) shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to the Holder a notice setting forth (1) such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based and (2) the number of Shares issuable on the exercise of each Warrant and the Warrant Price at the time in effect.

(g) Closing of Books. The Company will not close its stockholder books or records, other than in the ordinary course, in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

(h) Miscellaneous. All calculations hereunder shall be made to the nearest cent or to the nearest twentieth decimal place of a fractional Share, as the case may be.

5. Registration Rights.

(a) As soon as practicable following the Issuance Date but no later than thirty (30) calendar days after the Issuance Date, the Company shall submit to or file with the SEC a registration statement registering the resale of this Warrant, the Shares, and any securities issued or issuable with respect to the Shares by way of a stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation, spin-off, reclassification or other reorganization or similar transaction (including Shares received pursuant to Section 4 above) (the "Registrable Securities") on any form of registration statement (a "Registration Statement") as is then available to effect a registration for resale of such Registrable Securities, which may be on Form S-1, for an offering to be made on a continuous basis pursuant to Rule 415 of the Securities Act registering the resale from time to time by the Holder(s) (or a bona fide pledgee thereof) of all of the Registrable Securities held by the Holder (or bona fide pledgee thereof) (the "Initial Registration Statement"). The Holder shall not be named as an underwriter on any Registration Statement, provided, that if the SEC requires that the Holder be identified as a statutory underwriter in a Registration Statement, the Holder 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 Holder's Registrable Securities at a later date or (ii) be included as such in the Registration Statement. In the event that a Holder elects to include its Registrable Securities on a Registration Statement in accordance with the foregoing clause (ii), the Company shall provide such Holder 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 Holder shall be subject to the approval of such Holder (which approval shall not be unreasonably withheld or delayed). Such Registrable Securities will cease to become Registrable Securities upon the earliest to occur of: (A) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and all Registrable Securities held by the Holder shall have been sold, transferred, disposed of or exchanged in accordance with such Registration Statement by the applicable Holder; (B) such securities shall have ceased to be outstanding; (C) such securities may be sold without restriction on volume or manner of sale in any three-month period pursuant to Rule 144 or any successor rule promulgated under the Securities Act; and (D) all Registrable Securities held by the Holder have been sold to, or through, a broker, dealer or underwriter in a public distribution or other public securities transaction.

(b) The Company shall use commercially reasonable efforts to have the Initial Registration Statement declared effective as soon as practicable after the filing thereof, but no later than the earlier of (i) the ninetyth (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 Holders 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 Securities Act, and provide the Holders with copies of, any related prospectus to be used in connection with the sale or other disposition of the securities covered thereby (each, a "Prospectus"). The Registration Statement shall contain a Prospectus in such form as to permit any Holder to sell such Registrable Securities pursuant to Rule 415 under the Securities Act (or any successor or similar provision adopted by the Commission then in effect) at any time beginning on the effective date for such Registration Statement, and shall provide that such Registrable Securities may be sold pursuant to any method or combination of methods legally available to, and requested by, the Holders.

(c) 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 Holders named therein to sell their Registrable Securities included therein and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities (the "Effectiveness Period").

(d) In furtherance of the foregoing, the Company shall:

- i. provide copies to, and permit the Holder to review, the Registration Statement and all amendments and supplements thereto not less than five (5) business days prior to the filing of the Registration Statement and not less than one (1) business day prior to the filing of any related Prospectus or any amendment or supplement thereto (except any amendment or supplement in relation to 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 Holder 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;
 - ii. use commercially reasonable efforts to (x) prevent the issuance of any stop order or other suspension of effectiveness and (y) if such order is issued, obtain the withdrawal of any such order as soon as practicable;
 - iii. prior to any public offering of Registrable Securities, use commercially reasonable efforts to register or qualify or cooperate with the Holder and its 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 upon notice and as requested by the Holder and do any and all other commercially reasonable acts or things necessary or advisable as requested by the Holder to enable the distribution in such jurisdictions of the Registrable Securities covered by the Registration Statement; provided, 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 provision; (ii) subject itself to general taxation in any jurisdiction where it would not otherwise be so subject but for this provision; or (iii) file a general consent to service of process in any such jurisdiction;
 - iv. 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;
 - v. provide a transfer agent or warrant agent, if any, as applicable, and registrar for all such Registrable Securities no later than the effective date of such Registration Statement;
 - vi. promptly notify the Holder 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 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 (a "Misstatement"), which the Holder will maintain in confidence, and (i) 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 or (ii) suspend the filing, initial effectiveness or continued use of any Registration Statement in accordance with Section 5(g) below;
 - vii. use commercially reasonable efforts to comply with all applicable rules and regulations of the SEC under the Securities Act and the Exchange Act; and
 - viii. otherwise, in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested by the Holder, consistent with the terms of this Warrant, in connection with such registration.
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- (e) In the event that any Holder holds Registrable Securities that are not registered for resale on a delayed or continuous basis, the Company, upon written request of such Holder, 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.
 - (f) If the Initial Registration Statement ceases to be effective under Securities 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 Securities 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.
 - (g) 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 5 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 the Holder in writing of the commencement of an Allowed Delay, but shall not (without the prior written consent of a Holder) disclose to such Holder any material non-public information giving rise to an Allowed Delay; (2) advise the Holder 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 Securities Act) and (3) use commercially reasonable efforts to terminate an Allowed Delay as promptly as reasonably practicable.
 - (h) In the event that any Holder holds Registrable Securities that are not registered for resale on a delayed or continuous basis, the Company, upon request of a Holder, 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, the Initial Registration Statement or a subsequent Registration Statement and cause the same to become effective as soon as practicable after such filing and such Registration Statement shall be subject to the terms hereof.
 - (i) 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.
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- (j) The Company agrees to indemnify and hold harmless the Holder, 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 Securities Act or Section 20 of the Securities and Exchange Act of 1934, as amended (the “Exchange Act”)) the Holder (each, a “Holder 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 Securities 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 Securities 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 Holder Indemnified Party for any reasonable, customary and documented out-of-pocket legal and any other expenses reasonably incurred, as incurred, by such Holder Indemnified Party in connection with investigating and defending any such Losses, except to the extent the Holder is liable to indemnify the Company for such Losses pursuant to Section 5(k) below; provided, however, that the indemnity agreement contained in this Section 5(j) 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 the applicable Holder Indemnified Party expressly for use therein.
- (k) The Holder will, in the event that any registration of any Registrable Securities held by the Holder is being effected under the Securities Act pursuant to this Agreement and the Company has required the Holder 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 person, if any, who controls such underwriter within the meaning of the Securities 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 Securities 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 Holder expressly for use therein, and shall reimburse the Company and its directors and officers 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.
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6. Transferability; Compliance with Securities Laws.

- (a) This Warrant may not be transferred or assigned in whole or in part without compliance with all applicable United States, state, and foreign securities laws by the transferor and transferee (including the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, if requested by the Company). Subject to such restrictions, prior to the Expiration Date, this Warrant and all rights hereunder are transferable by the Holder hereof, in whole or in part, at the office or agency of the Company referred to in Section 1(b) above. Any such transfer shall be made in person or by the Holder's duly authorized attorney, upon surrender of this Warrant together with the Form of Transfer attached hereto properly endorsed.
- (b) The Holder of this Warrant, by acceptance hereof, acknowledges that this Warrant and the Shares issuable upon exercise hereof are being acquired solely for the Holder's own account and not as a nominee for any other party, and for investment, and that the Holder will not offer, sell, or otherwise dispose of this Warrant or any Shares to be issued upon exercise hereof except under circumstances that will not result in a violation of the Securities Act or any state or foreign securities laws. Upon exercise of this Warrant, the Holder shall, if reasonably requested by the Company and if required by applicable law or regulation, confirm in writing, in a form satisfactory to the Company, that the Shares so purchased are being acquired solely for Holder's own account and not as a nominee for any other party, for investment, and not with a view toward distribution or resale.
- (c) The Shares have not been registered under the Securities Act, and this Warrant may not be exercised except by (1) the original purchaser of this Warrant from the Company or (2) an "accredited investor" as defined in Rule 501(a) under the Securities Act. Each certificate representing Shares issued on exercise of this Warrant or other securities issued in respect of such Shares upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall be stamped or otherwise imprinted with a legend substantially in the following form (in addition to any other legend required under applicable securities laws):

THE SHARES OF COMMON STOCK EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS COVERING ANY SUCH TRANSACTION OR UNLESS THE COMPANY SHALL HAVE RECEIVED AN OPINION OF ITS COUNSEL THAT REGISTRATION OF SUCH SHARES UNDER THE SECURITIES ACT AND UNDER THE PROVISIONS OF APPLICABLE STATE SECURITIES LAWS IS NOT REQUIRED.

7. Removal of Restrictive Legends. Neither this Warrant nor any certificates evidencing the Shares or any other equity securities issuable or deliverable under or in connection with this Warrant shall contain any legend restricting the transfer thereof in any of the following circumstances: (i) while a registration statement covering the sale or resale of the Shares is effective under the Securities Act; (ii) following any sale of this Warrant, any of the Shares or any other equity securities issued or delivered to the Holder under or in connection herewith pursuant to Rule 144; (iii) if this Warrant, the Shares or any other equity securities are eligible for sale under Rule 144(b)(1); or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) (collectively, the "Unrestricted Conditions"). If the Unrestricted Conditions are met at the time of the issuance of the Shares, the Company shall cause its counsel, at its expense, to issue a legal opinion to the Transfer Agent, if required by such Transfer Agent to effect the issuance of the Shares or any other shares of equity securities issuable or deliverable under or in connection with this Warrant, as applicable, without a restrictive legend or removal of the legend hereunder. If the Unrestricted Conditions are met at the time of issuance of the Shares, then the Shares shall be issued free of all legends.
8. Payment of Taxes. The Company will from time to time promptly pay all taxes and charges that may be imposed in respect of the issuance or delivery of shares upon the exercise of Warrants, but the Company shall not be obligated to pay any transfer taxes in respect of the Warrants or such shares.
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9. Representations and Warranties. The Company represents and warrants to, and agrees with, the Holder as follows:

- (a) Due Organization. The Company is a corporation duly organized, validly existing, and in good standing under the laws of the state of its formation and has all requisite corporate power and authority to carry on its business as now conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business or properties.
 - (b) Authorization; Binding Obligation. This Warrant has been duly executed by the Company and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms of this Warrant. Except as may be limited by applicable bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights, all corporate action has been taken on the part of the Company, its officers, directors, and stockholders necessary for the authorization, execution and delivery of this Warrant. The Company has taken all corporate action required to make all the obligations of the Company reflected in the provisions of this Warrant the valid and enforceable obligations they purport to be. The issuance of this Warrant and the Shares issuable upon exercise of this Warrant will not be subject to preemptive rights of any stockholders of the Company. No consent, waiver, approval, authorization, exemption, registration, license or declaration is required to be made or obtained by the Company, other than those which have been made or obtained, in connection with (i) the execution or enforceability of this Warrant or (ii) the consummation of any of the transactions contemplated hereby, including the issuance of the Shares upon exercise of this Warrant.
 - (c) Compliance with Other Instruments. The authorization, execution and delivery of the Warrant will not constitute or result in a default or violation of any law or regulation applicable to the Company or any term or provision of the Company's Certificate of Incorporation or bylaws, or any material agreement or instrument by which it is bound or to which its properties or assets are subject.
 - (d) Valid Issuance. This Warrant, and all the Shares which may be issued upon the exercise of this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances (including preemptive or similar rights) except for restrictions on transfer provided for (i) in this Warrant, (ii) under applicable federal and state securities laws, or (iii) in the Company's Certificate of Incorporation. Based in part upon the representations and warranties of the Holder in this Warrant, this Warrant and all the Shares issuable upon exercise of this Warrant will be issued in compliance with all applicable federal and state securities laws. The Company covenants that it shall at all times cause to be reserved and kept available out of its authorized and unissued capital stock such number of the Shares and other securities for which this Warrant may be exercisable or for which the Shares may be convertible as will be sufficient to permit the exercise in full of this Warrant.
 - (e) Capitalization. The Company's summary capitalization table attached hereto as **Schedule 1** is true and complete, in all material respects, as of the Issuance Date. Except as described on **Schedule 1**, there are no outstanding warrants, options, convertible securities or other rights, agreements or arrangements of any character (other than equity grants promised to service providers in offer letters or similar agreements in the ordinary course of business, all of which grants will be made from the existing pool that is reflected in the fully diluted capitalization of the Company shown on **Schedule 1**) under which the Company and any of its subsidiaries is or may be obligated to issue any equity securities of any kind, and neither the Company nor any of its subsidiaries is currently in negotiations for the issuance of any equity securities of any kind.
 - (f) No Violation; Registration. The Company shall take all such actions as may be necessary to ensure that all the Shares are issued without violation by the Company of any applicable law or governmental regulation or any requirements of any trading market or securities exchange upon which shares of the Company's common stock or other securities constituting the Shares may be listed at the time of such exercise (except for official notice of issuance which shall be immediately delivered by the Company upon each such issuance). If the Unrestricted Conditions are satisfied at the time of exercise of this Warrant, the Company shall cause the Shares, immediately upon such exercise, to be listed on any such trading market or securities exchange upon which shares of common stock or other securities constituting the Shares are listed at the time of such exercise.
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10. **No Rights as a Stockholder: No Liability.** Except as specifically set forth herein, this Warrant, by itself, does not entitle the registered holder thereof to any of the rights of a stockholder of the Company, including, without limitation, the right to receive dividends, or other distributions, exercise any preemptive rights to vote or to consent or to receive notice as stockholders in respect of the meetings of stockholders or the election of directors of the Company or any other matter. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase the Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Shares or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.
11. **No Impairment.**
- (a) Notwithstanding anything herein to the contrary, nothing contained in this Warrant shall affect, limit or impair the rights and remedies of the Holder or its affiliates (x) in their capacity as a lender, creditor, or similar, as applicable, to the Company or any of its subsidiaries or affiliates, or (y) pursuant to any other agreements or instruments entered into by the Holder (or its affiliates) and the Company or any of its subsidiaries or affiliates. Without limiting the generality of the foregoing, neither the Administrative Agent (as defined in the Loan Agreement) nor any of its affiliates, in exercising their rights as lenders will have any duty to consider (i) its (or its affiliates') status as a direct or indirect shareholder of the Company and its subsidiaries, (ii) its (or its affiliates') direct or indirect ownership of the Shares of the Company or any of its subsidiaries, or (iii) any duty it (or its affiliates) may have to any other direct or indirect shareholders of the Company and its subsidiaries, except as may be required under the applicable loan documents.
- (b) The Company shall not, by amendment of its Certificate of Incorporation or bylaws, through any shareholders, voting or similar agreement, or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed by it hereunder, but shall at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may reasonably be requested by the Holder in order to protect the exercise rights of the Holder against dilution or other impairment, consistent with the tenor and purpose of this Warrant. Without limiting the generality of the foregoing, the Company (x) will not increase the par value of any the Shares above the then-applicable Warrant Price, (y) will take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Shares upon the exercise of this Warrant, and (z) will use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.
12. **Effect of Headings.** The section headings herein are for convenience only and are not part of this Warrant and shall not affect the interpretation thereof.
13. **Modification and Waiver.** This Warrant and any provision hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the same is sought.
14. **Notices.** Any notice, request or other document required or permitted to be given or delivered to the Holder or the Company shall be delivered through email, or shall be sent by certified or registered mail, postage prepaid, to the Holder at its address as shown on the books of the Company or to the Company at the address indicated therefor in the first paragraph of this Warrant.
15. **Governing Law.** This Warrant shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of New York.
16. **Nonwaiver and Expenses.** No course of dealing or any delay or failure to exercise any right hereunder on the part of the Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies provided herein. If the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.
17. **Successors and Assigns.** Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of the Holder. The provisions of this Warrant are intended to be for the benefit of the Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of the Shares.
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IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its duly authorized officer.

Dated: , 2022

DRAGONFLY ENERGY HOLDINGS CORP.

By: _____
Name:
Title:

[Signature Page to \$10 Warrant]

Accepted and Acknowledged by:

[WARRANT HOLDER]

By: _____
Name:
Title:

[Signature Page to \$10 Warrant]

SCHEDULE 1

Fully Diluted Capitalization of the Company as of the Issuance Date

NOTICE OF EXERCISE

To Be Executed by the Registered Holder in Order to Exercise Warrants

The undersigned Registered Holder irrevocably elects to exercise _____ Warrants represented by this Warrant Certificate, and to purchase the Shares issuable upon the exercise of such Warrants, and requests that Certificates for such shares shall be issued in the name of

(PLEASE TYPE OR PRINT NAME AND ADDRESS)

(SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER)

and be delivered to _____

(PLEASE PRINT OR TYPE NAME AND ADDRESS)

and, if such number of Warrants shall not be all the Warrants evidenced by this Warrant Certificate, that a new Warrant Certificate for the balance of such Warrants be registered in the name of, and delivered to, the Registered Holder at the address stated below:

Dated: _____

(SIGNATURE)

(ADDRESS)

(TAX IDENTIFICATION NUMBER)

(EMAIL ADDRESS)

NOTICE OF EXERCISE

To Be Executed by the Registered Holder in Order to Exercise Warrants

The undersigned Registered Holder irrevocably elects to exercise _____ Warrants represented by this Warrant Certificate, and to purchase the Shares issuable upon the exercise of such Warrants, **using the Cashless Exercise method, resulting in the issuance of _____ Shares to the undersigned.**

The undersigned has calculated the number of Shares to be issued to it in accordance with the following formula set forth in Section 1(d) of the Warrant:

$$X = Y[(A - B)/A]$$

X = the number of Shares to be issued to the Holder
Y = the number of Shares with respect to which this Warrant is being exercised
A = the Fair Market Value of one Share
B = the Warrant Price

Where the Fair Market Value of one Share is \$[____], being the [average closing price or last sale price of the Shares reported for the five (5) business days prior to the applicable date of determination][last sale price of the Shares for the business day immediately prior to the applicable date of determination]

The undersigned requests that Certificates for such shares shall be issued in the name of

[WARRANT HOLDER]

and be delivered to

(PLEASE PRINT OR TYPE NAME AND ADDRESS)

and, if such number of Warrants shall not be all the Warrants evidenced by this Warrant Certificate, that a new Warrant Certificate for the balance of such Warrants be registered in the name of, and delivered to, the Registered Holder at the address stated below.

Dated: _____

[WARRANT HOLDER]

By: _____
Name: _____
Title: _____

(ADDRESS AND EMAIL)

(TAX IDENTIFICATION NUMBER)

FORM OF TRANSFER

To Be Executed by the Registered Holder in Order to Transfer Warrants

For Value Received, _____ hereby sell, assign, and transfer unto

(PLEASE TYPE OR PRINT NAME AND ADDRESS)

(SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER)

and be delivered to _____

(PLEASE PRINT OR TYPE NAME AND ADDRESS)

_____ of the Warrants represented by this Warrant Certificate, and hereby irrevocably constitute and appoint _____ Attorney to transfer this Warrant Certificate on the books of the Company, with full power of substitution in the premises.

Dated: _____

(Signature)

THE SIGNATURE TO THE ASSIGNMENT OF THE SUBSCRIPTION FORM MUST CORRESPOND TO THE NAME WRITTEN UPON THE FACE OF THIS WARRANT CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER, AND MUST BE GUARANTEED BY A COMMERCIAL BANK OR TRUST COMPANY OR A MEMBER FIRM OF THE NYSE AMERICAN, NASDAQ, NEW YORK STOCK EXCHANGE, PACIFIC STOCK EXCHANGE, OR CHICAGO STOCK EXCHANGE.

FORM OF PENNY WARRANT

THIS WARRANT HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED, SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS REGISTERED UNDER THE ACT, AND ANY APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE. THIS WARRANT MUST BE SURRENDERED TO THE COMPANY OR ITS TRANSFER AGENT AS A CONDITION PRECEDENT TO THE SALE, TRANSFER, PLEDGE OR HYPOTHECATION OF ANY INTEREST IN ANY OF THE SECURITIES REPRESENTED HEREBY.

NUMBER W-_____

_____WARRANTS

THIS WARRANT WILL BE VOID IF NOT EXERCISED PRIOR TO THE EXPIRATION DATE (DEFINED BELOW)

DRAGONFLY ENERGY HOLDINGS CORP.

WARRANT

THIS WARRANT CERTIFIES THAT, for value received _____, is the registered holder (the “Holder”) of a warrant or warrants (the “Warrant(s)”) and is entitled to purchase up to _____¹ fully paid and non-assessable shares of common stock, par value \$0.0001 per share (“Shares”), of Dragonfly Energy Holdings Corp., a Delaware corporation (the “Company”) at a purchase price per Share (the “Warrant Price”) of \$0.01 per share (as adjusted from time to time in accordance with this Warrant). This Warrant is issued in connection with that certain term loan, guarantee and security agreement among Alter Domus (US) LLC, Dragonfly Energy Corp., EICF Agent LLC and the other credit parties signatory thereto (the “Loan Agreement”). The Warrant represented by this certificate is referred to herein as the “Warrant Certificate”.

1. Term and Exercise of Warrants.

- (a) Subject to the terms and conditions set forth herein, this Warrant shall be exercisable, in whole or in part, commencing the date hereof (the “Issuance Date”) and ending on the ten-year anniversary of the issuance date of this Warrant (the “Expiration Date”).
- (b) The Warrant entitles the holder thereof to purchase Shares from the Company, commencing on the Issuance Date upon surrender of this Warrant, delivery of the Notice of Exercise form attached hereto (the “Notice of Exercise”) duly executed to the office of the Company, Dragonfly Energy Holdings Corp., Attention: Chief Financial Officer, 1190 Trademark Dr. #108, Reno, NV 89521 legal@dragflyenergy.com (or such other office or agency of the Company as it may designate by notice in writing to the Holder at the address of the Holder appearing on the books of the Company) and payment of the Warrant Price (by cash or by check or bank draft payable to the order of the Company or pursuant to Section 1(d) below) whereupon the Holder shall be entitled to receive from the Company a stock certificate representing the number of Shares so purchased. In no event will the Company be required to net cash settle any warrant exercise.
- (c) The Holder shall have the right, in lieu of paying the Warrant Price in cash, to surrender a number of Warrants having a Fair Market Value equal to the aggregate Warrant Price (a “Cashless Exercise”).

¹ To equal 5.6% of the Company’s fully diluted equity securities at the time of issuance.

“Fair Market Value” shall mean, as of any particular date of determination, (i) if the Shares are then traded or quoted on a nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market (a “Trading Market”), the average closing price or last sale price of the Shares reported for the five (5) business days prior to the applicable date of determination (or, if the Shares have not been actively trading during the 5 business days prior to the applicable date of determination, the last sale price of the Shares for the business day immediately prior to the applicable date of determination) and (ii) if the Shares are not traded or quoted on a Trading Market, the Board of Directors of the Company (the “Board”) shall determine the fair market value of a Share in its reasonable, good faith judgment, subject to the Holder’s right to dispute such determination as provided in Section 1(d) below

In the event of such a Cashless Exercise, the number of Shares to be issued to the Holder shall be determined as follows:

$$X = Y[(A - B)/A]$$

X = the number of Shares to be issued to the Holder

Y = the number of Shares with respect to which this Warrant is being exercised

A = the Fair Market Value of one Share

B = the Warrant Price

- (d) In the case of any dispute as to the determination of Fair Market Value, any closing price or sales price of the Shares, the arithmetic calculation of the Warrant Price or the number of Shares for which this Warrant is exercisable, or any other computation required to be made hereunder, if the Holder and the Company are unable to settle such dispute within five business days (or such longer period as the parties may agree), then either party may elect to submit the disputed matter(s) for resolution by an independent accountant, appraiser or investment bank with relevant experience mutually acceptable to the Company and the Holder. Such independent party’s determination of such disputed matter(s) shall be binding upon all parties absent demonstrable error, and the Company and the Holder shall each pay one half of the fees and expenses of the independent party.
- (e) If, upon the Expiration Date, the Fair Market Value of one Share (or other security issuable upon the exercise hereof) is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed to be exercised on a Cashless Exercise basis as of the Expiration Date as to all the Shares for which it shall not previously have been exercised, and the Company shall, within a reasonable time, deliver a certificate representing the Shares issued upon such exercise to the Holder (and if the Company’s shares are uncertificated, the Company shall deliver reasonably satisfactory evidence to the Holder signifying the valid issuance of such uncertificated shares).

2. Issuance of Shares; No Fractional Shares.

- (a) Within three business days after the exercise of this Warrant and the clearance of the funds in payment of the applicable Warrant Price (if any) (the “Delivery Deadline”), the Company, at its expense, shall issue to the registered holder of such Warrant a certificate or certificates, or book entry position, for the number of Shares to which he, she or it is entitled, registered in such name or names as may be directed by him, her or it. Upon any exercise of the Warrant for less than the total number of full Shares provided for herein, there shall be issued to the registered holder hereof or the registered holder’s assignee a new Warrant Certificate covering the number of Shares for which the Warrant has not been exercised.
- (b) If, at the time of exercise, the Company has a transfer agent (the “Transfer Agent”), then upon the exercise of this Warrant in whole or in part, the Company shall, at its expense, take all necessary action, including (if necessary) obtaining and delivering an opinion from its counsel, to ensure that the Transfer Agent shall issue Shares in the name of the Holder (or its nominee) or such other persons as designated by the Holder and in such denominations to be specified in the applicable Notice of Exercise. The Company represents and warrants that if the Unrestricted Conditions set forth in Section 6 below are met, the Shares will be free-trading, and freely transferable, and will not contain a legend restricting the resale or transferability of the Shares and that no instructions other than the foregoing instructions will be given to the Transfer Agent.
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- (c) If the Transfer Agent is participating in the DTC Fast Automated Securities Transfer (“FAST”) program, upon written request of the Holder and in lieu of delivering physical certificates representing Shares to be delivered under or in connection with this Warrant Certificate, the Company shall use its commercially reasonable efforts to cause the Transfer Agent to electronically transmit the Shares to the Holder by crediting the account of the Holder’s prime broker with the DTC through its Deposit Withdrawal Agent Commission (“DWAC”) system. The time periods for delivery and penalties described herein shall apply to the electronic transmittals described herein. Any delivery not effected by electronic transmission shall be effected by delivery of physical certificates.
- (d) If the Company fails to transmit, or cause the Transfer Agent to transmit, to the Holder the Shares by the Delivery Deadline, then the Holder will have the right to rescind such Warrant exercise.
- (e) In addition to any other rights available to the Holder, including the right to rescind the exercise as provided above, if as a result of a failure to deliver the Shares by the Delivery Deadline (so long as the failure to deliver the Shares is not caused by any action or inaction by the Holder) (a “Delivery Failure”) the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder’s brokerage firm otherwise purchases shares of the Company’s capital stock to deliver in satisfaction of a sale anticipated to be made by the Holder of all or portion of such Shares which are the subject of such Delivery Failure (an “Anticipated Sale”), then the Company shall (i) pay in cash to the Holder the amount by which (x) the Holder’s total purchase price (including brokerage commissions, if any) for the shares of the Company’s capital stock so purchased exceeds (y) an amount equal to the product of (A) the number of Shares that the Holder anticipated to sell in such Anticipated Sale, multiplied by (B) the Warrant Price that would have been payable for such Shares, and (ii) at the option of the Holder, either reinstate the portion of this Warrant and equivalent number of Shares in respect of which such Delivery Failure occurred or deliver to the Holder the number of Shares that would have been issued had the Company timely complied with its obligations hereunder to issue such Shares upon such exercise. The Holder shall provide the Company written notice indicating the amounts payable to the Holder, together with applicable confirmations and other evidence reasonably requested by the Company.
- (f) No fraction of a Share will be issued upon any exercise of a Warrant. If the holder of a Warrant would be entitled to receive a fraction of a Share upon any exercise of a Warrant, the Company shall, upon such exercise, issue or cause to be issued only the largest whole number of Shares issuable on such exercise (and such fraction of a Share will be disregarded).
- (g) For purposes of Rule 144, it is acknowledged and agreed that (i) the Shares issuable upon any exercise of this Warrant in any Cashless Exercise transaction shall be deemed to have been acquired on the Issuance Date, and (ii) the holding period for any of the Shares issuable upon the exercise of this Warrant in any Cashless Exercise transaction shall be deemed to have commenced on the Issuance Date.

3. Exchange and Registry of Warrant.

- (a) Warrant Certificates, when surrendered at the office of the Company by the Holder in person or by attorney duly authorized in writing, may be exchanged without payment of any service charge, for another Warrant Certificate or Warrant Certificates of like tenor and evidencing in the aggregate a like number of Warrants.
 - (b) Upon due presentment for registration of transfer of the Warrant Certificate at the office of the Company, a new Warrant Certificate or Warrant Certificates of like tenor and evidencing in the aggregate a like number of Warrants shall be issued to the transferee in exchange for this Warrant Certificate, without charge except for any applicable tax or other governmental charge.
 - (c) The Company shall keep and properly maintain at its principal executive offices a register for the registration of this Warrant and any transfers thereof. The Company may deem and treat the person in whose name this Warrant is registered on such register as the Holder thereof for all purposes, and the Company shall not be affected by any notice to the contrary, except any assignment, division, combination or other transfer of this Warrant effected in accordance with the provisions of this Warrant.
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4. Anti-Dilution Adjustments.

(a) Adjustments for Change in Shares.

- i. In the event that, after the Issuance Date and prior to the exercise in full of this Warrant, the outstanding the number of Shares shall be subdivided (by distribution, subdivision or otherwise), into a greater number of Shares, the number of Shares issuable on the exercise of each Warrant then in effect shall, concurrently with the effectiveness of such subdivision, be equally, ratably and proportionally increased, as determined in good faith by the Board, which determination shall be final and binding on the Holders absent manifest error. In the event the outstanding Shares shall be combined or consolidated, by reclassification or otherwise, into a lesser number of Shares, the number of Shares issuable on the exercise of each Warrant then in effect shall, concurrently with the effectiveness of such subdivision, be equally, ratably and proportionally decreased, as determined in good faith by the Board, which determination shall be final and binding on the Holders absent manifest error.
- ii. In the event that, after the Issuance Date and prior to the exercise in full of this Warrant, the Shares are exchanged for, or converted into, another form of equity security of the Company or of any other entity, this Warrant shall be exercisable for an equivalent number of such equity securities, at an equivalent Warrant Price, in each case as determined by the Board acting reasonably, so as to provide the Holder with rights equitably equivalent to the rights held by the Holder by virtue of this Warrant in effect immediately prior to such exchange or conversion, and each reference herein to the Shares issuable on exercise of this Warrant shall be deemed to be a reference to such other equity securities.

- (b) Adjustment for Issuance of Applicable Shares. If, after the Issuance Date, the Company shall issue or sell any Shares (other than shares included in the Excluded Issuances, as defined below) (the “Applicable Shares”), or options, warrants, convertible securities and similar instruments exercisable or otherwise convertible or exchangeable for Applicable Shares, in each case without consideration or for a consideration per Share initially deliverable upon issuance, conversion or exchange of such securities less than [\$10] (as proportionately adjusted to account for stock splits, stock combinations, stock dividends or other distributions and recapitalizations affecting the Common Stock) (the “Original Price”), then effective immediately upon such issuance or sale, the number of Shares issuable upon exercise of this Warrant immediately prior to any such issuance or sale shall be increased, and shall not be reduced, in accordance with the following formula:

$$S_1 = S \times [(OS + D) / (OS + PS)]$$

S₁ = new number of Shares issuable upon exercise of this Warrant
S = then applicable number of Shares issuable upon exercise of this Warrant immediately prior to the issuance or sale
OS = the number of Shares outstanding immediately prior to the issuance of such securities
D = the maximum number of Shares deliverable upon issuance of such securities
PS = the aggregate number of Shares which the aggregate amount of consideration received by the Company upon such issuance or sale would have purchased at the Original Price

- (c) Other Dividends and Distributions. If the Company shall make or declare, or fix a record date for the determination of holders of equity securities entitled to receive, a dividend or any other distribution payable in cash, securities of the Company or other property, then, and in each such event, the Company shall ensure that provisions are made so that the Holder shall receive upon exercise of this Warrant, in addition to the number of the Shares receivable thereupon, the kind and amount of cash, securities of the Company or other property which the Holder would have been entitled to receive had this Warrant been exercised in full into the Shares on the date of such event and had the Holder thereafter, during the period from the date of such event to and including the date this Warrant is exercised, retained such cash, securities or other property receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this Section with respect to the rights of the Holder; *provided*, that no such provision shall be made if the Holder receives, simultaneously with the distribution to the holders of equity securities, a dividend or other distribution of such securities, cash or other property in an amount equal to the amount of such securities, cash or other property as the Holder would have received if this Warrant had been exercised in full into the Shares on the date of such event.
- (d) Certain Events. If any event of the type contemplated by the provisions of this Section but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features) occurs, then the Board shall make an appropriate adjustment in the number of the Shares issuable upon exercise of this Warrant so as to protect the rights of the Holder in a manner consistent with the provisions of this Section; *provided*, that no such adjustment pursuant to this Section 4(d) shall increase the Warrant Price or decrease the number of the Shares issuable hereunder.
- (e) Exceptions to Adjustments. Except as specifically provided for herein, there shall be no adjustment or readjustment to the number of Shares issuable in the following circumstances (each of the following, an “Excluded Issuance”): (1) upon the exercise of this Warrant or any of the other Warrants issued to the Company’s other lenders on the Issuance Date; (2) upon conversion, exercise or exchange of securities, including convertible debt securities, outstanding prior to the Issuance Date; (3) pursuant to agreements in effect as of the Issuance Date (provided that such agreements are not amended after the Issuance Date to increase the number of securities, reduce the consideration payable in connection with such securities, or otherwise change the terms of such agreements so as to have a dilutive effect on this Warrant); (4) pursuant to the Company’s management, directors or other service providers as part of compensation and incentive programs approved by the Board; (5) pursuant to any joint venture arrangement, strategic arrangements, real property lease, financing transaction or other similar transaction in which equity financing is not the purpose of the transaction; and (6) pursuant to any public equity offerings. Notwithstanding the foregoing, the parties agree that any equity securities issued in “PIPE” transactions, and any equity securities issued pursuant to the Committed Equity Facility shall be “Excluded Issuances” if the securities issued in such “PIPE” transactions or pursuant to the Committed Equity Facility are issued for consideration equal to at least \$5 per share (as proportionately adjusted to account for stock splits, stock combinations, stock dividends or other distributions or recapitalizations affecting the Common Stock). For example (x) if the Company issues equity securities in a PIPE Transaction or pursuant to the Committed Equity Facility, and the consideration paid for those equity securities is \$4 per equity security, then such issuance shall not be an Excluded Issuance and the adjustment set forth in Section 4(h) shall apply, and (y) if the Company issues equity securities in a PIPE Transaction or pursuant to the Committed Equity Facility, and the consideration paid for those equity securities is \$5 per equity security, then such issuance shall be an Excluded Issuance and the adjustment set forth in Section 4(h) shall not apply. As used herein, “Committed Equity Facility” means the ChEF Purchase Agreement by and between Chardan Capital Markets LLC and Dragonfly Energy Holdings Corp., including any modification, amendment or replacement thereof.
- (f) Notice of Adjustment. Upon the occurrence of each adjustment or readjustment of the number of Shares issuable on the exercise of each Warrant, the Company (at its expense) shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to the Holder a notice setting forth (1) such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based and (2) the number of Shares issuable on the exercise of each Warrant at the time in effect.
- (g) Closing of Books. The Company will not close its stockholder books or records, other than in the ordinary course, in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.
- (h) Miscellaneous. All calculations hereunder shall be made to the nearest cent or to the nearest twentieth decimal place of a fractional Share, as the case may be.
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5. Registration Rights.

- (a) As soon as practicable following the Issuance Date but no later than thirty (30) calendar days after the Issuance Date, the Company shall submit to or file with the SEC a registration statement registering the resale of this Warrant, the Shares, and any securities issued or issuable with respect to the Shares by way of a stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation, spin-off, reclassification or other reorganization or similar transaction (including Shares received pursuant to Section 4 above) (the "Registrable Securities") on any form of registration statement (a "Registration Statement") as is then available to effect a registration for resale of such Registrable Securities, which may be on Form S-1, for an offering to be made on a continuous basis pursuant to Rule 415 of the Securities Act registering the resale from time to time by the Holder(s) (or a bona fide pledgee thereof) of all of the Registrable Securities held by the Holder (or bona fide pledgee thereof) (the "Initial Registration Statement"). The Holder shall not be named as an underwriter on any Registration Statement, provided, that if the SEC requires that the Holder be identified as a statutory underwriter in a Registration Statement, the Holder 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 Holder's Registrable Securities at a later date or (ii) be included as such in the Registration Statement. In the event that a Holder elects to include its Registrable Securities on a Registration Statement in accordance with the foregoing clause (ii), the Company shall provide such Holder 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 Holder shall be subject to the approval of such Holder (which approval shall not be unreasonably withheld or delayed). Such Registrable Securities will cease to become Registrable Securities upon the earliest to occur of: (A) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and all Registrable Securities held by the Holder shall have been sold, transferred, disposed of or exchanged in accordance with such Registration Statement by the applicable Holder; (B) such securities shall have ceased to be outstanding; (C) such securities may be sold without restriction on volume or manner of sale in any three-month period pursuant to Rule 144 or any successor rule promulgated under the Securities Act; and (D) all Registrable Securities held by the Holder have been sold to, or through, a broker, dealer or underwriter in a public distribution or other public securities transaction.
- (b) The Company shall use commercially reasonable efforts to have the Initial 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 Holders 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 Securities Act, and provide the Holders with copies of, any related prospectus to be used in connection with the sale or other disposition of the securities covered thereby (each, a "Prospectus"). The Registration Statement shall contain a Prospectus in such form as to permit any Holder to sell such Registrable Securities pursuant to Rule 415 under the Securities Act (or any successor or similar provision adopted by the Commission then in effect) at any time beginning on the effective date for such Registration Statement, and shall provide that such Registrable Securities may be sold pursuant to any method or combination of methods legally available to, and requested by, the Holders.
- (c) 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 Holders named therein to sell their Registrable Securities included therein and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities (the "Effectiveness Period").
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(d) In furtherance of the foregoing, the Company shall:

- i. provide copies to, and permit the Holder to review, the Registration Statement and all amendments and supplements thereto not less than five (5) business days prior to the filing of the Registration Statement and not less than one (1) business day prior to the filing of any related Prospectus or any amendment or supplement thereto (except any amendment or supplement in relation to 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 Holder 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;
- ii. use commercially reasonable efforts to (x) prevent the issuance of any stop order or other suspension of effectiveness and (y) if such order is issued, obtain the withdrawal of any such order as soon as practicable;
- iii. prior to any public offering of Registrable Securities, use commercially reasonable efforts to register or qualify or cooperate with the Holder and its 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 upon notice and as requested by the Holder and do any and all other commercially reasonable acts or things necessary or advisable as requested by the Holder to enable the distribution in such jurisdictions of the Registrable Securities covered by the Registration Statement; provided, 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 provision; (ii) subject itself to general taxation in any jurisdiction where it would not otherwise be so subject but for this provision; or (iii) file a general consent to service of process in any such jurisdiction;
- iv. 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;
- v. provide a transfer agent or warrant agent, if any, as applicable, and registrar for all such Registrable Securities no later than the effective date of such Registration Statement;
- vi. promptly notify the Holder 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 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 (a "Misstatement"), which the Holder will maintain in confidence, and (i) 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 or (ii) suspend the filing, initial effectiveness or continued use of any Registration Statement in accordance with Section 5(g) below;
- vii. use commercially reasonable efforts to comply with all applicable rules and regulations of the SEC under the Securities Act and the Exchange Act; and
- viii. otherwise, in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested by the Holder, consistent with the terms of this Warrant, in connection with such registration.

(e) In the event that any Holder holds Registrable Securities that are not registered for resale on a delayed or continuous basis, the Company, upon written request of such Holder, 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.

- (f) If the Initial Registration Statement ceases to be effective under Securities 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 Securities 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.
- (g) 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 5 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 the Holder in writing of the commencement of an Allowed Delay, but shall not (without the prior written consent of a Holder) disclose to such Holder any material non-public information giving rise to an Allowed Delay, (2) advise the Holder 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 Securities Act) and (3) use commercially reasonable efforts to terminate an Allowed Delay as promptly as reasonably practicable.
- (h) In the event that any Holder holds Registrable Securities that are not registered for resale on a delayed or continuous basis, the Company, upon request of a Holder, 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, the Initial Registration Statement or a subsequent Registration Statement and cause the same to become effective as soon as practicable after such filing and such Registration Statement shall be subject to the terms hereof.
- (i) 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.
- (j) The Company agrees to indemnify and hold harmless the Holder, 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 Securities Act or Section 20 of the Securities and Exchange Act of 1934, as amended (the "Exchange Act")) the Holder (each, a "Holder 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 Securities 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 Securities 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 Holder Indemnified Party for any reasonable, customary and documented out-of-pocket legal and any other expenses reasonably incurred, as incurred, by such Holder Indemnified Party in connection with investigating and defending any such Losses, except to the extent the Holder is liable to indemnify the Company for such Losses pursuant to Section 5(k) below; provided, however, that the indemnity agreement contained in this Section 5(j) 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 the applicable Holder Indemnified Party expressly for use therein.
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(k) The Holder will, in the event that any registration of any Registrable Securities held by the Holder is being effected under the Securities Act pursuant to this Agreement and the Company has required the Holder 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 person, if any, who controls such underwriter within the meaning of the Securities 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 Securities 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 Holder expressly for use therein, and shall reimburse the Company and its directors and officers 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.

6. Transferability; Compliance with Securities Laws.

- (a) This Warrant may not be transferred or assigned in whole or in part without compliance with all applicable United States, state, and foreign securities laws by the transferor and transferee (including the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, if requested by the Company). Subject to such restrictions, prior to the Expiration Date, this Warrant and all rights hereunder are transferable by the Holder hereof, in whole or in part, at the office or agency of the Company referred to in Section 1(b) above. Any such transfer shall be made in person or by the Holder's duly authorized attorney, upon surrender of this Warrant together with the Form of Transfer attached hereto properly endorsed.
- (b) The Holder of this Warrant, by acceptance hereof, acknowledges that this Warrant and the Shares issuable upon exercise hereof are being acquired solely for the Holder's own account and not as a nominee for any other party, and for investment, and that the Holder will not offer, sell, or otherwise dispose of this Warrant or any Shares to be issued upon exercise hereof except under circumstances that will not result in a violation of the Securities Act or any state or foreign securities laws. Upon exercise of this Warrant, the Holder shall, if reasonably requested by the Company and if required by applicable law or regulation, confirm in writing, in a form satisfactory to the Company, that the Shares so purchased are being acquired solely for Holder's own account and not as a nominee for any other party, for investment, and not with a view toward distribution or resale.
- (c) The Shares have not been registered under the Securities Act, and this Warrant may not be exercised except by (1) the original purchaser of this Warrant from the Company or (2) an "accredited investor" as defined in Rule 501(a) under the Securities Act. Each certificate representing Shares issued on exercise of this Warrant or other securities issued in respect of such Shares upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall be stamped or otherwise imprinted with a legend substantially in the following form (in addition to any other legend required under applicable securities laws):

THE SHARES OF COMMON STOCK EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS COVERING ANY SUCH TRANSACTION OR UNLESS THE COMPANY SHALL HAVE RECEIVED AN OPINION OF ITS COUNSEL THAT REGISTRATION OF SUCH SHARES UNDER THE SECURITIES ACT AND UNDER THE PROVISIONS OF APPLICABLE STATE SECURITIES LAWS IS NOT REQUIRED.

7. Removal of Restrictive Legends. Neither this Warrant nor any certificates evidencing the Shares or any other equity securities issuable or deliverable under or in connection with this Warrant shall contain any legend restricting the transfer thereof in any of the following circumstances: (i) while a registration statement covering the sale or resale of the Shares is effective under the Securities Act; (ii) following any sale of this Warrant, any of the Shares or any other equity securities issued or delivered to the Holder under or in connection herewith pursuant to Rule 144; (iii) if this Warrant, the Shares or any other equity securities are eligible for sale under Rule 144(b)(1); or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) (collectively, the “Unrestricted Conditions”). If the Unrestricted Conditions are met at the time of the issuance of the Shares, the Company shall cause its counsel, at its expense, to issue a legal opinion to the Transfer Agent, if required by such Transfer Agent to effect the issuance of the Shares or any other shares of equity securities issuable or deliverable under or in connection with this Warrant, as applicable, without a restrictive legend or removal of the legend hereunder. If the Unrestricted Conditions are met at the time of issuance of the Shares, then the Shares shall be issued free of all legends.
8. Payment of Taxes. The Company will from time to time promptly pay all taxes and charges that may be imposed in respect of the issuance or delivery of shares upon the exercise of Warrants, but the Company shall not be obligated to pay any transfer taxes in respect of the Warrants or such shares.
9. Representations and Warranties. The Company represents and warrants to, and agrees with, the Holder as follows:
- (a) Due Organization. The Company is a corporation duly organized, validly existing, and in good standing under the laws of the state of its formation and has all requisite corporate power and authority to carry on its business as now conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business or properties.
- (b) Authorization; Binding Obligation. This Warrant has been duly executed by the Company and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms of this Warrant. Except as may be limited by applicable bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors’ rights, all corporate action has been taken on the part of the Company, its officers, directors, and stockholders necessary for the authorization, execution and delivery of this Warrant. The Company has taken all corporate action required to make all the obligations of the Company reflected in the provisions of this Warrant the valid and enforceable obligations they purport to be. The issuance of this Warrant and the Shares issuable upon exercise of this Warrant will not be subject to preemptive rights of any stockholders of the Company. No consent, waiver, approval, authorization, exemption, registration, license or declaration is required to be made or obtained by the Company, other than those which have been made or obtained, in connection with (i) the execution or enforceability of this Warrant or (ii) the consummation of any of the transactions contemplated hereby, including the issuance of the Shares upon exercise of this Warrant.
- (c) Compliance with Other Instruments. The authorization, execution and delivery of the Warrant will not constitute or result in a default or violation of any law or regulation applicable to the Company or any term or provision of the Company’s Certificate of Incorporation or bylaws, or any material agreement or instrument by which it is bound or to which its properties or assets are subject.
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- (d) Valid Issuance. This Warrant, and all the Shares which may be issued upon the exercise of this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances (including preemptive or similar rights) except for restrictions on transfer provided for (i) in this Warrant, (ii) under applicable federal and state securities laws, or (iii) in the Company's Certificate of Incorporation. Based in part upon the representations and warranties of the Holder in this Warrant, this Warrant and all the Shares issuable upon exercise of this Warrant will be issued in compliance with all applicable federal and state securities laws. The Company covenants that it shall at all times cause to be reserved and kept available out of its authorized and unissued capital stock such number of the Shares and other securities for which this Warrant may be exercisable or for which the Shares may be convertible as will be sufficient to permit the exercise in full of this Warrant.
- (e) Capitalization. The Company's summary capitalization table attached hereto as **Schedule 1** is true and complete, in all material respects, as of the Issuance Date. Except as described on **Schedule 1**, there are no outstanding warrants, options, convertible securities or other rights, agreements or arrangements of any character (other than equity grants promised to service providers in offer letters or similar agreements in the ordinary course of business, all of which grants will be made from the existing pool that is reflected in the fully diluted capitalization of the Company shown on **Schedule 1**) under which the Company and any of its subsidiaries is or may be obligated to issue any equity securities of any kind, and neither the Company nor any of its subsidiaries is currently in negotiations for the issuance of any equity securities of any kind.
- (f) No Violation; Registration. The Company shall take all such actions as may be necessary to ensure that all the Shares are issued without violation by the Company of any applicable law or governmental regulation or any requirements of any trading market or securities exchange upon which shares of the Company's common stock or other securities constituting the Shares may be listed at the time of such exercise (except for official notice of issuance which shall be immediately delivered by the Company upon each such issuance). If the Unrestricted Conditions are satisfied at the time of exercise of this Warrant, the Company shall cause the Shares, immediately upon such exercise, to be listed on any such trading market or securities exchange upon which shares of common stock or other securities constituting the Shares are listed at the time of such exercise.

10. No Rights as a Stockholder; No Liability. Except as specifically set forth herein, this Warrant, by itself, does not entitle the registered holder thereof to any of the rights of a stockholder of the Company, including, without limitation, the right to receive dividends, or other distributions, exercise any preemptive rights to vote or to consent or to receive notice as stockholders in respect of the meetings of stockholders or the election of directors of the Company or any other matter. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase the Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Shares or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

11. No Impairment.

- (a) Notwithstanding anything herein to the contrary, nothing contained in this Warrant shall affect, limit or impair the rights and remedies of the Holder or its affiliates (x) in their capacity as a lender, creditor, or similar, as applicable, to the Company or any of its subsidiaries or affiliates, or (y) pursuant to any other agreements or instruments entered into by the Holder (or its affiliates) and the Company or any of its subsidiaries or affiliates. Without limiting the generality of the foregoing, neither the Administrative Agent (as defined in the Loan Agreement) nor any of its affiliates, in exercising their rights as lenders will have any duty to consider (i) its (or its affiliates') status as a direct or indirect shareholder of the Company and its subsidiaries, (ii) its (or its affiliates') direct or indirect ownership of the Shares of the Company or any of its subsidiaries, or (iii) any duty it (or its affiliates) may have to any other direct or indirect shareholders of the Company and its subsidiaries, except as may be required under the applicable loan documents.
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(b) The Company shall not, by amendment of its Certificate of Incorporation or bylaws, through any shareholders, voting or similar agreement, or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed by it hereunder, but shall at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may reasonably be requested by the Holder in order to protect the exercise rights of the Holder against dilution or other impairment, consistent with the tenor and purpose of this Warrant. Without limiting the generality of the foregoing, the Company (x) will not increase the par value of any the Shares above the then-applicable Warrant Price, (y) will take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Shares upon the exercise of this Warrant, and (z) will use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

12. Effect of Headings. The section headings herein are for convenience only and are not part of this Warrant and shall not affect the interpretation thereof.
 13. Modification and Waiver. This Warrant and any provision hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the same is sought.
 14. Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder or the Company shall be delivered through email, or shall be sent by certified or registered mail, postage prepaid, to the Holder at its address as shown on the books of the Company or to the Company at the address indicated therefor in the first paragraph of this Warrant.
 15. Governing Law. This Warrant shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of New York.
 16. Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of the Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies provided herein. If the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.
 17. Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of the Holder. The provisions of this Warrant are intended to be for the benefit of the Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of the Shares.
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IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its duly authorized officer.

Dated: , 2022

DRAGONFLY ENERGY HOLDINGS CORP.

By: _____
Name:
Title:

[Signature Page to Penny Warrant]

Accepted and Acknowledged by:

[WARRANT HOLDER]

By: _____
Name:
Title:

[Signature Page to Penny Warrant]

SCHEDULE 1

Fully Diluted Capitalization of the Company as of the Issuance Date

NOTICE OF EXERCISE

To Be Executed by the Registered Holder in Order to Exercise Warrants

The undersigned Registered Holder irrevocably elects to exercise _____ Warrants represented by this Warrant Certificate, and to purchase the Shares issuable upon the exercise of such Warrants, and requests that Certificates for such shares shall be issued in the name of

(PLEASE TYPE OR PRINT NAME AND ADDRESS)

(SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER)

and be delivered to _____

(PLEASE PRINT OR TYPE NAME AND ADDRESS)

and, if such number of Warrants shall not be all the Warrants evidenced by this Warrant Certificate, that a new Warrant Certificate for the balance of such Warrants be registered in the name of, and delivered to, the Registered Holder at the address stated below:

Dated: _____

(SIGNATURE)

(ADDRESS)

(TAX IDENTIFICATION NUMBER)

(EMAIL ADDRESS)

NOTICE OF EXERCISE

To Be Executed by the Registered Holder in Order to Exercise Warrants

The undersigned Registered Holder irrevocably elects to exercise _____ Warrants represented by this Warrant Certificate, and to purchase the Shares issuable upon the exercise of such Warrants, **using the Cashless Exercise method, resulting in the issuance of _____ Shares to the undersigned.**

The undersigned has calculated the number of Shares to be issued to it in accordance with the following formula set forth in Section 1(d) of the Warrant:

$$X = Y[(A - B)/A]$$

X = the number of Shares to be issued to the Holder
Y = the number of Shares with respect to which this Warrant is being exercised
A = the Fair Market Value of one Share
B = the Warrant Price

Where the Fair Market Value of one Share is \$[____], being the [average closing price or last sale price of the Shares reported for the five (5) business days prior to the applicable date of determination][last sale price of the Shares for the business day immediately prior to the applicable date of determination]

The undersigned requests that Certificates for such shares shall be issued in the name of

[WARRANT HOLDER]

_____ and be delivered to _____
(PLEASE PRINT OR TYPE NAME AND ADDRESS)

and, if such number of Warrants shall not be all the Warrants evidenced by this Warrant Certificate, that a new Warrant Certificate for the balance of such Warrants be registered in the name of, and delivered to, the Registered Holder at the address stated below.

Dated: _____

[WARRANT HOLDER]
By: _____
Name: _____
Title: _____

(ADDRESS AND EMAIL)

(TAX IDENTIFICATION NUMBER)

FORM OF TRANSFER

To Be Executed by the Registered Holder in Order to Transfer Warrants

For Value Received, _____ hereby sell, assign, and transfer unto

(PLEASE TYPE OR PRINT NAME AND ADDRESS)

(SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER)

and be delivered to _____

(PLEASE PRINT OR TYPE NAME AND ADDRESS)

_____ of the Warrants represented by this Warrant Certificate, and hereby irrevocably constitute and appoint _____ Attorney to transfer this Warrant Certificate on the books of the Company, with full power of substitution in the premises.

Dated: _____

(Signature)

THE SIGNATURE TO THE ASSIGNMENT OF THE SUBSCRIPTION FORM MUST CORRESPOND TO THE NAME WRITTEN UPON THE FACE OF THIS WARRANT CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER, AND MUST BE GUARANTEED BY A COMMERCIAL BANK OR TRUST COMPANY OR A MEMBER FIRM OF THE NYSE AMERICAN, NASDAQ, NEW YORK STOCK EXCHANGE, PACIFIC STOCK EXCHANGE, OR CHICAGO STOCK EXCHANGE.

**DRAGONFLY ENERGY HOLDINGS CORP.
2022 EQUITY INCENTIVE PLAN**

1. PURPOSE OF PLAN

The purpose of this Dragonfly Energy Holdings Corp. 2022 Equity Incentive Plan (this “**Plan**”) of Dragonfly Energy Holdings Corp., a Delaware corporation (the “**Corporation**”), is to promote the success of the Corporation by providing an additional means through the grant of awards to attract, motivate, retain and reward selected employees and other eligible persons and to enhance the alignment of the interests of the selected participants with the interests of the Corporation’s stockholders.

2. ELIGIBILITY

The Administrator (as such term is defined in Section 3.1) may grant awards under this Plan only to those persons that the Administrator determines to be Eligible Persons. An “**Eligible Person**” is any person who is either: (a) an officer (whether or not a director) or employee of the Corporation or one of its Subsidiaries; (b) a director of the Corporation or one of its Subsidiaries; or (c) an individual consultant or advisor who renders or has rendered bona fide services (other than services in connection with the offering or sale of securities of the Corporation or one of its Subsidiaries in a capital-raising transaction or as a market maker or promoter of securities of the Corporation or one of its Subsidiaries) to the Corporation or one of its Subsidiaries and who is selected to participate in this Plan by the Administrator; provided, however, that a person who is otherwise an Eligible Person under clause (c) above may participate in this Plan only if such participation would not adversely affect either the Corporation’s eligibility to use Form S-8 to register under the Securities Act of 1933, as amended (the “**Securities Act**”), the offering and sale of shares issuable under this Plan by the Corporation or the Corporation’s compliance with any other applicable laws. An Eligible Person who has been granted an award (a “**Participant**”) may, if otherwise eligible, be granted additional awards if the Administrator shall so determine. As used herein, “**Subsidiary**” means any corporation or other entity a majority of whose outstanding voting stock or voting power is beneficially owned directly or indirectly by the Corporation; and “**Board**” means the Board of Directors of the Corporation.

3. PLAN ADMINISTRATION

3.1 *The Administrator.* This Plan shall be administered by and all awards under this Plan shall be authorized by the Administrator. The “**Administrator**” means the Board or one or more committees (or subcommittees, as the case may be) appointed by the Board or another committee (within its delegated authority) to administer all or certain aspects of this Plan. Any such committee shall be comprised solely of one or more directors or such number of directors as may be required under applicable law. A committee may delegate some or all of its authority to another committee so constituted. The Board or a committee comprised solely of directors may also delegate, to the extent permitted by applicable law, to one or more officers of the Corporation, its authority under this Plan. The Board or another committee (within its delegated authority) may delegate different levels of authority to different committees or persons with administrative and grant authority under this Plan. Unless otherwise provided in the Bylaws of the Corporation or the applicable charter of any Administrator: (a) a majority of the members of the acting Administrator shall constitute a quorum, and (b) the vote of a majority of the members present assuming the presence of a quorum or the unanimous written consent of the members of the Administrator shall constitute action by the acting Administrator. Award grants, and transactions in or involving awards, intended to be exempt under Rule 16b-3 under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), must be duly and timely authorized by the Board or a committee consisting solely of two or more non-employee directors (as this requirement is applied under Rule 16b-3 promulgated under the Exchange Act). To the extent required by any applicable listing agency, this Plan shall be administered by a committee composed entirely of independent directors (within the meaning of the applicable listing agency).

3.2 Powers of the Administrator. Subject to the express provisions of this Plan, the Administrator is authorized and empowered to do all things necessary or desirable in connection with the authorization of awards and the administration of this Plan (in the case of a committee or delegation to one or more officers, within any express limits on the authority delegated to that committee or person(s)), including, without limitation, the authority to:

- (a) determine eligibility and, from among those persons determined to be eligible, determine the particular Eligible Persons who will receive an award under this Plan;
- (b) grant awards to Eligible Persons, determine the price (if any) at which securities will be offered or awarded and the number of securities to be offered or awarded to any of such persons (in the case of securities-based awards), determine the other specific terms and conditions of awards consistent with the express limits of this Plan, establish the installment(s) (if any) in which such awards shall become exercisable or shall vest (which may include, without limitation, performance and/or time-based schedules), or determine that no delayed exercisability or vesting is required, establish any applicable performance-based exercisability or vesting requirements, determine the circumstances in which any performance-based goals (or the applicable measure of performance) will be adjusted and the nature and impact of any such adjustment, determine the extent (if any) to which any applicable exercise and vesting requirements have been satisfied, establish the events (if any) on which exercisability or vesting may accelerate (which may include, without limitation, retirement and other specified terminations of employment or services, or other circumstances), and establish the events (if any) of termination, expiration or reversion of such awards;
- (c) approve the forms of any Award Agreements (which need not be identical either as to type of award or among Participants);
- (d) construe and interpret this Plan and any agreements defining the rights and obligations of the Corporation, its Subsidiaries, and Participants under this Plan, make any and all determinations under this Plan and any such agreements, further define the terms used in this Plan, and prescribe, amend and rescind rules and regulations relating to the administration of this Plan or the awards granted under this Plan;

- (e) cancel, modify, or waive the Corporation's rights with respect to, or modify, discontinue, suspend, or terminate any or all outstanding awards, subject to any required consent under Section 8.6.5;
- (f) accelerate, waive or extend the vesting or exercisability, or modify or extend the term of, any or all such outstanding awards (in the case of options or stock appreciation rights, within the maximum term of such awards) in such circumstances as the Administrator may deem appropriate (including, without limitation, in connection with a retirement or other termination of employment or services, or other circumstances) subject to any required consent under Section 8.6.5;
- (g) adjust the number of shares of Common Stock subject to any award, adjust the price of any or all outstanding awards or otherwise waive or change previously imposed terms and conditions, in such circumstances as the Administrator may deem appropriate, in each case subject to Sections 4 and 8.6 (and subject to the no repricing provision below);
- (h) determine the date of grant of an award, which may be a designated date after but not before the date of the Administrator's action to approve the award (unless otherwise designated by the Administrator, the date of grant of an award shall be the date upon which the Administrator took the action approving the award);
- (i) determine whether, and the extent to which, adjustments are required pursuant to Section 7.1 hereof and take any other actions contemplated by Section 7 in connection with the occurrence of an event of the type described in Section 7;
- (j) acquire or settle (subject to Sections 7 and 8.6) rights under awards in cash, stock of equivalent value, or other consideration (subject to the no repricing provision below); and
- (k) determine the Fair Market Value of the Common Stock or awards under this Plan from time to time and/or the manner in which such value will be determined.

3.3 Prohibition on Repricing. Notwithstanding anything to the contrary in Section 3.2 and except for an adjustment pursuant to Section 7.1 or a repricing approved by stockholders, in no case may the Administrator (1) amend an outstanding stock option or SAR to reduce the exercise price or base price of the award, (2) cancel, exchange, or surrender an outstanding stock option or SAR in exchange for cash or other awards for the purpose of repricing the award, or (3) cancel, exchange, or surrender an outstanding stock option or SAR in exchange for an option or SAR with an exercise or base price that is less than the exercise or base price of the original award.

- 3.4 **Binding Determinations.** Any determination or other action taken by, or inaction of, the Corporation, any Subsidiary, or the Administrator relating or pursuant to this Plan (or any award made under this Plan) and within its authority hereunder or under applicable law shall be within the absolute discretion of that entity or body and shall be conclusive and binding upon all persons. Neither the Board nor any other Administrator, nor any member thereof or person acting at the direction thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with this Plan (or any award made under this Plan), and all such persons shall be entitled to indemnification and reimbursement by the Corporation in respect of any claim, loss, damage or expense (including, without limitation, attorneys' fees) arising or resulting therefrom to the fullest extent permitted by law and/or under any directors and officers liability insurance coverage that may be in effect from time to time. Neither the Board nor any other Administrator, nor any member thereof or person acting at the direction thereof, nor the Corporation or any of its Subsidiaries, shall be liable for any damages of a Participant should an option intended as an ISO (as defined below) fail to meet the requirements of the Internal Revenue Code of 1986, as amended (the "**Code**"), applicable to ISOs, should any other award(s) fail to qualify for any intended tax treatment, should any award grant or other action with respect thereto not satisfy Rule 16b-3 promulgated under the Exchange Act, or otherwise for any tax or other liability imposed on a Participant with respect to an award.
- 3.5 **Reliance on Experts.** In making any determination or in taking or not taking any action under this Plan, the Administrator may obtain and may rely upon the advice of experts, including employees and professional advisors to the Corporation. No director, officer or agent of the Corporation or any of its Subsidiaries shall be liable for any such action or determination taken or made or omitted in good faith.
- 3.6 **Delegation.** The Administrator may delegate ministerial, non-discretionary functions to individuals who are officers or employees of the Corporation or any of its Subsidiaries or to third parties.

4. **SHARES OF COMMON STOCK SUBJECT TO THE PLAN; SHARE LIMITS**

- 4.1 **Shares Available.** Subject to the provisions of Section 7.1, the capital stock that may be delivered under this Plan shall be shares of the Corporation's authorized but unissued Common Stock and any shares of its Common Stock held as treasury shares. For purposes of this Plan, "**Common Stock**" shall mean the common stock of the Corporation and such other securities or property as may become the subject of awards under this Plan, or may become subject to such awards, pursuant to an adjustment made under Section 7.1.

4.2 Aggregate Share Limit. The maximum number of shares of Common Stock that may be delivered pursuant to awards granted to Eligible Persons under this Plan (the “**Share Limit**”) is equal to the sum of the following:

- (1) 2,785,950 shares of Common Stock, plus
- (2) the number of any shares subject to stock options granted under the Dragonfly Energy, Inc. 2019 Stock Incentive Plan or the Dragonfly Energy, Inc. 2021 Stock Incentive Plan (the “**Prior Plans**”) and outstanding on the date of stockholder approval of this Plan (the “**Stockholder Approval Date**”) which expire, or for any reason are cancelled or terminated, after the Stockholder Approval Date without being exercised, plus
- (3) the number of any shares subject to restricted stock awards granted under the Prior Plans that are outstanding and unvested on the Stockholder Approval Date that are forfeited, terminated, cancelled or otherwise reacquired by the Corporation without having become vested.

In addition, the Share Limit shall automatically increase on the first trading day in January of each calendar year during the term of this Plan, with the first such increase to occur in January 2023, by an amount equal to the lesser of (i) four percent (4%) of the total number of shares of Common Stock issued and outstanding on December 31 of the immediately preceding calendar year or (ii) such number of shares of Common Stock as may be established by the Board.

4.3 Additional Share Limits. The following limits also apply with respect to awards granted under this Plan. These limits are in addition to, not in lieu of, the aggregate Share Limit in Section 4.2.

- (a) The maximum number of shares of Common Stock that may be delivered pursuant to options qualified as incentive stock options granted under this Plan is 6,571,800 shares.
- (b) Awards that are granted under this Plan during any one calendar year to any person who, on the grant date of the award, is a non-employee director are subject to the limits of this Section 4.3(b). The maximum number of shares of Common Stock subject to those awards that are granted under this Plan during any one calendar year to an individual who, on the grant date of the award, is a non-employee director is the number of shares that produce a grant date fair value for the award that, when combined with (i) the grant date fair value of any other awards granted under this Plan during that same calendar year to that individual in his or her capacity as a non-employee director and (ii) the dollar amount of all other cash compensation payable by the Corporation to such non-employee director for his or her services in such capacity during that same calendar year (regardless of whether deferred and excluding any interest or earnings on any portion of such amount that may be deferred), is \$500,000. For purposes of this Section 4.3(b), a “non-employee director” is an individual who, on the grant date of the award, is a member of the Board who is not then an officer or employee of the Corporation or one of its Subsidiaries. For purposes of this Section 4.3(b), “grant date fair value” means the value of the award as of the date of grant of the award and as determined using the equity award valuation principles applied in the Corporation’s financial reporting. The limits of this Section 4.3(b) do not apply to, and shall be determined without taking into account, any award granted to an individual who, on the grant date of the award, is an officer or employee of the Corporation or one of its Subsidiaries. The limits of this Section 4.3(b) apply on an individual basis and not on an aggregate basis to all non-employee directors as a group.

4.4 Share-Limit Counting Rules. The Share Limit shall be subject to the following provisions of this Section 4.4:

- (a) Shares that are subject to or underlie awards granted under this Plan which expire or for any reason are cancelled or terminated, are forfeited, fail to vest, or for any other reason are not paid or delivered under this Plan shall not be counted against the Share Limit and shall be available for subsequent awards under this Plan.
- (b) Except as provided below, to the extent that shares of Common Stock are delivered pursuant to the exercise of a stock appreciation right granted under this Plan, the number of underlying shares which are actually issued in payment of the award shall be counted against the Share Limit. (For purposes of clarity, if a stock appreciation right relates to 100,000 shares and is exercised in full at a time when the payment due to the Participant is 15,000 shares, 15,000 shares shall be counted against the Share Limit with respect to such exercise and the 85,000 shares not issued shall not be counted against the Share Limit and shall be available for subsequent awards under this Plan.)
- (c) Shares that are exchanged by a Participant or withheld by the Corporation as full or partial payment in connection with any award granted under this Plan, as well as any shares exchanged by a Participant or withheld by the Corporation or one of its Subsidiaries to satisfy the tax withholding obligations related to any award granted under this Plan, shall be counted against the Share Limit and shall not be available for subsequent awards under this Plan. For clarity, shares that are exchanged by a Participant or withheld by the Corporation as full or partial payment in connection with any award granted under a Prior Plan, as well as any shares exchanged by a Participant or withheld by the Corporation or one of its Subsidiaries to satisfy the tax withholding obligations related to any award granted under a Prior Plan, shall not be available for awards under this Plan.
- (d) To the extent that an award granted under this Plan is settled in cash or a form other than shares of Common Stock, the shares that would have been delivered had there been no such cash or other settlement shall not be counted against the Share Limit and shall be available for subsequent awards under this Plan.

- (e) In the event that shares of Common Stock are delivered in respect of a dividend equivalent right granted under this Plan, the number of shares delivered with respect to the award shall be counted against the Share Limit. (For purposes of clarity, if 1,000 dividend equivalent rights are granted and outstanding when the Corporation pays a dividend, and 50 shares are delivered in payment of those rights with respect to that dividend, 50 shares shall be counted against the Share Limit). Except as otherwise provided by the Administrator, shares delivered in respect of dividend equivalent rights shall not count against any individual award limit under this Plan other than the aggregate Share Limit.
- (f) The Corporation may not increase the Share Limit by repurchasing shares of Common Stock on the market (by using cash received through the exercise of stock options or otherwise).

Refer to Section 8.10 for application of the share limits of this Plan, including the limits in Sections 4.2 and 4.3, with respect to assumed awards. Each of the numerical limits and references in Sections 4.2 and 4.3, and in this Section 4.4, is subject to adjustment as contemplated by Sections 7 and 8.10.

- 4.5 **No Fractional Shares; Minimum Issue.** Unless otherwise expressly provided by the Administrator, no fractional shares shall be delivered under this Plan. The Administrator may pay cash in lieu of any fractional shares in settlements of awards under this Plan. The Administrator may from time to time impose a limit (of not greater than 100 shares) on the minimum number of shares that may be purchased or exercised as to awards (or any particular award) granted under this Plan unless (as to any particular award) the total number purchased or exercised is the total number at the time available for purchase or exercise under the award.

5. AWARDS

- 5.1 **Type and Form of Awards.** The Administrator shall determine the type or types of award(s) to be made to each selected Eligible Person. Awards may be granted singly, in combination or in tandem. Awards also may be made in combination or in tandem with, in replacement of, as alternatives to, or as the payment form for grants or rights under any other employee or compensation plan of the Corporation or one of its Subsidiaries. The types of awards that may be granted under this Plan are:

5.1.1 **Stock Options.** A stock option is the grant of a right to purchase a specified number of shares of Common Stock during a specified period as determined by the Administrator. An option may be intended as an incentive stock option within the meaning of Section 422 of the Code (an “ISO”) or a nonqualified stock option (an option not intended to be an ISO). The agreement evidencing the grant of an option will indicate if the option is intended as an ISO; otherwise it will be deemed to be a nonqualified stock option. The maximum term of each option (ISO or nonqualified) shall be ten (10) years. The per share exercise price for each option shall be not less than 100% of the Fair Market Value of a share of Common Stock on the date of grant of the option. When an option is exercised, the exercise price for the shares to be purchased shall be paid in full in cash or such other method permitted by the Administrator consistent with Section 5.4.

5.1.2 Additional Rules Applicable to ISOs. To the extent that the aggregate Fair Market Value (determined at the time of grant of the applicable option) of stock with respect to which ISOs first become exercisable by a Participant in any calendar year exceeds \$100,000, taking into account both Common Stock subject to ISOs under this Plan and stock subject to ISOs under all other plans of the Corporation or one of its Subsidiaries (or any parent or predecessor corporation to the extent required by and within the meaning of Section 422 of the Code and the regulations promulgated thereunder), such options shall be treated as nonqualified stock options. In reducing the number of options treated as ISOs to meet the \$100,000 limit, the most recently granted options shall be reduced first. To the extent a reduction of simultaneously granted options is necessary to meet the \$100,000 limit, the Administrator may, in the manner and to the extent permitted by law, designate which shares of Common Stock are to be treated as shares acquired pursuant to the exercise of an ISO. ISOs may only be granted to employees of the Corporation or one of its subsidiaries (for this purpose, the term "subsidiary" is used as defined in Section 424(f) of the Code, which generally requires an unbroken chain of ownership of at least 50% of the total combined voting power of all classes of stock of each subsidiary in the chain beginning with the Corporation and ending with the subsidiary in question). No ISO may be granted to any person who, at the time the option is granted, owns (or is deemed to own under Section 424(d) of the Code) shares of outstanding Common Stock possessing more than 10% of the total combined voting power of all classes of stock of the Corporation, unless the exercise price of such option is at least 110% of the Fair Market Value of the stock subject to the option and such option by its terms is not exercisable after the expiration of five years from the date such option is granted. If an otherwise-intended ISO fails to meet the applicable requirements of Section 422 of the Code, the option shall be a nonqualified stock option.

5.1.3 Stock Appreciation Rights. A stock appreciation right or "**SAR**" is a right to receive a payment, in cash and/or Common Stock, equal to the excess of the Fair Market Value of a specified number of shares of Common Stock on the date the SAR is exercised over the "**base price**" of the award, which base price shall be set forth in the applicable Award Agreement and shall be not less than 100% of the Fair Market Value of a share of Common Stock on the date of grant of the SAR. The maximum term of a SAR shall be ten (10) years.

5.1.4 Other Awards; Dividend Equivalent Rights. The other types of awards that may be granted under this Plan include: (a) stock bonuses, restricted stock, performance stock, stock units, restricted stock units, deferred shares, phantom stock or similar rights to purchase or acquire shares, whether at a fixed or variable price (or no price) or fixed or variable ratio related to the Common Stock, and any of which may (but need not) be fully vested at grant or vest upon the passage of time, the occurrence of one or more events, the satisfaction of performance criteria or other conditions, or any combination thereof; or (b) cash awards. The types of cash awards that may be granted under this Plan include the opportunity to receive a payment for the achievement of one or more goals established by the Administrator, on such terms as the Administrator may provide, as well as discretionary cash awards. Dividend equivalent rights may be granted as a separate award or in connection with another award under this Plan; provided, however, that dividend equivalent rights may not be granted as to a stock option or SAR granted under this Plan. In addition, any dividends and/or dividend equivalents as to the portion of an award that is subject to unsatisfied vesting requirements will be subject to termination and forfeiture to the same extent as the corresponding portion of the award to which they relate in the event the applicable vesting requirements are not satisfied.

- 5.2 **Award Agreements.** Each award shall be evidenced by a written or electronic award agreement or notice in a form approved by the Administrator (an “**Award Agreement**”), and, in each case and if required by the Administrator, executed or otherwise electronically accepted by the recipient of the award in such form and manner as the Administrator may require.
- 5.3 **Deferrals and Settlements.** Payment of awards may be in the form of cash, Common Stock, other awards or combinations thereof as the Administrator shall determine, and with such restrictions (if any) as it may impose. The Administrator may also require or permit Participants to elect to defer the issuance of shares or the settlement of awards in cash under such rules and procedures as it may establish under this Plan. The Administrator may also provide that deferred settlements include the payment or crediting of interest or other earnings on the deferral amounts, or the payment or crediting of dividend equivalents where the deferred amounts are denominated in shares.
- 5.4 **Consideration for Common Stock or Awards.** The purchase price (if any) for any award granted under this Plan or the Common Stock to be delivered pursuant to an award, as applicable, may be paid by means of any lawful consideration as determined by the Administrator, including, without limitation, one or a combination of the following methods:
- (a) services rendered by the recipient of such award;
 - (b) cash, check payable to the order of the Corporation, or electronic funds transfer;
 - (c) notice and third party payment in such manner as may be authorized by the Administrator;
 - (d) the delivery of previously owned shares of Common Stock;
 - (e) by a reduction in the number of shares otherwise deliverable pursuant to the award; or
 - (f) subject to such procedures as the Administrator may adopt, pursuant to a “cashless exercise” with a third party who provides financing for the purposes of (or who otherwise facilitates) the purchase or exercise of awards.

In no event shall any shares newly-issued by the Corporation be issued for less than the minimum lawful consideration for such shares or for consideration other than consideration permitted by applicable state law. Shares of Common Stock used to satisfy the exercise price of an option shall be valued at their Fair Market Value. The Corporation will not be obligated to deliver any shares unless and until it receives full payment of the exercise or purchase price therefor and any related withholding obligations under Section 8.5 and any other conditions to exercise or purchase have been satisfied. Unless otherwise expressly provided in the applicable Award Agreement, the Administrator may at any time eliminate or limit a Participant’s ability to pay any purchase or exercise price of any award or shares by any method other than cash payment to the Corporation.

5.5 **Definition of Fair Market Value.** For purposes of this Plan, “**Fair Market Value**” shall mean, unless otherwise determined or provided by the Administrator in the circumstances, the closing price (in regular trading) for a share of Common Stock on the principal securities exchange on which the Common Stock is listed or admitted to trade (the “**Exchange**”) for the date in question or, if no sales of Common Stock were reported on the Exchange on that date, the closing price (in regular trading) for a share of Common Stock on the Exchange on the last day preceding the date in question on which sales of Common Stock were reported on the Exchange. The Administrator may, however, provide with respect to one or more awards that the Fair Market Value shall equal the closing price (in regular trading) for a share of Common Stock on the Exchange on the last trading day preceding the date in question or the average of the high and low trading prices of a share of Common Stock on the Exchange for the date in question or the most recent trading day. If the Common Stock is no longer listed or is no longer actively traded on an established securities exchange as of the applicable date, the Fair Market Value of the Common Stock shall be the value as reasonably determined by the Administrator for purposes of the award in the circumstances. The Administrator also may adopt a different methodology for determining Fair Market Value with respect to one or more awards if a different methodology is necessary or advisable to secure any intended favorable tax, legal or other treatment for the particular award(s) (for example, and without limitation, the Administrator may provide that Fair Market Value for purposes of one or more awards will be based on an average of closing prices (or the average of high and low daily trading prices) for a specified period preceding the relevant date).

5.6 **Transfer Restrictions.**

5.6.1 **Limitations on Exercise and Transfer.** Unless otherwise expressly provided in (or pursuant to) this Section 5.6 or required by applicable law: (a) all awards are non-transferable and shall not be subject in any manner to sale, transfer, anticipation, alienation, assignment, pledge, encumbrance or charge; (b) awards shall be exercised only by the Participant; and (c) amounts payable or shares issuable pursuant to any award shall be delivered only to (or for the account of) the Participant.

5.6.2 Exceptions. The Administrator may permit awards to be exercised by and paid to, or otherwise transferred to, other persons or entities pursuant to such conditions and procedures, including limitations on subsequent transfers, as the Administrator may, in its sole discretion, establish in writing. Any permitted transfer shall be subject to compliance with applicable federal and state securities laws and shall not be for value (other than nominal consideration, settlement of marital property rights, or for interests in an entity in which more than 50% of the voting interests are held by the Eligible Person or by the Eligible Person's family members).

5.6.3 Further Exceptions to Limits on Transfer. The exercise and transfer restrictions in Section 5.6.1 shall not apply to:

- (a) transfers to the Corporation (for example, in connection with the expiration or termination of the award);
- (b) the designation of a beneficiary to receive benefits in the event of the Participant's death or, if the Participant has died, transfers to or exercise by the Participant's beneficiary, or, in the absence of a validly designated beneficiary, transfers by will or the laws of descent and distribution;
- (c) subject to any applicable limitations on ISOs, transfers to a family member (or former family member) pursuant to a domestic relations order if received by the Administrator;
- (d) if the Participant has suffered a disability, permitted transfers or exercises on behalf of the Participant by his or her legal representative; or
- (e) the authorization by the Administrator of "cashless exercise" procedures with third parties who provide financing for the purpose of (or who otherwise facilitate) the exercise of awards consistent with applicable laws and any limitations imposed by the Administrator.

5.7 International Awards. One or more awards may be granted to Eligible Persons who provide services to the Corporation or one of its Subsidiaries outside of the United States. Any awards granted to such persons may be granted pursuant to the terms and conditions of any applicable sub-plans, if any, appended to this Plan and approved by the Administrator from time to time. The awards so granted need not comply with the specific terms of this Plan to the extent the Committee determines other terms are necessary or desirable to satisfy securities, tax and other applicable laws of the jurisdictions relevant to such awards, provided that stockholder approval of any deviation from the specific terms of this Plan is not required by applicable law or any applicable listing agency.

6. EFFECT OF TERMINATION OF EMPLOYMENT OR SERVICE ON AWARDS

6.1 General. The Administrator shall establish the effect (if any) of a termination of employment or service on the rights and benefits under each award under this Plan and in so doing may make distinctions based upon, inter alia, the cause of termination and type of award. If the Participant is not an employee of the Corporation or one of its Subsidiaries, is not a member of the Board, and provides other services to the Corporation or one of its Subsidiaries, the Administrator shall be the sole judge for purposes of this Plan (unless a contract or the award otherwise provides) of whether the Participant continues to render services to the Corporation or one of its Subsidiaries and the date, if any, upon which such services shall be deemed to have terminated.

- 6.2 Events Not Deemed Terminations of Employment.** Unless the express policy of the Corporation or one of its Subsidiaries, or the Administrator, otherwise provides, or except as otherwise required by applicable law, the employment relationship shall not be considered terminated in the case of: (a) medical leave, (b) military leave, or (c) any other leave of absence authorized by the Corporation or one of its Subsidiaries, or the Administrator; provided that, unless reemployment upon the expiration of such leave is guaranteed by contract or law or the Administrator otherwise provides, such leave is for a period of not more than three months. In the case of any employee of the Corporation or one of its Subsidiaries on an approved leave of absence, continued vesting of the award while on leave from the employ of the Corporation or one of its Subsidiaries may be suspended until the employee returns to service, unless the Administrator otherwise provides or applicable law otherwise requires. In no event shall an award be exercised after the expiration of any applicable maximum term of the award.
- 6.3 Effect of Change of Subsidiary Status.** For purposes of this Plan and any award, if an entity ceases to be a Subsidiary of the Corporation a termination of employment or service shall be deemed to have occurred with respect to each Eligible Person in respect of such Subsidiary who does not continue as an Eligible Person in respect of the Corporation or another Subsidiary that continues as such after giving effect to the transaction or other event giving rise to the change in status unless the Subsidiary that is sold, spun-off or otherwise divested (or its successor or a direct or indirect parent of such Subsidiary or successor) assumes the Eligible Person's award(s) in connection with such transaction.

7. ADJUSTMENTS; ACCELERATION

7.1 Adjustments.

- (a) Subject to Section 7.2, upon (or, as may be necessary to effect the adjustment, immediately prior to): any reclassification, recapitalization, stock split (including a stock split in the form of a stock dividend) or reverse stock split; any merger, combination, consolidation, conversion or other reorganization; any spin-off, split-up, or extraordinary dividend distribution in respect of the Common Stock; or any exchange of Common Stock or other securities of the Corporation, or any similar, unusual or extraordinary corporate transaction in respect of the Common Stock; then the Administrator shall equitably and proportionately adjust: (1) the number and type of shares of Common Stock (or other securities) that thereafter may be made the subject of awards (including the specific share limits, maximums and numbers of shares set forth elsewhere in this Plan); (2) the number, amount and type of shares of Common Stock (or other securities or property) subject to any outstanding awards; (3) the grant, purchase, or exercise price (which term includes the base price of any SAR or similar right) of any outstanding awards; and/or (4) the securities, cash or other property deliverable upon exercise or payment of any outstanding awards, in each case to the extent necessary to preserve (but not increase) the level of incentives intended by this Plan and the then-outstanding awards.
- (b) Without limiting the generality of Section 3.4, any good faith determination by the Administrator as to whether an adjustment is required in the circumstances pursuant to this Section 7.1, and the extent and nature of any such adjustment, shall be conclusive and binding on all persons.

7.2 *Corporate Transactions - Assumption and Termination of Awards.*

- (a) Upon any event in which the Corporation does not survive, or does not survive as a public company in respect of its Common Stock (including, without limitation, a dissolution, merger, combination, consolidation, conversion, exchange of securities, or other reorganization, or a sale of all or substantially all of the business, stock or assets of the Corporation, in any case in connection with which the Corporation does not survive or does not survive as a public company in respect of its Common Stock), then the Administrator may make provision for a cash payment in settlement of, or for the termination, assumption, substitution or exchange of any or all outstanding awards or the cash, securities or property deliverable to the holder of any or all outstanding awards, based upon, to the extent relevant under the circumstances, the distribution or consideration payable to holders of the Common Stock upon or in respect of such event. Upon the occurrence of any event described in the preceding sentence in connection with which the Administrator has made provision for the award to be terminated (and the Administrator has not made a provision for the substitution, assumption, exchange or other continuation or settlement of the award); (1) unless otherwise provided in the applicable Award Agreement, each then-outstanding option and SAR shall become fully vested, all shares of restricted stock then outstanding shall fully vest free of restrictions, and each other award granted under this Plan that is then outstanding shall become payable to the holder of such award (with any performance goals applicable to the award in each case being deemed met, unless otherwise provided in the Award Agreement, at either the "target" performance level or based on performance through the applicable transaction, as determined by the Administrator in its discretion); and (2) each award (including any award or portion thereof that, by its terms, does not accelerate and vest in the circumstances) shall terminate upon the related event; provided that the holder of an option or SAR shall be given reasonable advance notice of the impending termination and a reasonable opportunity to exercise his or her outstanding vested options and SARs (after giving effect to any accelerated vesting required in the circumstances) in accordance with their terms before the termination of such awards (except that in no case shall more than ten days' notice of the impending termination be required and any acceleration of vesting and any exercise of any portion of an award that is so accelerated may be made contingent upon the actual occurrence of the event).
- (b) Without limiting the preceding paragraph, in connection with any event referred to in the preceding paragraph or any change in control event defined in any applicable Award Agreement, the Administrator may, in its discretion, provide for the accelerated vesting of any award or awards as and to the extent determined by the Administrator in the circumstances.

- (c) For purposes of this Section 7.2, an award shall be deemed to have been “assumed” if (without limiting other circumstances in which an award is assumed) the award continues after an event referred to above in this Section 7.2, and/or is assumed and continued by the surviving entity following such event (including, without limitation, an entity that, as a result of such event, owns the Corporation or all or substantially all of the Corporation’s assets directly or through one or more subsidiaries (a “**Parent**”)), and confers the right to purchase or receive, as applicable and subject to vesting and the other terms and conditions of the award, for each share of Common Stock subject to the award immediately prior to the event, the consideration (whether cash, shares, or other securities or property) received in the event by the stockholders of the Corporation for each share of Common Stock sold or exchanged in such event (or the consideration received by a majority of the stockholders participating in such event if the stockholders were offered a choice of consideration); provided, however, that if the consideration offered for a share of Common Stock in the event is not solely the ordinary common stock of a successor corporation or a Parent, the Administrator may provide for the consideration to be received upon exercise or payment of the award, for each share subject to the award, to be solely ordinary common stock of the successor corporation or a Parent equal in Fair Market Value to the per share consideration received by the stockholders participating in the event.
- (d) The Administrator may adopt such valuation methodologies for outstanding awards as it deems reasonable in the event of a cash or property settlement and, in the case of options, SARs or similar rights, but without limitation on other methodologies, may base such settlement solely upon the excess if any of the per share amount payable upon or in respect of such event over the exercise or base price of the award. In the case of an option, SAR or similar right as to which the per share amount payable upon or in respect of such event is less than or equal to the exercise or base price of the award, the Administrator may terminate such award in connection with an event referred to in this Section 7.2 without any payment in respect of such award.
- (e) In any of the events referred to in this Section 7.2, the Administrator may take such action contemplated by this Section 7.2 prior to such event (as opposed to on the occurrence of such event) to the extent that the Administrator deems the action necessary to permit the Participant to realize the benefits intended to be conveyed with respect to the underlying shares. Without limiting the generality of the foregoing, the Administrator may deem an acceleration and/or termination to occur immediately prior to the applicable event and, in such circumstances, will reinstate the original terms of the award if an event giving rise to an acceleration and/or termination does not occur.

- (f) Without limiting the generality of Section 3.4, any good faith determination by the Administrator pursuant to its authority under this Section 7.2 shall be conclusive and binding on all persons.
- (g) The Administrator may override the provisions of this Section 7.2 by express provision in the Award Agreement and may accord any Eligible Person a right to refuse any acceleration, whether pursuant to the Award Agreement or otherwise, in such circumstances as the Administrator may approve. The portion of any ISO accelerated in connection with an event referred to in this Section 7.2 (or such other circumstances as may trigger accelerated vesting of the award) shall remain exercisable as an ISO only to the extent the applicable \$100,000 limitation on ISOs is not exceeded. To the extent exceeded, the accelerated portion of the option shall be exercisable as a nonqualified stock option under the Code.

8. OTHER PROVISIONS

- 8.1 **Compliance with Laws.** This Plan, the granting and vesting of awards under this Plan, the offer, issuance and delivery of shares of Common Stock, and/or the payment of money under this Plan or under awards are subject to compliance with all applicable federal, state, local and foreign laws, rules and regulations (including, but not limited to, state and federal securities law and federal margin requirements) and to such approvals by any listing, regulatory or governmental authority as may, in the opinion of counsel for the Corporation, be necessary or advisable in connection therewith. The person acquiring any securities under this Plan will, if requested by the Corporation or one of its Subsidiaries, provide such assurances and representations to the Corporation or one of its Subsidiaries as the Administrator may deem necessary or desirable to assure compliance with all applicable legal and accounting requirements.
- 8.2 **No Rights to Award.** No person shall have any claim or rights to be granted an award (or additional awards, as the case may be) under this Plan, subject to any express contractual rights (set forth in a document other than this Plan) to the contrary.
- 8.3 **No Employment/Service Contract.** Nothing contained in this Plan (or in any other documents under this Plan or in any award) shall confer upon any Eligible Person or other Participant any right to continue in the employ or other service of the Corporation or one of its Subsidiaries, constitute any contract or agreement of employment or other service or affect an employee's status as an employee at will, nor shall interfere in any way with the right of the Corporation or one of its Subsidiaries to change a person's compensation or other benefits, or to terminate his or her employment or other service, with or without cause. Nothing in this Section 8.3, however, is intended to adversely affect any express independent right of such person under a separate employment or service contract other than an Award Agreement.

- 8.4 Plan Not Funded.** Awards payable under this Plan shall be payable in shares or from the general assets of the Corporation, and no special or separate reserve, fund or deposit shall be made to assure payment of such awards. No Participant, beneficiary or other person shall have any right, title or interest in any fund or in any specific asset (including shares of Common Stock, except as expressly otherwise provided) of the Corporation or one of its Subsidiaries by reason of any award hereunder. Neither the provisions of this Plan (or of any related documents), nor the creation or adoption of this Plan, nor any action taken pursuant to the provisions of this Plan shall create, or be construed to create, a trust of any kind or a fiduciary relationship between the Corporation or one of its Subsidiaries and any Participant, beneficiary or other person. To the extent that a Participant, beneficiary or other person acquires a right to receive payment pursuant to any award hereunder, such right shall be no greater than the right of any unsecured general creditor of the Corporation.
- 8.5 Tax Withholding.** Upon any exercise, vesting, or payment of any award, or upon the disposition of shares of Common Stock acquired pursuant to the exercise of an ISO prior to satisfaction of the holding period requirements of Section 422 of the Code, or upon any other tax withholding event with respect to any award, arrangements satisfactory to the Corporation shall be made to provide for any taxes the Corporation or any of its Subsidiaries may be required or permitted to withhold with respect to such award event or payment. Such arrangements may include (but are not limited to) any one of (or a combination of) the following:
- (a) The Corporation or one of its Subsidiaries shall have the right to require the Participant (or the Participant's personal representative or beneficiary, as the case may be) to pay or provide for payment of the amount of any taxes which the Corporation or one of its Subsidiaries may be required or permitted to withhold with respect to such award event or payment.
 - (b) The Corporation or one of its Subsidiaries shall have the right to deduct from any amount otherwise payable in cash (whether related to the award or otherwise) to the Participant (or the Participant's personal representative or beneficiary, as the case may be) the amount of any taxes which the Corporation or one of its Subsidiaries may be required or permitted to withhold with respect to such award event or payment.
 - (c) In any case where a tax is required to be withheld in connection with the delivery of shares of Common Stock under this Plan, the Administrator may in its sole discretion (subject to Section 8.1) require or grant (either at the time of the award or thereafter) to the Participant the right to elect, pursuant to such rules and subject to such conditions as the Administrator may establish, that the Corporation reduce the number of shares to be delivered by (or otherwise reacquire) the appropriate number of shares, valued in a consistent manner at their Fair Market Value or at the sales price in accordance with authorized procedures for cashless exercises, necessary to satisfy any applicable withholding obligation on exercise, vesting or payment.

8.6 **Effective Date, Termination and Suspension, Amendments.**

8.6.1 **Effective Date.** This Plan is effective as of May 13, 2022, the date of its initial approval by the Board (the “**Effective Date**”). This Plan shall be submitted for and subject to stockholder approval no later than twelve months after the Effective Date. Unless earlier terminated by the Board and subject to any extension that may be approved by stockholders, this Plan shall terminate at the close of business on the day before the tenth anniversary of the Effective Date. After the termination of this Plan either upon such stated termination date or its earlier termination by the Board, no additional awards may be granted under this Plan, but previously granted awards (and the authority of the Administrator with respect thereto, including the authority to amend such awards) shall remain outstanding in accordance with their applicable terms and conditions and the terms and conditions of this Plan.

8.6.2 **Board Authorization.** The Board may, at any time, terminate or, from time to time, amend, modify or suspend this Plan, in whole or in part. No awards may be granted during any period that the Board suspends this Plan.

8.6.3 **Stockholder Approval.** To the extent then required by applicable law or deemed necessary or advisable by the Board, any amendment to this Plan shall be subject to stockholder approval.

8.6.4 **Amendments to Awards.** Without limiting any other express authority of the Administrator under (but subject to) the express limits of this Plan, the Administrator by agreement or resolution may waive conditions of or limitations on awards to Participants that the Administrator in the prior exercise of its discretion has imposed, without the consent of a Participant, and (subject to the requirements of Sections 3.2 and 8.6.5) may make other changes to the terms and conditions of awards. Any amendment or other action that would constitute a repricing of an award is subject to the no-repricing provision of Section 3.3.

8.6.5 **Limitations on Amendments to Plan and Awards.** No amendment, suspension or termination of this Plan or amendment of any outstanding Award Agreement shall, without written consent of the Participant, affect in any manner materially adverse to the Participant any rights or benefits of the Participant or obligations of the Corporation under any award granted under this Plan prior to the effective date of such change. Changes, settlements and other actions contemplated by Section 7 shall not be deemed to constitute changes or amendments for purposes of this Section 8.6.

8.7 **Privileges of Stock Ownership.** Except as otherwise expressly authorized by the Administrator, a Participant shall not be entitled to any privilege of stock ownership as to any shares of Common Stock not actually delivered to and held of record by the Participant. Except as expressly required by Section 7.1 or otherwise expressly provided by the Administrator, no adjustment will be made for dividends or other rights as a stockholder for which a record date is prior to such date of delivery.

8.8 *Governing Law; Severability.*

8.8.1 *Choice of Law.* This Plan, the awards, all documents evidencing awards and all other related documents shall be governed by, and construed in accordance with the laws of the State of Delaware, notwithstanding any Delaware or other conflict of law provision to the contrary.

8.8.2 *Severability.* If a court of competent jurisdiction holds any provision invalid and unenforceable, the remaining provisions of this Plan shall continue in effect.

8.8.3 *Construction.* It is the intent of the Corporation that the awards granted hereunder (and transactions permitted by such awards) will not result in the imposition of any tax liability pursuant to Section 409A of the Code and that, in the case of Participants who are or may be subject to Section 16 of the Exchange Act, that such awards and transactions qualify, to the maximum extent compatible with the express terms of the award, for exemption from matching liability under Rule 16b-3 promulgated under the Exchange Act. The provisions of this Plan and any applicable Award Agreement or other relevant document shall be construed and interpreted consistent with that intent.

8.9 *Captions.* Captions and headings are given to the sections and subsections of this Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of this Plan or any provision thereof.

8.10 *Stock-Based Awards in Substitution for Stock Options or Awards Granted by Other Corporation.* Awards may be granted to Eligible Persons in substitution for or in connection with an assumption of employee stock options, SARs, restricted stock or other stock-based awards granted by other entities to persons who are or who will become Eligible Persons in respect of the Corporation or one of its Subsidiaries, in connection with a distribution, merger or other reorganization by or with the granting entity or an affiliated entity, or the acquisition by the Corporation or one of its Subsidiaries, directly or indirectly, of all or a substantial part of the stock or assets of the employing entity. The awards so granted need not comply with other specific terms of this Plan, provided the awards reflect adjustments giving effect to the assumption or substitution consistent with any conversion applicable to the common stock (or the securities otherwise subject to the award) in the transaction and any change in the issuer of the security. Any shares that are delivered and any awards that are granted by, or become obligations of, the Corporation, as a result of the assumption by the Corporation of, or in substitution for, outstanding awards previously granted or assumed by an acquired company (or previously granted or assumed by a predecessor employer (or direct or indirect parent thereof) in the case of persons that become employed by the Corporation or one of its Subsidiaries in connection with a business or asset acquisition or similar transaction) shall not be counted against the Share Limit or other limits on the number of shares available for issuance under this Plan.

- 8.11 Non-Exclusivity of Plan.** Nothing in this Plan shall limit or be deemed to limit the authority of the Board or the Administrator to grant awards or authorize any other compensation, with or without reference to the Common Stock, under any other plan or authority.
- 8.12 No Corporate Action Restriction.** The existence of this Plan, the Award Agreements and the awards granted hereunder shall not limit, affect, or restrict in any way the right or power of the Corporation or any Subsidiary (or any of their respective shareholders, boards of directors or committees thereof (or any subcommittees), as the case may be) to make or authorize: (a) any adjustment, recapitalization, reorganization or other change in the capital structure or business of the Corporation or any Subsidiary, (b) any merger, amalgamation, consolidation or change in the ownership of the Corporation or any Subsidiary, (c) any issue of bonds, debentures, capital, preferred or prior preference stock ahead of or affecting the capital stock (or the rights thereof) of the Corporation or any Subsidiary, (d) any dissolution or liquidation of the Corporation or any Subsidiary, (e) any sale or transfer of all or any part of the assets or business of the Corporation or any Subsidiary, (f) any other award, grant, or payment of incentives or other compensation under any other plan or authority (or any other action with respect to any benefit, incentive or compensation), or (g) any other corporate act or proceeding by the Corporation or any Subsidiary. No Participant, beneficiary or any other person shall have any claim under any award or Award Agreement against any member of the Board or the Administrator, or the Corporation or any employees, officers or agents of the Corporation or any Subsidiary, as a result of any such action. Awards need not be structured so as to be deductible for tax purposes.
- 8.13 Other Company Benefit and Compensation Programs.** Payments and other benefits received by a Participant under an award made pursuant to this Plan shall not be deemed a part of a Participant's compensation for purposes of the determination of benefits under any other employee welfare or benefit plans or arrangements, if any, provided by the Corporation or any Subsidiary, except where the Administrator expressly otherwise provides or authorizes in writing. Awards under this Plan may be made in addition to, in combination with, as alternatives to or in payment of grants, awards or commitments under any other plans, arrangements or authority of the Corporation or its Subsidiaries.
- 8.14 Clawback Policy.** The awards granted under this Plan are subject to the terms of the Corporation's recoupment, clawback or similar policy as it may be in effect from time to time, as well as any similar provisions of applicable law, any of which could in certain circumstances require repayment or forfeiture of awards or any shares of Common Stock or other cash or property received with respect to the awards (including any value received from a disposition of the shares acquired upon payment of the awards).

**DRAGONFLY ENERGY HOLDINGS CORP.
EMPLOYEE STOCK PURCHASE PLAN**

1. PURPOSE

The purpose of this Plan is to assist Eligible Employees in acquiring a stock ownership interest in the Corporation, at a favorable price and upon favorable terms, pursuant to a plan which is intended to qualify as an “employee stock purchase plan” under Section 423 of the Code. This Plan is also intended to encourage Eligible Employees to remain in the employ of the Corporation (or a Subsidiary which may be designated by the Committee as a “Participating Subsidiary”) and to provide them with an additional incentive to advance the best interests of the Corporation.

2. DEFINITIONS

Capitalized terms used herein which are not otherwise defined shall have the following meanings.

“**Account**” means the bookkeeping account maintained by the Corporation, or by a recordkeeper on behalf of the Corporation, for a Participant pursuant to Section 7(a).

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

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended from time to time.

“**Commission**” means the U.S. Securities and Exchange Commission.

“**Committee**” means the committee appointed by the Board to administer this Plan pursuant to Section 12.

“**Common Stock**” means the common stock, par value \$0.0001 per share, of the Corporation, and such other securities or property as may become the subject of Options pursuant to an adjustment made under Section 17.

“**Compensation**” means an Eligible Employee’s regular gross pay. Compensation includes any amounts contributed as salary reduction contributions to a plan qualifying under Section 401(k), 125 or 129 of the Code. Any other form of remuneration is excluded from Compensation, including (but not limited to) the following: severance pay, overtime payments, commissions, prizes, awards, relocation or housing allowances, stock option exercises, stock appreciation right payments, the vesting or grant of restricted stock, the payment of stock units, performance awards, auto allowances, tuition reimbursement, perquisites, non-cash compensation and other forms of imputed income, bonuses, incentive compensation, special payments, fees and allowances. Notwithstanding the foregoing, Compensation shall not include any amounts deferred under or paid from any nonqualified deferred compensation plan maintained by the Corporation or any Subsidiary.

“**Contributions**” means all bookkeeping amounts credited to the Account of a Participant pursuant to Section 7(a).

“**Corporation**” means Dragonfly Energy Holdings Corp., a Delaware corporation, and its successors.

“**Effective Date**” means May 13 2022, the date this Plan was initially adopted by the Board.

“**Eligible Employee**” means any employee of the Corporation, or of any Subsidiary which has been designated in writing by the Committee as a “Participating Subsidiary” (including any Subsidiaries which have become such after the date that this Plan is approved by the stockholders of the Corporation). Notwithstanding the foregoing and unless otherwise provided by the Committee in advance of the applicable Offering Period, “Eligible Employee” shall not include any employee:

- (a) whose customary employment is for not more than five (5) months in a calendar year; or
- (b) whose customary employment is for twenty (20) hours or less per week.

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended from time to time.

“**Exercise Date**” means, with respect to an Offering Period, the last day of that Offering Period.

“**Fair Market Value**” on any date means:

- (a) if the Common Stock is listed or admitted to trade on a national securities exchange, the closing price of a share of Common Stock on such date on the principal national securities exchange on which the Common Stock is so listed or admitted to trade, or, if there is no trading of the Common Stock on such date, then the closing price of a share of Common Stock on such exchange on the last day preceding such date on which there was trading in the shares of Common Stock;
- (b) in the absence of exchange data required to determine Fair Market Value pursuant to the foregoing, the value as established by the Committee as of the relevant time for purposes of this Plan.

“**Grant Date**” means the first day of each Offering Period, as determined by the Committee and announced to potential Eligible Employees.

“**Individual Limit**” has the meaning given to such term in Section 4(b).

“**New Exercise Date**” has the meaning given to such term in Section 18.

“**Offering Period**” means the period of six (6) consecutive months commencing on each Grant Date; provided, however, that the Committee may declare, as it deems appropriate and in advance of the applicable Offering Period, a shorter (not to be less than three months) Offering Period or a longer (not to exceed 27 months) Offering Period; provided, further, that the Committee may provide, as it deems appropriate and in advance of the applicable Offering Period, that such Offering Period will consist of multiple “purchase periods,” with an Exercise Date to occur at the end of each such purchase period. In no event will the Grant Date for an Offering Period occur on or before the Exercise Date (or the final Exercise Date, as the case may be) for the immediately preceding Offering Period.

“**Option**” means the stock option to acquire shares of Common Stock granted to a Participant pursuant to Section 8.

“**Option Price**” means the per share exercise price of an Option as determined in accordance with Section 8(b).

“**Parent**” means any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation in which each corporation (other than the Corporation) owns stock possessing 50% or more of the total combined voting power of all classes of stock in one or more of the other corporations in the chain.

“**Participant**” means an Eligible Employee who has elected to participate in this Plan and who has filed a valid and effective Subscription Agreement to make Contributions pursuant to Section 6.

“**Participating Subsidiary**” means any Subsidiary that has been designated in writing by the Committee as a Participating Subsidiary for purposes of this Plan.

“**Plan**” means this Dragonfly Energy Holdings Corp. Employee Stock Purchase Plan, as amended from time to time.

“**Rule 16b-3**” means Rule 16b-3 as promulgated by the Commission under Section 16, as amended from time to time.

“**Share Limit**” has the meaning given to such term in Section 4(a).

“**Subscription Agreement**” means the written enrollment agreement or applicable electronic form of enrollment agreement filed by an Eligible Employee with the Corporation (or its designee) pursuant to Section 6 to participate in this Plan.

“**Subsidiary**” means any corporation (other than the Corporation) in an unbroken chain of corporations (beginning with the Corporation) in which each corporation (other than the last corporation) owns stock possessing 50% or more of the total combined voting power of all classes of stock in one or more of the other corporations in the chain.

3. **ELIGIBILITY**

Any person employed as an Eligible Employee as of a Grant Date shall be eligible to participate in this Plan during the Offering Period in which such Grant Date occurs, subject to the Eligible Employee satisfying the requirements of Section 6.

4. **STOCK SUBJECT TO THIS PLAN; SHARE LIMITATIONS**

- (a) *Aggregate Share Limit.* Subject to the provisions of Section 17, the capital stock that may be delivered under this Plan will be shares of the Corporation's authorized but unissued Common Stock and any of its shares of Common Stock held as treasury shares. The maximum number of shares of Common Stock that may be delivered pursuant to Options granted under this Plan is 2,464,400 shares, subject to adjustments pursuant to Section 17 (the "**Share Limit**").

In addition, subject to adjustments pursuant to Section 17, the Share Limit shall automatically increase on the first trading day in January of each of the calendar years during the term of this Plan, with the first such increase to occur in January 2023, by an amount equal to the lesser of (i) one percent (1%) of the total number of shares of Common Stock issued and outstanding on December 31 of the immediately preceding calendar year, (ii) 1,500,000 shares of Common Stock, or (iii) such number of shares of Common Stock as may be established by the Board.

In the event that during a particular Offering Period all of the shares of Common Stock made available under this Plan are subscribed prior to the expiration of this Plan, this Plan and all outstanding Options hereunder shall terminate at the end of that Offering Period and the shares available shall be allocated for purchase by Participants in that Offering Period on a pro-rata basis determined with respect to Participants' Account balances.

- (b) *Individual Share Limit.* The maximum number of shares of Common Stock that any one individual may acquire upon exercise of his or her Option with respect to any one Offering Period is 10,000 shares, subject to adjustments pursuant to Section 17 (the "**Individual Limit**"); provided, however, that the Committee may amend such Individual Limit, effective no earlier than the first Offering Period commencing after the adoption of such amendment, without stockholder approval. The Individual Limit shall be proportionately adjusted for any Offering Period of less than six months, and may, at the discretion of the Committee, be proportionately increased for any Offering Period of greater than six months.
- (c) *Shares Not Actually Delivered.* Shares that are subject to or underlie Options, which for any reason are cancelled or terminated, are forfeited, fail to vest, or for any other reason are not paid or delivered under this Plan shall again, except to the extent prohibited by law, be available for subsequent Options under this Plan.

5. **OFFERING PERIODS**

During the term of this Plan, the Corporation will offer Options to purchase Shares in each Offering Period to all Participants in that Offering Period. Unless otherwise specified by the Committee in advance of the Offering Period, Offering Periods will be of six (6) months duration. The Committee will specify, in advance of each Offering Period, the Grant Date of that Offering Period. Each Option shall become effective on the Grant Date of that Offering Period. The term of each Option shall be the duration of the related Offering Period and shall end on the Exercise Date of that Offering Period. Offering Periods shall continue until this Plan is terminated in accordance with Section 18 or 19, or, if earlier, until no Shares remain available for Options pursuant to Section 4.

6. **PARTICIPATION**

- (a) *Enrollment.* An Eligible Employee may become a Participant in this Plan by completing a Subscription Agreement on a form approved by and in a manner prescribed by the Committee (or its delegate). To become effective, a Subscription Agreement must be signed by the Eligible Employee and filed with the Corporation (or its designee) at the time specified by the Committee, but in all cases prior to the start of the Offering Period with respect to which it is to become effective, and must set forth a whole percentage (or, if the Committee so provides, a stated amount) of the Eligible Employee's Compensation to be credited to the Participant's Account as Contributions each pay period.
- (b) *Contribution Limits.* Notwithstanding the foregoing, a Participant's Contribution election shall be subject to the following limitations:
 - (i) the \$25,000 annual limitation set forth in Section 8(c);
 - (ii) a Participant may not elect to contribute less than one percent (1%) or more than fifteen percent (15%) of his or her Compensation each pay period as Plan Contributions; and
 - (iii) such other limits, rules, or procedures as the Committee may prescribe.
- (c) *Content and Duration of Subscription Agreements.* Subscription Agreements shall contain the Eligible Employee's authorization and consent to the Corporation's withholding from his or her Compensation the amount of his or her Contributions. An Eligible Employee's Subscription Agreement, and his or her participation election and withholding consent thereon, shall remain valid for all Offering Periods until (i) the Eligible Employee's participation terminates pursuant to the terms hereof, (ii) the Eligible Employee files a new Subscription Agreement that becomes effective, or (iii) the Committee requires that a new Subscription Agreement be executed and filed with the Corporation.

7. **METHOD OF PAYMENT OF CONTRIBUTIONS**

- (a) *Participation Account.* The Corporation shall maintain on its books, or cause to be maintained by a recordkeeper, an Account in the name of each Participant. The percentage (or amount, as applicable) of Compensation elected to be applied as Contributions by a Participant shall be deducted from such Participant's Compensation on each payday during the period for payroll deductions set forth below and such payroll deductions shall be credited to that Participant's Account as soon as administratively practicable after such date. A Participant may not make any additional payments to his or her Account. A Participant's Account shall be reduced by any amounts used to pay the Option Price of shares acquired, or by any other amounts distributed pursuant to the terms hereof.
- (b) *Commencement of Payroll Deductions.* Payroll deductions with respect to an Offering Period shall commence as of the first day of the payroll period which coincides with or immediately follows the applicable Grant Date and shall end on the last day of the payroll period which coincides with or immediately precedes the applicable Exercise Date, unless sooner terminated by the Participant as provided in this Section 7 or until his or her Plan participation terminates pursuant to Section 11.
- (c) *Withdrawal During an Offering Period.* A Participant may terminate his or her Contributions during an Offering Period (and receive a distribution of the balance of his or her Account in accordance with Section 11) by completing and filing with the Corporation (or its designee), in such form and on such terms as the Committee (or its delegate) may prescribe, a written withdrawal form or applicable electronic withdrawal form which shall be completed by the Participant. Such termination shall be effective as soon as administratively practicable after its receipt by the Corporation. A withdrawal election pursuant to this Section 7(c) with respect to an Offering Period shall only be effective, however, if it is received by the Corporation prior to the Exercise Date of that Offering Period (or such earlier deadline that the Committee may reasonably require to process the withdrawal prior to the Exercise Date). Partial withdrawals of Accounts, and other modifications or suspensions of Subscription Agreements, except as provided in Section 7(d) or 7(e), are not permitted.
- (d) *Change in Contribution Elections for the Following Offering Period.* A Participant may discontinue, increase, or decrease the level of his or her Contributions (within Plan limits) by completing and filing with the Corporation (or its designee), on such terms as the Committee (or its delegate) may prescribe, a new Subscription Agreement which indicates such election. Subject to any additional timing requirements that the Committee may impose, an election pursuant to this Section 7(d) shall be effective with the first Offering Period that commences after the Corporation's receipt of such election.

- (e) *Discontinuing Contributions During an Offering Period.* A Participant may discontinue his or her Contributions (but not increase or otherwise decrease the level of his or her Contributions) during an Offering Period, by filing with the Corporation (or its designee), on such terms as the Committee (or its delegate) may prescribe, a new Subscription Agreement which indicates such election. An election pursuant to this Section 7(e) shall be effective no earlier than the first payroll period that starts after the Corporation's receipt of such election. If a Participant elects to discontinue his or her Contributions pursuant to this Section 7(e), the Contributions previously credited to the Participant's Account for that Offering Period shall be used to exercise the Participant's Option as of the applicable Exercise Date in accordance with Section 9 (unless the Participant makes a timely withdrawal election in accordance with Section 7(c), in which case the Participant's Account will be paid to him or her in cash in accordance with Section 11(a)).

8. GRANT OF OPTION

- (a) *Grant Date; Number of Shares.* On each Grant Date, each Eligible Employee who is a Participant during that Offering Period shall be granted an Option to purchase a number of shares of Common Stock. The Option shall be exercised on the Exercise Date. The number of shares subject to the Option shall be determined by dividing the Participant's Account balance as of the applicable Exercise Date by the Option Price.
- (b) *Option Price.* The Option Price per share of the shares subject to an Option for an Offering Period shall be the lesser of: (i) 85% of the Fair Market Value of a Share on the Grant Date of that Offering Period; or (ii) 85% of the Fair Market Value of a Share on the Exercise Date of that Offering Period; provided, however, that the Committee may provide prior to the start of any Offering Period that the Option Price for that Offering Period shall be determined by applying a discount amount (not to exceed 15%) to either (1) the Fair Market Value of Common Shares on the Grant Date of the Offering Period, or (2) the Fair Market Value of Common Shares on the Exercise Date of that Offering Period, or (3) the lesser of the Fair Market Value of Common Shares on the Grant Date of the Offering Period or the Fair Market Value of Common Shares on the Exercise Date of that Offering Period (or, for purposes of the foregoing clauses (2) and (3), the applicable Exercise Date of that Offering Period, as the case may be). Notwithstanding anything to the contrary in the preceding provisions of this Section 8(b), in no event shall the Option Price per share be less than the par value of a share of Common Stock.
- (c) *Limits on Share Purchases.* Notwithstanding anything else contained herein, a person who is otherwise an Eligible Employee shall not be granted any Option (or any Option granted shall be subject to compliance with the following limitations) or other right to purchase shares under this Plan to the extent:
- (i) it would, if exercised, cause the person to own stock (within the meaning of Section 423(b)(3) of the Code) possessing 5% or more of the total combined voting power or value of all classes of stock of the Corporation, or of any Parent, or of any Subsidiary; or

(ii) such Option causes such individual to have rights to purchase stock under this Plan and any other plan of the Corporation, any Parent, or any Subsidiary which is qualified under Section 423 of the Code which accrue at a rate which exceeds \$25,000 of the fair market value of the stock of the Corporation, of any Parent, or of any Subsidiary (determined at the time the right to purchase such stock is granted, before giving effect to any discounted purchase price under any such plan) for each calendar year in which such right is outstanding at any time.

For purposes of the foregoing, a right to purchase stock accrues when it first becomes exercisable during the calendar year. In determining whether the stock ownership of an Eligible Employee equals or exceeds the 5% limit set forth above, the rules of Section 424(d) of the Code (relating to attribution of stock ownership) shall apply, and stock which the Eligible Employee may purchase under outstanding options shall be treated as stock owned by the Eligible Employee.

9. EXERCISE OF OPTION

Unless a Participant withdraws from an Offering Period pursuant to Section 7(c) or the Participant's Plan participation is terminated as provided in Section 11, his or her Option for the purchase of shares shall be exercised automatically on the Exercise Date for that Offering Period, without any further action on the Participant's part, and the maximum number of whole shares subject to such Option (subject to the Individual Limit set forth in Section 4(b) and the limitations contained in Section 8(c)) shall be purchased at the Option Price with the balance of such Participant's Account.

If any amount which is not sufficient to purchase a whole share remains in a Participant's Account after the exercise of his or her Option on the Exercise Date, such amount shall be refunded to such Participant as soon as administratively practicable after such date; provided that the Committee may provide in advance of an Offering Period for any such amount with respect to that Offering Period to be credited to the Participant's Account for the next Offering Period, if he or she is a Participant in such next Offering Period.

If the Share Limit of Section 4(a) is reached, any amount that remains in a Participant's Account after the exercise of his or her Option on the Exercise Date to purchase the number of Shares that he or she is allocated shall be refunded to the Participant as soon as administratively practicable after such date.

If any amount which exceeds the Individual Limit set forth in Section 4(b) or one of the limitations set forth in Section 8(c) remains in a Participant's Account after the exercise of his or her Option on the Exercise Date, such amount shall be refunded to the Participant as soon as administratively practicable after such date.

10. DELIVERY OF SHARES

As soon as administratively practicable after the Exercise Date, the Corporation shall, in its discretion, either deliver to each Participant a certificate representing the shares of Common Stock purchased upon exercise of his or her Option, provide for the crediting of such shares in book entry form in the name of the Participant, or provide for an alternative arrangement for the delivery of such shares to a broker or recordkeeping service for the benefit of the Participant. In the event the Corporation is required to obtain from any commission or agency authority to issue any such certificate or otherwise deliver such shares, the Corporation will seek to obtain such authority. If the Corporation is unable to obtain from any such commission or agency authority which counsel for the Corporation deems necessary for the lawful issuance of any such certificate or other delivery of such shares, or if for any other reason the Corporation cannot issue or deliver shares of Common Stock and satisfy Section 21, the Corporation shall be relieved from liability to any Participant except that the Corporation shall return to each Participant to whom such shares cannot be issued or delivered the amount of the balance credited to his or her Account that would have otherwise been used for the purchase of such shares.

11. TERMINATION OF EMPLOYMENT; CHANGE IN ELIGIBLE STATUS

- (a) *General.* Except as provided in the next paragraph, if a Participant ceases to be an Eligible Employee for any reason at any time prior to the last day of an Offering Period in which he or she participates, or if the Participant timely elects to terminate Contributions and withdraw from the Plan pursuant to Section 7(c), such Participant's Account shall be paid to him or her (or, in the event of the Participant's death, to the person or persons entitled thereto under Section 13) in cash, and such Participant's Option and participation in the Plan shall be automatically terminated.
- (b) *Change in Employment Status or Leave of Absence.* If a Participant (i) ceases to be an Eligible Employee during an Offering Period but remains an employee of the Corporation or a Participating Subsidiary through the Exercise Date, or (ii) during an Offering Period commences a sick leave, military leave, or other leave of absence approved by the Corporation or a Participating Subsidiary, and the leave meets the requirements of Treasury Regulation Section 1.421-1(h)(2) and the Participant is an employee of the Corporation or a Participating Subsidiary or on such leave through the applicable Exercise Date, such Participant's Contributions shall cease, and the Contributions previously credited to the Participant's Account for that Offering Period shall be used to exercise the Participant's Option as of the applicable Exercise Date in accordance with Section 9 (unless the Participant makes a timely election to terminate Contributions and withdraw from the Plan in accordance with Section 7(c), in which case such Participant's Account shall be paid to him or her in cash in accordance with Section 11(a).
- (c) *Re-Enrollment.* A Participant's termination from Plan participation precludes the Participant from again participating in this Plan during that Offering Period. However, such termination shall not have any effect upon his or her ability to participate in any succeeding Offering Period, provided that the applicable eligibility and participation requirements are again then met. A Participant's termination from Plan participation shall be deemed to be a revocation of that Participant's Subscription Agreement and such Participant must file a new Subscription Agreement to resume Plan participation in any succeeding Offering Period.

- (d) *Change in Subsidiary Status.* For purposes of this Plan, if a Participating Subsidiary ceases to be a Subsidiary, each person employed by that Subsidiary will be deemed to have terminated employment for purposes of this Plan and will no longer be an Eligible Employee, unless the person continues as an Eligible Employee in respect of the Corporation or another Participating Subsidiary.

12. ADMINISTRATION

- (a) *The Committee.* The Board shall appoint the Committee, which shall be composed of not less than two members of the Board. Subject to the preceding sentence, the Board may, at any time, increase or decrease the number of members of the Committee, may remove from membership on the Committee all or any portion of its members, and may appoint such person or persons as it desires to fill any vacancy existing on the Committee, whether caused by removal, resignation, or otherwise. The Board may also, at any time, assume or change the administration of this Plan.
- (b) *Powers and Duties of the Committee.* The Committee shall administer this Plan and shall have full power and discretion to adopt, amend and rescind any rules it considers desirable and appropriate for the administration of this Plan and not inconsistent with the terms of this Plan (including, without limitation, rules and deadlines for making elections under the Plan, which deadlines may be more restrictive than the deadlines otherwise set forth in this Plan), to further define the terms used in this Plan, and to make all other determinations necessary or advisable for the administration of this Plan or the effectuation of its purposes. The Committee shall act by majority vote or by unanimous written consent. No member of the Committee shall be entitled to act on or decide any matter relating solely to himself or herself or solely to any of his or her rights or benefits under this Plan. The Committee shall have full power and discretionary authority to construe and interpret the terms and conditions of this Plan and any agreements defining the rights and obligations of the Corporation, any Subsidiary, and any Participant or other person under this Plan, which construction or interpretation shall be final and binding on all parties including the Corporation, Subsidiaries, Participants and beneficiaries. Notwithstanding anything else contained in this Plan to the contrary, the Committee may also adopt rules, procedures, separate offerings, or sub-plans applicable to particular Subsidiaries or locations, which separate offerings or sub-plans may be designed to be outside the scope of Section 423 of the Code and need not comply with the otherwise applicable provisions of this Plan. The Committee may delegate ministerial non-discretionary functions to third parties, including individuals who are officers or employees of the Corporation or Participating Subsidiaries.

- (c) *Decisions of the Committee are Binding; Reliance on Experts.* Subject only to compliance with the express provisions hereof, the Board and Committee may act in their absolute discretion in matters within their authority related to this Plan. Any action taken by, or inaction of, the Corporation, any Participating Subsidiary, the Board or the Committee relating or pursuant to this Plan and within its authority hereunder or under applicable law shall be within the absolute discretion of that entity or body and shall be conclusive and binding upon all persons. In making any determination or in taking or not taking any action under this Plan, the Board or Committee, as the case may be, may obtain and may rely on the advice of experts, including professional advisors to the Corporation. No member of the Board or Committee, or officer or agent of the Corporation, will be liable for any action, omission or decision under the Plan taken, made or omitted in good faith.
- (d) *Indemnification.* Neither the Board nor any Committee, nor any member thereof or person acting at the direction thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with this Plan, and all such persons shall be entitled to indemnification and reimbursement by the Corporation in respect of any claim, loss, damage or expense (including, without limitation, attorneys' fees) arising or resulting therefrom to the fullest extent permitted by law and/or under any directors and officers liability insurance coverage that may be in effect from time to time.

13. DEATH BENEFITS

In the event of the death of a Participant, the Corporation shall deliver such shares and/or cash payable pursuant to the terms hereof to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Corporation), the Corporation, in its sole discretion, may deliver such shares and/or cash to the spouse or to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Corporation, then to such other person as the Corporation may designate.

14. TRANSFERABILITY

Neither Contributions credited to a Participant's Account nor any Options or rights with respect to the exercise of Options or right to receive shares under this Plan may be anticipated, alienated, encumbered, assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution, or as provided in Section 13) by the Participant. Any such attempt at anticipation, alienation, encumbrance, assignment, transfer, pledge or other disposition shall be without effect and all amounts shall be paid and all shares shall be delivered in accordance with the provisions of this Plan. Amounts payable or shares deliverable pursuant to this Plan shall be paid or delivered only to (or credited in the name of, as the case may be) the Participant or, in the event of the Participant's death, as provided in Section 13.

The Corporation may require a Participant to hold any shares the Participant acquires under this Plan in a brokerage account identified by the Corporation until the date the shares are transferred, sold or otherwise disposed of in any way by the Participant, or such earlier time as the Corporation may determine.

15. USE OF FUNDS; INTEREST

All Contributions received or held by the Corporation under this Plan will be included in the general assets of the Corporation and may be used for any corporate purpose. Notwithstanding anything else contained herein to the contrary, no interest will be paid to any Participant or credited to his or her Account under this Plan (in respect of Account balances, refunds of Account balances, or otherwise).

16. REPORTS

Statements shall be provided or made available (in writing or electronically) to Participants as soon as administratively practicable following each Exercise Date. Each Participant's statement shall set forth, as of such Exercise Date, that Participant's Account balance immediately prior to the exercise of his or her Option, the Option Price, the number of whole shares purchased and his or her remaining Account balance, if any.

17. ADJUSTMENTS OF AND CHANGES IN THE STOCK

Upon or in contemplation of any reclassification, recapitalization, stock split (including a stock split in the form of a stock dividend), or reverse stock split; any merger, combination, consolidation, or other reorganization; split-up, spin-off, or any similar extraordinary dividend distribution in respect of the Common Stock (whether in the form of securities or property); any exchange of Common Stock or other securities of the Corporation, or any similar, unusual or extraordinary corporate transaction in respect of the Common Stock; or a sale of substantially all the assets of the Corporation as an entirety occurs; then the Committee shall, in such manner, to such extent (if any) and at such time as it deems appropriate and equitable in the circumstances:

- (a) proportionately adjust any or all of (i) the number and type of shares of Common Stock or the number and type of other securities that thereafter may be made the subject of Options (including the specific maxima and numbers of shares set forth elsewhere in this Plan), (ii) the number, amount and type of shares (or other securities or property) subject to any or all outstanding Options, (iii) the Option Price of any or all outstanding Options, or (iv) the securities, cash or other property deliverable upon exercise of any outstanding Options, in each case to the extent necessary to preserve (but not increase) the level of incentives intended by this Plan and the then-outstanding Options; or
- (b) make provision for a cash payment in settlement of, or for the substitution or exchange of, any or all outstanding Options or the cash, securities or property deliverable to the holder of any or all outstanding Options based upon the distribution or consideration payable to holders of the Common Stock upon or in respect of such event.

The Committee may adopt such valuation methodologies for outstanding Options as it deems reasonable in the event of a cash or property settlement and, without limitation on other methodologies, may base such settlement solely upon the excess (if any) of the amount payable upon or in respect of such event over the Option Price of the Option.

In any of such events, the Committee may take such action sufficiently prior to such event to the extent that the Committee deems the action necessary to permit the Participant to realize the benefits intended to be conveyed with respect to the underlying shares in the same manner as is or will be available to stockholders generally.

Without limiting the generality of Section 12, any good faith determination by the Committee as to whether an adjustment is required in the circumstances pursuant to this Section 17, and the extent and nature of any such adjustment, shall be conclusive and binding on all persons.

18. POSSIBLE EARLY TERMINATION OF PLAN AND OPTIONS

Upon a dissolution or liquidation of the Corporation, or any other event described in Section 17 that the Corporation does not survive, or does not survive as a publicly-traded company in respect of its Shares, subject to any provision that has been expressly made by the Board for the survival, substitution, assumption, exchange or other settlement of the Options that are then outstanding under the Plan, each Offering Period then in progress shall be shortened and a new Exercise Date shall be established by the Board or the Committee (the “**New Exercise Date**”), as of which date the Plan and any Offering Period then in progress shall terminate and all then-outstanding Options under this Plan shall be automatically exercised in accordance with the terms hereof; provided, however, that the New Exercise Date shall not be more than ten (10) days before the date of the consummation of such dissolution, liquidation or other event. The Option Price on the New Exercise Date shall be determined as provided in Section 8(b), and the New Exercise Date shall be treated as the “Exercise Date” for purposes of determining such Option Price.

19. TERM OF PLAN; AMENDMENT OR TERMINATION

- (a) *Effective Date; Termination.* This Plan shall become effective as of the Effective Date. No new Offering Periods shall commence on or after the tenth (10th) anniversary of the Effective Date, and this Plan shall terminate as of the Exercise Date on or immediately following such date unless sooner terminated pursuant to Section 4, Section 18 or this Section 19.
- (b) *Board Amendment Authority.* The Board may, at any time, terminate or, from time to time, amend, modify or suspend this Plan, in whole or in part, without notice. Stockholder approval for any amendment or modification shall not be required, except to the extent required by law or applicable stock exchange rules, or required under Section 423 of the Code in order to preserve the intended tax consequences of this Plan. No Options may be granted during any suspension of this Plan or after the termination of this Plan, but the Committee will retain jurisdiction as to Options then outstanding in accordance with the terms of this Plan. No amendment, modification, or termination pursuant to this Section 19(b) shall, without written consent of the Participant, affect in any manner materially adverse to the Participant any rights or benefits of such Participant or obligations of the Corporation under any Option granted under this Plan prior to the effective date of such change. Changes contemplated by Section 17 or Section 18 shall not be deemed to constitute changes or amendments requiring Participant consent. Without limiting the generality of the Committee’s amendment authority, the Committee shall have the right to designate from time to time the Subsidiaries whose employees may be eligible to participate in this Plan (including, without limitation, any Subsidiary that may become such after the Effective Date), to change the service and other qualification requirements set forth under the definition of Eligible Employee in Section 2, and to change the definition of Compensation set forth in Section 2 (in each case, subject to the requirements of Section 423(b) of the Code and applicable rules and regulations thereunder). Any such change shall not take effect earlier than the first Offering Period that starts on or after the effective date of such change. Any such change shall not constitute an amendment to this Plan requiring stockholder approval.

20. NOTICES

All notices or other communications by a Participant to the Corporation contemplated by this Plan shall be deemed to have been duly given when received in the form and manner specified by the Committee (or its delegate) at the location, or by the person, designated by the Committee (or its delegate) for that purpose.

21. CONDITIONS UPON ISSUANCE OF SHARES

This Plan, the granting of Options under this Plan and the offer, issuance and delivery of shares of Common Stock are subject to compliance with all applicable federal and state laws, rules and regulations (including but not limited to state and federal securities laws) and to such approvals by any listing, regulatory or governmental authority as may, in the opinion of counsel for the Corporation, be necessary or advisable in connection therewith. The person acquiring any securities under this Plan will, if requested by the Corporation and as a condition precedent to the exercise of his or her Option, provide such assurances and representations to the Corporation as the Committee may deem necessary or desirable to assure compliance with all applicable legal and accounting requirements.

22. PLAN CONSTRUCTION

- (a) *Section 16.* It is the intent of the Corporation that transactions involving Options under this Plan (other than “Discretionary Transactions” as that term is defined in Rule 16b-3(b)(1) promulgated by the Commission under Section 16 of the Exchange Act, to the extent there are any Discretionary Transactions under this Plan), in the case of Participants who are or may be subject to the prohibitions of Section 16 of the Exchange Act, satisfy the requirements for exemption under Rule 16b-3(c) promulgated by the Commission under Section 16 of the Exchange Act to the maximum extent possible. Notwithstanding the foregoing, the Corporation shall have no liability to any Participant for Section 16 consequences of Options or other events with respect to this Plan.

- (b) *Section 423.* Except as the Committee may expressly provide in the case of one or more separate offerings or sub-plans adopted pursuant to Section 12(b), this Plan and Options are intended to qualify under Section 423 of the Code.
- (c) *Interpretation.* If any provision of this Plan or of any Option would otherwise frustrate or conflict with the intents expressed above, that provision to the extent possible shall be interpreted so as to avoid such conflict. If the conflict remains irreconcilable, the Committee may disregard the provision if it concludes that to do so furthers the interest of the Corporation and is consistent with the purposes of this Plan as to such persons in the circumstances.

23. EMPLOYEES' RIGHTS

- (a) *No Employment Rights.* Nothing in this Plan (or in any Subscription Agreement or other document related to this Plan) will confer upon any Eligible Employee or Participant any right to continue in the employ or other service of the Corporation or any Subsidiary, constitute any contract or agreement of employment or other service or effect an employee's status as an employee at will, nor shall interfere in any way with the right of the Corporation or any Subsidiary to change such person's compensation or other benefits or to terminate his or her employment or other service, with or without cause. Nothing contained in this Section 23(a), however, is intended to adversely affect any express independent right of any such person under a separate employment or service contract other than a Subscription Agreement.
- (b) *No Rights to Assets of the Corporation.* No Participant or other person will have any right, title or interest in any fund or in any specific asset (including shares of Common Stock) of the Corporation or any Subsidiary by reason of any Option hereunder. Neither the provisions of this Plan (or of any Subscription Agreement or other document related to this Plan), nor the creation or adoption of this Plan, nor any action taken pursuant to the provisions of this Plan will create, or be construed to create, a trust of any kind or a fiduciary relationship between the Corporation or any Subsidiary, on the one hand, and any Participant or other person, on the other hand. To the extent that a Participant or other person acquires a right to receive payment pursuant to this Plan, such right will be no greater than the right of any unsecured general creditor of the Corporation. No special or separate reserve, fund or deposit will be made to assure any such payment.
- (c) *No Stockholder Rights.* A Participant will not be entitled to any privilege of stock ownership as to any Shares not actually delivered to and held of record by the Participant. Except as expressly required by Section 17, no adjustment will be made for dividends or other rights as a stockholder for which a record date is prior to such date of delivery.

24. MISCELLANEOUS

- (a) *Governing Law; Severability.* This Plan, the Options, Subscription Agreements, and other documents related to this Plan shall be governed by, and construed in accordance with, the laws of the State of Delaware. If any provision shall be held by a court of competent jurisdiction to be invalid and unenforceable, the remaining provisions of this Plan shall continue in effect.
- (b) *Captions and Headings.* Captions and headings are given to the sections of this Plan solely as a convenience to facilitate reference. Such captions and headings shall not be deemed in any way material or relevant to the construction of interpretation of this Plan or any provision hereof.
- (c) *No Effect on Other Plans or Corporate Authority.* The adoption of this Plan shall not affect any other Corporation or Subsidiary compensation or incentive plans in effect. Nothing in this Plan will limit or be deemed to limit the authority of the Board or Committee (i) to establish any other forms of incentives or compensation for employees of the Corporation or any Subsidiary (with or without reference to the Common Stock), or (ii) to grant or assume options (outside the scope of and in addition to those contemplated by this Plan) in connection with any proper corporate purpose; to the extent consistent with any other plan or authority.
- (d) *No Effect on Other Compensation.* Benefits received by a Participant under an Option granted pursuant to this Plan shall not be deemed a part of the Participant's compensation for purposes of the determination of benefits under any other employee welfare or benefit plans or arrangements, if any, provided by the Corporation or any Subsidiary, except where the Committee or the Board (or the Board of Directors of the Subsidiary that sponsors such plan or arrangement, as applicable) expressly otherwise provides in writing.

25. STOCKHOLDER APPROVAL

Notwithstanding anything else contained herein to the contrary, the effectiveness of this Plan is subject to the approval of this Plan by the stockholders of the Corporation within twelve months after the Effective Date. No Shares shall be issued or delivered under this Plan until such stockholder approval is obtained and, if such stockholder approval is not obtained within such twelve-month period of time, all Contributions credited to a Participant's Account hereunder shall be refunded to such Participant (without interest) as soon as practicable after the end of such twelve-month period.

26. TAX WITHHOLDING

Notwithstanding anything else contained herein to the contrary, the Corporation may deduct from a Participant's Account balance as of an Exercise Date, before the exercise of the Participant's Option is given effect on such date, the amount of any taxes which the Corporation reasonably determines it or any Subsidiary may be required to withhold with respect to such exercise. In such event, the maximum number of whole shares of Common Stock subject to such Option (subject to the other limits set forth in this Plan) shall be purchased at the Option Price with the balance of the Participant's Account (after reduction for the tax withholding amount).

Should the Corporation for any reason be unable, or elect not to, satisfy its or any Subsidiary's tax withholding obligations in the manner described in the preceding paragraph with respect to a Participant's exercise of an Option, or should the Corporation or any Subsidiary reasonably determine that it or an affiliated entity has a tax withholding obligation with respect to a disposition of shares acquired pursuant to the exercise of an Option prior to satisfaction of the holding period requirements of Section 423 of the Code or at any other time in respect of a Participant's participation in this Plan, the Corporation or Subsidiary, as the case may be, shall have the right at its option to (i) require the Participant to pay or provide for payment of the amount of any taxes which the Corporation or Subsidiary reasonably determines that it or any affiliate is required to withhold with respect to such event or (ii) deduct from the Participant's Account or from any amount otherwise payable to or for the account of the Participant the amount of any taxes which the Corporation or Subsidiary reasonably determines that it or an affiliate is required to withhold with respect to such event.

27. NOTICE OF SALE

Any person who has acquired shares under this Plan shall give prompt written notice to the Corporation of any sale or other transfer of the shares if such sale or transfer occurs (1) within the two-year period after the Grant Date of the Offering Period with respect to which such shares were acquired, or (2) within the twelve-month period after the Exercise Date of the Offering Period with respect to which such shares were acquired.

ChEF PURCHASE AGREEMENT

This ChEF PURCHASE AGREEMENT is made and entered into as of October 7, 2022 (together with Annex I, this “*Agreement*”), by and between Chardan Capital Markets LLC, a New York limited liability company (the “*Investor*”), and Dragonfly Energy Holdings Corp., a Delaware corporation (the “*Company*”).

RECITALS

WHEREAS, the parties desire that, upon the terms and subject to the conditions and limitations of this Agreement, the Company may issue and sell to the Investor, from time to time as provided herein, and the Investor shall purchase from the Company, up to the lesser of (i) \$150,000,000 (the “*Total Commitment*”) in aggregate gross purchase price of newly issued shares of the Company’s common stock, par value \$0.0001 per share (the “*Common Stock*”), and (ii) the Exchange Cap (to the extent applicable under [Section 3.3](#));

WHEREAS, such sales of Common Stock by the Company to the Investor will be made in reliance upon the provisions of Section 4(a)(2) of the Securities Act (“*Section 4(a)(2)*”), Rule 506(b) of Regulation D promulgated by the Commission under the Securities Act (“*Regulation D*”), and/or upon such other exemption from the registration requirements of the Securities Act as may be available with respect to any or all of the issuances and sales of Common Stock by the Company to the Investor to be made hereunder;

WHEREAS, the parties hereto are concurrently entering into a Registration Rights Agreement in the form attached as [Exhibit A](#) hereto (together with its exhibits, the “*Registration Rights Agreement*”), pursuant to which the Company shall register the resale of the Registrable Securities (as defined in the Registration Rights Agreement), upon the terms and subject to the conditions set forth therein; and

WHEREAS, in consideration for the Investor’s execution and delivery of this Agreement, the Company agrees to pay to the Investor the Commitment Fee;

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound hereby, the Company and the Investor, hereby agree as follows:

ARTICLE I

DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings ascribed to such terms in [Annex I](#) hereto, which is hereby made a part hereof, or as otherwise set forth in this Agreement.

ARTICLE II

PURCHASE AND SALE OF COMMON STOCK

Section 2.1. Purchase and Sale of Stock. Upon the terms and subject to the conditions and limitations of this Agreement, during the Investment Period, the Company, in its sole discretion, shall have the right, but not the obligation, to issue and sell to the Investor, and, in such event, the Investor shall purchase from the Company, up to the lesser of (i) the Total Commitment in aggregate gross purchase price of duly authorized, validly issued, fully paid and non-assessable shares of Common Stock and (ii) the Exchange Cap, to the extent applicable under [Section 3.3](#) (such lesser number of shares of Common Stock, the “*Aggregate Limit*”), by the delivery to the Investor of VWAP Purchase Notices as provided in [Article III](#), provided that all of the conditions precedent in [Article VII](#) shall have been fulfilled at the applicable times set forth in Article VII. For the avoidance of doubt, the Investor shall have no obligation to purchase any Shares unless and until a VWAP Purchase Notice is received and accepted by the Investor in accordance with the terms, and subject to the conditions and limitations, of this Agreement.

Section 2.2. Closing Date; Settlement Dates. This Agreement shall become effective and binding (the “*Closing*”) upon (a) the delivery of counterpart signature pages of this Agreement and the Registration Rights Agreement executed by each of the parties hereto and thereto, and (b) the delivery of all other documents, instruments and writings required to be delivered pursuant to this Agreement, as provided in [Section 7.1](#), at or prior to 9:00 a.m. New York City time, on the Closing Date.

Section 2.3. Initial Public Announcements and Required Filings. The Company shall, after the Closing but not later than 5:00 p.m., New York City time, on the date of this Agreement, file with the Commission a Current Report on Form 8-K disclosing the execution of this Agreement and the Registration Rights Agreement by the Company and the Investor and describing the material terms thereof, and attaching as exhibits thereto copies of each of this Agreement and the Registration Rights Agreement and if applicable, any press release issued by the Company disclosing the execution of this Agreement and the Registration Rights Agreement (including all exhibits thereto, the “**Current Report**”). The Company shall provide the Investor and its legal counsel a reasonable opportunity to comment on a draft of the Current Report prior to filing the Current Report with the Commission and shall give due consideration to all such comments. From and after the filing of the Current Report with the Commission, the Company shall have publicly disclosed all material, nonpublic information delivered to the Investor (or the Investor’s representatives or agents) by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees, agents or representatives (if any) in connection with the transactions contemplated by the Transaction Documents. The Company shall use its commercially reasonable efforts to prepare and, within thirty (30) calendar days following the Business Combination Closing Date, file with the Commission the Initial Registration Statement covering only the resale by the Investor of the Registrable Securities in accordance with the Securities Act and the Registration Rights Agreement. At or before 8:30 a.m. (New York City time) on the second (2nd) Trading Day immediately following the Effective Date of the Initial Registration Statement and any New Registration Statement (or any post-effective amendment thereto), the Company shall use its commercially reasonable efforts to file with the Commission in accordance with Rule 424(b) under the Securities Act the final Prospectus to be used in connection with sales pursuant to such Registration Statement (or post-effective amendment thereto).

ARTICLE III

PURCHASE TERMS

Subject to the satisfaction of the conditions set forth in Article VII, the parties agree as follows:

Section 3.1. VWAP Purchases. Upon the initial satisfaction of all of the conditions set forth in Section 7.2 (the “**Commencement**” and the date of initial satisfaction of all of such conditions, the “**Commencement Date**”) and from time to time thereafter, subject to the satisfaction of all of the conditions set forth in Section 7.3, the Company shall have the right, but not the obligation, to direct the Investor, by its timely delivery to the Investor of a VWAP Purchase Notice, in substantially the form attached hereto as Exhibit D, after 6:00 a.m., New York City time, but prior to 9:00 a.m., New York City time, on a VWAP Purchase Date, to purchase the applicable VWAP Purchase Share Amount, at the applicable VWAP Purchase Price therefor on such VWAP Purchase Date in accordance with this Agreement (each such purchase, a “**VWAP Purchase**”). In addition, the Investor may, in its sole discretion, accept a VWAP Purchase Notice that is delivered after 9:00 a.m., New York City time, on a VWAP Purchase Date, provided that, such acceptance, once provided, shall be irrevocable and binding and the Company’s obligation to deliver the shares that are the subject of such VWAP Purchase Notice shall be binding; provided further that if the Investor does not accept a VWAP Purchase Notice that is delivered after 9:00 a.m., New York City time such VWAP Purchase Notice shall be null and void. During a Trading Day, the Company may submit an additional VWAP Purchase Notice to increase the VWAP Purchase Share Amount for such Trading Day; if Investor accepts (which it may or may not do so in its sole discretion) such additional VWAP Purchase Notice, it will supersede and replace in its entirety any prior VWAP Purchase Notice applicable to such Trading Day (including, for the avoidance of doubt, any share delivery obligation that would otherwise have arisen with respect to such prior VWAP Purchase Notice). The Company may timely deliver a VWAP Purchase Notice to the Investor as often as every Trading Day (and may deliver additional VWAP Purchase Notices in any given day, as specified in the previous sentence), so long as all Shares subject to all prior VWAP Purchases theretofore required to have been received by the Investor on a timely basis (as set forth in Section 3.2 of this Agreement) as DWAC Shares in accordance with this Agreement. Upon receipt of a VWAP Purchase Notice prepared and delivered by the Company prior to 9:00 a.m., New York City time, the Investor must notify the Company of its receipt of such VWAP Purchase Notice (email being sufficient) (“the **Acknowledgement Receipt**”) by 9:30 a.m., New York City time, on the applicable VWAP Purchase Date. In the event the Company does not receive an Acknowledgement Receipt by 9:30 a.m., New York City time, on the applicable VWAP Purchase Date for such VWAP Purchase, the Company must reforward the previously delivered VWAP Purchase Notice to the Investor (email being sufficient) by 10:00 a.m., New York City time. The Investor must also deliver to the Company an Acknowledgement Receipt to indicate its acceptance of any VWAP Purchase Notice delivered by the Company after 9:00 a.m., New York City time. If the VWAP Purchase Share Amount exceeds the VWAP Purchase Commitment Amount applicable to a Trading Day, the Investor may, in its sole discretion, purchase any amount of Shares that is not less than the VWAP Purchase Commitment Amount and not more than the VWAP Purchase Share Amount for such Trading Day. For the avoidance the doubt, the Investor shall not be required to purchase any amount of Shares that is more than the VWAP Purchase Commitment Amount for such Trading Day, and the Investor’s commitment to purchase the number of Shares equal to the VWAP Purchase Commitment Amount is subject to the other conditions and limitations provided in this Agreement; provided that the Investor may waive the limitation set forth in Section 3.4 of this Agreement if it deems appropriate and purchase any amount of Shares that is more than the VWAP Purchase Commitment Amount. At or prior to 5:30 p.m., New York City time, on the VWAP Purchase Date for each VWAP Purchase, the Investor shall provide to the Company a written confirmation for such VWAP Purchase setting forth the applicable VWAP Purchase Price for such Trading Day, the total number of Shares being purchased by the Investor in such VWAP Purchase, the total aggregate VWAP Purchase Price to be paid by the Investor for such VWAP Purchase, the VWAP Purchase Commencement Time, and, if the Investor is purchasing a number of Shares less than the VWAP Purchase Share Amount, the Investor’s calculation of the VWAP Purchase Commitment Amount.

Section 3.2. Payment and Settlement. The Shares purchased by the Investor in an applicable VWAP Purchase shall be delivered to the Investor as DWAC Shares not later than 1:00 p.m., New York City time, on the Trading Day immediately following the applicable VWAP Purchase Date for such VWAP Purchase (the “**VWAP Purchase Share Delivery Date**”). The Company acknowledges and agrees that it may not deliver any additional VWAP Purchase Notice to the Investor until all such Shares subject to any previous VWAP Purchases – other than those to be delivered pursuant to a VWAP Purchase Notice delivered on the immediately preceding Trading Day -- have been received by the Investor as DWAC Shares in accordance with this Agreement. For each VWAP Purchase, the Investor shall pay to the Company an amount in cash equal to the product of (a) the total number of Shares purchased by the Investor in such VWAP Purchase and (b) the applicable VWAP Purchase Price for such Shares (the “**VWAP Purchase Amount**”), as full payment for such Shares purchased by the Investor in such VWAP Purchase, via wire transfer of immediately available funds, not later than 5:00 p.m., New York City time, on the Trading Day immediately following the applicable VWAP Purchase Share Delivery Date for such VWAP Purchase, provided the Investor shall have timely received, as DWAC Shares, all of such Shares purchased by the Investor in such VWAP Purchase on such VWAP Purchase Share Delivery Date in accordance with the first sentence of this [Section 3.2](#), or, if any of such Shares are received by the Investor after 1:00 p.m., New York City time, then the Company’s receipt of such funds in its designated account may occur on the Trading Day next following the Trading Day on which the Investor shall have received all of such Shares as DWAC Shares, but not later than 5:00 p.m., New York City time, on such next Trading Day. If the Company or the Transfer Agent shall fail for any reason to deliver to the Investor, as DWAC Shares, any Shares purchased by the Investor in a VWAP Purchase prior to 10:30 a.m., New York City time, on the Trading Day immediately following the applicable VWAP Purchase Share Delivery Date for such VWAP Purchase, and if on or after such Trading Day the Investor purchases (in an open market transaction or otherwise) shares of Common Stock (the “**Cover Shares**”) to deliver in satisfaction of any sales by the Investor of such Shares that the Investor anticipated receiving from the Company on such VWAP Purchase Share Delivery Date in respect of such VWAP Purchase, then the Company shall, within one (1) Trading Day after the Investor’s request, either (i) pay cash to the Investor in an amount equal to the Investor’s total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the “**Cover Price**”), at which point the Company’s obligation to deliver such Shares as DWAC Shares shall terminate, or (ii) promptly honor its obligation to deliver to the Investor such Shares as DWAC Shares and pay cash to the Investor in an amount equal to the excess (if any) of the Cover Price over the total purchase price paid by the Investor pursuant to this Agreement for all of the Shares purchased by the Investor in such VWAP Purchase; provided that, to the extent the Investor borrows any shares of Common Stock through any securities lending or similar arrangement instead of purchasing such shares as Cover Shares, the Company shall promptly honor its obligation to deliver to the Investor such Shares as DWAC Shares and pay cash to the Investor in an amount equal to any securities lending or related fees related to the borrowings of such Cover Shares. The Company shall not issue any fraction of a share of Common Stock to the Investor in connection with any VWAP Purchase effected pursuant to this Agreement. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up or down to the nearest whole share. All payments to be made by the Investor pursuant to this Agreement shall be made by wire transfer of immediately available funds to such account as the Company may from time to time designate by written notice to the Investor in accordance with the provisions of this Agreement.

Section 3.3. Compliance with Rules of Principal Market.

(a) **Exchange Cap.** The Company shall not issue or sell any shares of Common Stock pursuant to this Agreement, and the Investor shall not purchase or acquire any shares of Common Stock pursuant to this Agreement, to the extent that after giving effect thereto, the aggregate number of Registrable Shares that would be issued pursuant to this Agreement and the transactions contemplated by the Transaction Documents would exceed 8,973,528 shares of Common Stock (representing 19.99% of the voting power or number of shares of Common Stock issued and outstanding immediately prior to the execution of this Agreement), which number of shares shall be reduced, on a share-for-share basis, by the number of shares of Common Stock issued or issuable pursuant to any transaction or series of transactions that may be aggregated with the transactions contemplated by the Transaction Documents under applicable rules of the Principal Market (such maximum number of shares, the “**Exchange Cap**”), unless the Company’s stockholders have approved the issuance of Common Stock pursuant to this Agreement in excess of the Exchange Cap in accordance with the applicable rules of the Principal Market or such approval is not required in accordance with the applicable rules of the Principal Market or otherwise. For the avoidance of doubt, the Company may, but shall be under no obligation to, request its stockholders to approve the issuance of Common Stock pursuant to this Agreement; provided, that if such stockholder approval is not obtained, the Exchange Cap shall be applicable for all purposes of this Agreement and the transactions contemplated by the Transaction Documents at all times during the term of this Agreement (except as set forth in **Section 3.3(b)**). The Investor shall not have the right or obligation to purchase or acquire any shares of Common Stock pursuant to this Agreement, to the extent that after giving effect thereto, the aggregate number of shares of Common Stock held by the Investor immediately following such purchase will cause the Investor to have beneficial ownership of more than the number of shares of Common Stock representing 19.99% of the voting power or number of shares of Common Stock issued and outstanding immediately prior to such purchase, unless the Company’s stockholders have approved such purchase of Common Stock in accordance with the applicable rules of the Principal Market or such approval is not required in accordance with the applicable rules of the Principal Market or otherwise.

(b) **At Market Transaction.** Notwithstanding **Section 3.3(a)** above, the Exchange Cap shall not be applicable for any purposes of this Agreement and the transactions contemplated by the Transaction Documents, solely to the extent that (and only for so long as) the Average Price shall equal or exceed the Base Price (it being hereby acknowledged and agreed that the Exchange Cap shall be applicable for all purposes of this Agreement and the transactions contemplated by the Transaction Documents at all other times during the term of this Agreement, unless the stockholder approval referred to in **Section 3.3(a)** is obtained or not required (it being understood that such stockholder approval was received on October 6, 2022). The parties acknowledge and agree that the Minimum Price used to determine the Base Price hereunder represents the lower of (i) the Nasdaq official closing price of the Common Stock on the Trading Market (as reflected on Nasdaq.com) on the date of this Agreement and (ii) the average Nasdaq official closing price of the Common Stock on the Trading Market (as reflected on Nasdaq.com) for the five (5) consecutive Trading Days ending on the date of this Agreement.

(c) **General.** The Company shall not issue or sell any shares of Common Stock pursuant to this Agreement if such issuance or sale would or could reasonably be expected to result in (A) a violation of the Securities Act or (B) a breach of the rules of the Principal Market. The provisions of this **Section 3.3** shall not be construed and implemented in a manner otherwise than in strict conformity with the terms of this **Section 3.3** unless necessary to properly give effect to the limitations contained in this **Section 3.3**.

Section 3.4. Beneficial Ownership Limitation. Notwithstanding anything to the contrary contained in this Agreement, the Company shall not issue or sell, and the Investor shall not be obligated to purchase or acquire, and shall not purchase or acquire, any shares of Common Stock under this Agreement which, when aggregated with all other shares of Common Stock then beneficially owned by the Investor and its affiliates (as calculated pursuant to Section 13(d) of the Exchange Act and Rule 13d-3 promulgated thereunder), would result in the beneficial ownership by the Investor and its affiliates (on an aggregated basis) of more than 9.9% of the outstanding voting power or shares of Common Stock (the “**Beneficial Ownership Limitation**”). Upon the written or oral request of the Investor, the Company shall promptly (but not later than the next business day on which the Transfer Agent is open for business) confirm orally or in writing to the Investor the number of shares of Common Stock then outstanding. The Investor and the Company shall each cooperate in good faith in the determinations required under this **Section 3.4** and the application of this **Section 3.4**. The Investor’s written certification to the Company of the applicability of the Beneficial Ownership Limitation, and the resulting effect thereof hereunder at any time, shall be conclusive with respect to the applicability thereof and such result absent manifest error. The provisions of this **Section 3.4** shall not be construed and implemented in a manner otherwise than in strict conformity with the terms of this **Section 3.4** unless necessary to properly give effect to the limitations contained in this **Section 3.4**. The Investor shall reasonably promptly provide notice to the Company indicating the amount of shares of Common Stock the Investor beneficially owns for purposes of this **Section 3.4** following (i) the first Trading Day after the Closing Date, (ii) each time the beneficial ownership of the Investor and its affiliates (on an aggregated basis) increases by more than 1.00% of the outstanding shares of Common Stock and (iii) the Company’s request.

Section 3.5. Post-Effective Amendment Period. Notwithstanding anything to the contrary contained in this Agreement, the Company shall not deliver any VWAP Purchase Notices to the Investor during the Post-Effective Amendment Period and shall comply with the notification provisions regarding amendments to the Registration Statement under the Registration Rights Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE INVESTOR

The Investor hereby makes the following representations, warranties and covenants to the Company:

Section 4.1. Organization and Standing of the Investor. The Investor is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware.

Section 4.2. Authorization and Power. The Investor has the requisite limited liability company power and authority to enter into this Agreement and the Registration Rights Agreement and to purchase or acquire the Shares in accordance with the terms hereof. The execution and delivery by the Investor of this Agreement and the Registration Rights Agreement and the consummation by the Investor of the purchase or acquisition of Shares contemplated hereby have been duly authorized by all necessary action on the part of the Investor, and no further consent or authorization of the Investor or its sole member is required. Each of this Agreement and the Registration Rights Agreement has been duly executed and delivered by the Investor and constitutes a valid and binding obligation of the Investor enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, conservatorship, receivership, or similar laws relating to, or affecting generally the enforcement of, creditor's rights and remedies or by other equitable principles of general application (including any limitation of equitable remedies).

Section 4.3. No Conflicts. The execution, delivery and performance by the Investor of this Agreement and the Registration Rights Agreement and the consummation by the Investor of the purchase or acquisition of Shares contemplated hereby do not and shall not (i) result in a violation of such Investor's certificate of formation, limited liability company agreement or other applicable organizational instruments, (ii) conflict with, constitute a default (or an event which, with notice or lapse of time or both, would become a default) under, or give rise to any rights of termination, amendment, acceleration or cancellation of, any material agreement, mortgage, deed of trust, indenture, note, bond, license, lease agreement, instrument or obligation to which the Investor is a party or is bound, or (iii) result in a violation of any federal, state, local or foreign statute, rule, or regulation, or any order, judgment or decree of any court or governmental agency applicable to the Investor or by which any of its properties or assets are bound or affected, except, in the case of clauses (ii) and (iii), for such conflicts, defaults, terminations, amendments, acceleration, cancellations and violations as would not, individually or in the aggregate, prohibit or otherwise interfere with, in any material respect, the ability of the Investor to enter into this Agreement and the Registration Rights Agreement and to purchase or acquire the Shares in accordance with the terms hereof. The Investor is not required under any applicable federal, state or local law, rule or regulation to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency in order for it to execute, deliver or perform this Agreement and the Registration Rights Agreement or to purchase or acquire the Shares in accordance with the terms hereof, other than as may be required by FINRA; provided, however, that for purposes of the representation made in this sentence, the Investor is assuming and relying upon the accuracy of the representations and warranties of the Company and the compliance by the Company with the conditions, covenants and agreements of the Company in the Transaction Documents.

Section 4.4. Accredited Investor Status. The Investor is an “accredited investor” as that term is defined in Rule 501(a) of Regulation D.

Section 4.5. Reliance on Exemptions. The Investor understands that the Shares are being offered and sold to it in reliance on specific exemptions from the registration requirements of U.S. federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Investor’s compliance with, the representations and warranties of the Investor set forth herein in order to determine the availability of such exemptions and the eligibility of the Investor to acquire the Shares.

Section 4.6. Information. All materials relating to the business, financial condition, management and operations of the Company and materials relating to the offer and sale of the Shares which have been requested by the Investor have been furnished or otherwise made available to the Investor or its advisors, including, without limitation, the Commission Documents. The Investor understands that its investment in the Shares involves a high degree of risk. The Investor is able to bear the economic risk of an investment in the Shares and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of a proposed investment in the Shares. The Investor and its advisors have been afforded the opportunity to ask questions of and receive answers from representatives of the Company concerning the financial condition and business of the Company and other matters relating to an investment in the Shares. Neither such inquiries nor any other due diligence investigations conducted by the Investor or its advisors, if any, or its representatives shall modify, amend or affect the Investor’s right to rely on the Company’s representations and warranties contained in this Agreement or in any other Transaction Document or the Investor’s right to rely on any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transaction contemplated hereby (including, without limitation, the opinions of the Company’s counsel delivered pursuant to this Agreement and the Registration Rights Agreement). The Investor has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Shares. The Investor understands that it (and not the Company) shall be responsible for its own tax liabilities that may arise as a result of this investment or the purchase or acquisition of Shares contemplated by this Agreement.

Section 4.7. No Governmental Review. The Investor understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Shares or the fairness or suitability of the investment in the Shares nor have such authorities passed upon or endorsed the merits of the offering of the Shares.

Section 4.8. No General Solicitation. The Investor is not purchasing or acquiring the Shares as a result of any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Shares.

Section 4.9. No Prior Short Sales. At no time prior to the date of this Agreement has the Investor, engaged in or effected, in any manner whatsoever, directly or indirectly, for its own principal account, any (i) “short sale” (as such term is defined in Rule 200 of Regulation SHO of the Exchange Act) of the Common Stock or (ii) hedging transaction, which establishes a net short position with respect to the Common Stock that remains in effect as of the date of this Agreement.

Section 4.10. Statutory Underwriter Status. The Investor acknowledges that it will be disclosed as an “underwriter” and a “selling shareholder” in each Registration Statement and in any Prospectus contained therein to the extent required by applicable law and to the extent the Prospectus is related to the resale of Registrable Securities.

Section 4.11. Resales of Shares. The Investor represents, warrants and covenants that it will resell such Shares only pursuant to the Registration Statement in which the resale of such Shares is registered under the Securities Act, in a manner described under the caption “Plan of Distribution” in such Registration Statement, or in a manner in compliance with all applicable U.S. federal and state securities laws, rules and regulations.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby makes the following representations, warranties and covenants to the Investor:

Section 5.1. Organization, Good Standing and Power. The Company and each of its Subsidiaries are duly organized, validly existing and in good standing (to the extent such concept is available) under the laws of their respective jurisdictions of organization. The Company and each of its Subsidiaries are duly licensed or qualified as a foreign corporation for transaction of business and in good standing under the laws of each other jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such license or qualification, and have all corporate power and authority necessary to own or hold their respective properties and to conduct their respective businesses as described in the Commission Documents, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, have a material adverse effect or would reasonably be expected to have a material adverse effect on or affecting the assets, business, operations, earnings, properties, condition (financial or otherwise), prospects, stockholders' equity or results of operations of the Company and the Subsidiaries taken as a whole, or prevent or materially interfere with consummation of the transactions contemplated by the Transaction Documents (a "***Material Adverse Effect***").

Section 5.2. Subsidiaries. Each Subsidiary has been duly formed or organized, is validly existing under the applicable laws of its jurisdiction of incorporation or organization and has the organizational power and authority to own, lease and operate its assets and properties and to conduct its business as it is now being conducted. Each of the Company's Subsidiaries is duly licensed or qualified and in good standing (or equivalent status as applicable) as a foreign corporation (or other entity, if applicable) in each jurisdiction in which the assets owned or leased by it or the character of its activities require it to be licensed or qualified or in good standing (or equivalent status as applicable), except where the failure to be so licensed or qualified, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect. Except as set forth in the Disclosure Documents, the Company owns, directly or indirectly, all of the equity interests of the Subsidiaries free and clear of any lien, charge, security interest, encumbrance, right of first refusal or other restriction, and all the equity interests of the Subsidiaries are validly issued and are fully paid, nonassessable and free of preemptive and similar rights.

Section 5.3. Authorization, Enforcement. The Company has the requisite corporate power and authority to enter into and perform its obligations under each of the Transaction Documents and to issue the Shares in accordance with the terms hereof and thereof. The execution, delivery and performance by the Company of each of the Transaction Documents and the consummation by it of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action, and no further consent or authorization of the Company, its Board of Directors or its stockholders is required. Each of the Transaction Documents has been duly executed and delivered by the Company and constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, conservatorship, receivership or similar laws relating to, or affecting generally the enforcement of, creditor's rights and remedies or by other equitable principles of general application (including any limitation of equitable remedies).

Section 5.4. Capitalization. The authorized capital stock of the Company and the shares thereof issued and outstanding were as set forth in the Disclosure Documents as of the dates reflected therein. All of the outstanding shares of Common Stock have been duly authorized and validly issued and are fully paid and non-assessable. Except as set forth in the Disclosure Documents, this Agreement and the Registration Rights Agreement, there are no agreements or arrangements under which the Company is obligated to register the sale of any securities under the Securities Act. Except as set forth in the Disclosure Documents, no shares of Common Stock are entitled to preemptive rights and there are no outstanding debt securities and no contracts, commitments, understandings, or arrangements by which the Company is or may become bound to issue additional shares of the capital stock of the Company or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exchangeable for, any shares of capital stock of the Company other than those issued or granted in the ordinary course of business pursuant to the Company's equity incentive and/or compensatory plans or arrangements. Except for customary transfer restrictions contained in agreements entered into by the Company to sell restricted securities or as set forth in the Disclosure Documents, the Company is not a party to, and it has no Knowledge of, any agreement restricting the voting or transfer of any shares of the capital stock of the Company. Except as set forth in the Disclosure Documents, there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by this Agreement or any of the other Transaction Documents or the consummation of the transactions described herein or therein. The Company has filed with the Commission true and correct copies of the Company's Amended and Restated Certification of Incorporation as in effect on the Closing Date (the "***Charter***"), and the Company's Bylaws as in effect on the Closing Date (the "***Bylaws***").

Section 5.5. Issuance of Shares. The Shares to be issued under this Agreement have been, duly and validly authorized by all necessary corporate action on the part of the Company. The Shares, if and when issued and sold to the Investor against payment therefor in accordance with this Agreement, shall be, validly issued and outstanding, fully paid and non-assessable and free from all liens, charges, taxes, security interests, encumbrances, rights of first refusal, preemptive or similar rights and other encumbrances with respect to the issue thereof, and the Investor shall be entitled to all rights accorded to a holder of Common Stock. At or prior to Commencement, the Company shall have duly authorized and reserved a number of shares of Common Stock equal to the Exchange Cap for issuance and sale as Shares to the Investor.

Section 5.6. No Conflicts. The execution, delivery and performance by the Company of each of the Transaction Documents and the consummation by the Company of the transactions contemplated hereby and thereby do not and shall not (i) result in a violation of any provision of the Charter or Bylaws, (ii) conflict with or constitute a default (or an event which, with notice or lapse of time or both, would become a default) under, or give rise to any rights of termination, amendment, acceleration or cancellation of, any material agreement, mortgage, deed of trust, indenture, note, bond, license, lease agreement, instrument or obligation to which the Company or any of its Subsidiaries is a party or is bound, (iii) create or impose a lien, charge or encumbrance on any property or assets of the Company or any of its Subsidiaries under any agreement or any commitment to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of their respective properties or assets is subject, (iv) result in a violation of any federal, state, local or foreign statute, rule, regulation, order, judgment or decree applicable to the Company or any of its Subsidiaries, or by which any property or asset of the Company or any of its Subsidiaries are bound or affected (including federal and state securities laws and regulations and the rules and regulations of the Principal Market or applicable Principal Market), except, in the case of clauses (ii) and (iii), for such conflicts, defaults, terminations, amendments, acceleration, cancellations, liens, charges, encumbrances and violations as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Except as specifically contemplated by this Agreement or the Registration Rights Agreement and as required under the Securities Act, any applicable state securities laws and applicable rules of the Principal Market, the Company is not required under any federal, state or local rule or regulation to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency (including, without limitation, the Principal Market) in order for it to execute, deliver or perform any of its obligations under the Transaction Documents, or to issue the Registrable Shares to the Investor in accordance with the terms hereof and thereof (other than such consents, authorizations, orders, filings or registrations as have been obtained or made prior to the Closing Date); provided, however, that, for purposes of the representation made in this sentence, the Company is assuming and relying upon the accuracy of the representations and warranties of the Investor in this Agreement and the compliance by it with its covenants and agreements contained in this Agreement and the Registration Rights Agreement.

Section 5.7. Disclosure Documents, Financial Statements, Internal Controls Over Financial Reporting, Accountants.

(a) Since June 17, 2022, the Company has timely filed (giving effect to permissible extensions in accordance with Rule 12b-25 under the Exchange Act) all filings required to be filed with or furnished to the Commission by the Company under the Securities Act or the Exchange Act, including those required to be filed with or furnished to the Commission under Section 13(a) or Section 15(d) of the Exchange Act. As of the date of this Agreement, no Subsidiary of the Company is required to file or furnish any report, schedule, registration, form, statement, information or other document with the Commission. As of its filing date, each Commission Document filed with or furnished to the Commission prior to the Closing Date complied in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and other federal, state and local laws, rules and regulations applicable to it, and, as of its filing date (or, if amended or superseded by a filing prior to the Closing Date, on the date of such amended or superseded filing).

(b) Each Registration Statement, on the date it is filed with the Commission, on the date it is declared effective by the Commission and on each VWAP Purchase Date shall comply in all material respects with the requirements of the Securities Act (including, without limitation, Rule 415 under the Securities Act) and shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading, except that this representation and warranty shall not apply to statements in or omissions from such Registration Statement made in reliance upon and in conformity with information relating to the Investor furnished to the Company in writing by or on behalf of the Investor expressly for use therein. The Prospectus and each Prospectus Supplement, when taken together, on its date and on each VWAP Purchase Date shall comply in all material respects with the requirements of the Securities Act (including, without limitation, Rule 424(b) under the Securities Act) and shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that this representation and warranty shall not apply to statements in or omissions from the Prospectus or any Prospectus Supplement made in reliance upon and in conformity with information relating to the Investor furnished to the Company in writing by or on behalf of the Investor expressly for use therein. The statistical, demographic and market-related data included in the Registration Statement and Prospectus are based on or derived from sources that are reliable and accurate.

(c) Each Commission Document (other than the Initial Registration Statement or any New Registration Statement, or the Prospectus included therein or any Prospectus Supplement thereto) to be filed with or furnished to the Commission on or after the Closing Date and incorporated by reference in the Initial Registration Statement or any New Registration Statement, or the Prospectus included therein or any Prospectus Supplement thereto required to be filed pursuant to this Agreement or the Registration Rights Agreement (including, without limitation, the Current Report), when such document is filed with or furnished to the Commission and, if applicable, when such document becomes effective, as the case may be, shall comply in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and other federal, state and local laws, rules and regulations applicable to it.

(d) The Company has delivered or made available to the Investor via EDGAR or otherwise true and complete copies of all comment letters and substantive correspondence received by the Company from the Commission relating to the Commission Documents filed with or furnished to the Commission as of the Closing Date, together with all written responses of the Company thereto in the form such responses were filed via EDGAR. There are no outstanding or unresolved comments or undertakings in such comment letters received by the Company from the Commission. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the Securities Act or the Exchange Act.

(e) The consolidated financial statements of the Company included or incorporated by reference in the Commission Documents, together with the related notes and schedules, present fairly, in all material respects, the consolidated financial position of the Company and its then consolidated subsidiaries as of the dates indicated, and the consolidated results of operations, cash flows and changes in stockholders' equity of the Company and its then consolidated subsidiaries for the periods specified and have been prepared in compliance with the published requirements of the Securities Act and the Exchange Act, as applicable, and in conformity with generally accepted accounting principles in the United States ("**GAAP**") applied on a consistent basis. The summary consolidated financial data included or incorporated by reference in the Commission Documents present fairly the information shown therein and have been compiled on a basis consistent with that of the financial statements included or incorporated by reference in the Commission Documents, as of and at the dates indicated. Any pro forma condensed combined financial statements and the pro forma combined financial statements and any other pro forma financial statements or data with respect to any entity to be acquired by the Company (each, an "**Acquired Entity**") included or incorporated by reference in the Commission Documents comply with the requirements of Regulation S-X of the Securities Act, including, without limitation, Article 11 thereof, and the assumptions used in the preparation of such pro forma financial statements and data are reasonable, the pro forma adjustments used therein are appropriate to give effect to the circumstances referred to therein and the pro forma adjustments have been properly applied to the historical amounts in the compilation of those statements and data. To the Knowledge of the Company, the historical financial statements of any Acquired Entity, together with the related notes thereto, included in the Registration Statement and the Prospectus after the date hereof, will fairly present the financial position of such Acquired Entity at the respective dates indicated and the results of operations of such Acquired Entity for the respective periods indicated, in each case in accordance with GAAP consistently applied throughout such periods.

(f) The other financial and statistical data with respect to the Company and the Subsidiaries contained or incorporated by reference in the Commission Documents, if any, are accurately and fairly presented and prepared on a basis consistent with the financial statements and books and records of the Company. There are no financial statements (historical or pro forma) that are required to be included or incorporated by reference in the Disclosure Documents that are not included or incorporated by reference as required. The Company and the Subsidiaries do not have any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations or any “variable interest entities” as that term is used in Accounting Standards Codification Paragraph 810-10-25-20), not described in Commission Documents which are required to be described in the Commission Documents. All disclosures contained or incorporated by reference in the Disclosure Documents, if any, regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission) comply in all material respects with Regulation G of the Exchange Act and Item 10 of Regulation S-K under the Securities Act, to the extent applicable. The interactive data in eXtensible Business Reporting Language included in the Commission Documents fairly presents the information called for in all material respects and has been prepared in accordance with the Commission’s rules and guidelines applicable thereto. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the Commission Documents has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(g) BDO USA, LLP (“**BDO**”) whose report on the consolidated financial statements of the Company as of and for the years ended December 31, 2021 and 2020 is included in the Company Form S-4 Registration Statement (as defined below), and any other accounting firm who have certified financial statements of the Company, its then consolidated subsidiaries, any other entity or Acquired Entity, in each case, that are included or incorporated by reference in the Registration Statement and the Prospectus, are and, during the periods covered by their report, were an independent public accounting firm within the meaning of the Securities Act and the Public Company Accounting Oversight Board (United States). To the Company’s Knowledge, BDO or such other accounting firm referenced in this Subsection (g) is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002 (the “**Sarbanes-Oxley Act**”) with respect to the Company.

(h) WithumSmith+Brown, PC (“**Withum**”), whose report on the consolidated financial statements of Chardan NexTech Acquisition 2 Corp. as of December 31, 2021, and for the period from June 23, 2020 (inception) through December 31, 2021, are included in the Company Form S-4 Registration Statement, are and, during the periods covered by their report, were an independent public accounting firm within the meaning of the Securities Act and the Public Company Accounting Oversight Board (United States). To the Company’s Knowledge, Withum is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act with respect to the Company.

(i) There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply in all material respects with any applicable provisions of the Sarbanes-Oxley Act and the rules and regulations promulgated thereunder. Each of the principal executive officer and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company as applicable) has made all certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act with respect to all reports, schedules, forms, statements and other documents required to be filed by it or furnished by it to the Commission. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in the Sarbanes-Oxley Act. The Company and the Subsidiaries maintain and keep accurate books and records reflecting their assets and maintain internal accounting controls in a manner designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and including those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) provide reasonable assurance that transactions are recorded as necessary to permit the preparation of the Company's consolidated financial statements in accordance with generally accepted accounting principles, (iii) that receipts and expenditures of the Company are being made only in accordance with management's and the Company's directors' authorization, and (iv) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on its financial statements. The Company and the Subsidiaries maintain such controls and other procedures, including, without limitation, those required by Sections 302 and 906 of the Sarbanes-Oxley Act, and the applicable regulations thereunder that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure and to ensure that material information relating to the Company or the Subsidiaries is made known to them by others within those entities, particularly during the period in which such periodic reports are being prepared.

Section 5.8. No Material Adverse Effect; Absence of Certain Changes. Since the date of the latest audited financial statements included in the Registration Statement or the Prospectus, there has not been (i) any Material Adverse Effect or the occurrence of any development that could reasonably be expected to result in a Material Adverse Effect, (ii) any transaction which is material to the Company and the Subsidiaries taken as a whole, (iii) any obligation or liability, direct or contingent (including any off-balance sheet obligations), incurred by the Company or any Subsidiary, which is material to the Company and the Subsidiaries taken as a whole, (iv) any material change in the capital stock (other than (A) the grant of additional awards under the Company's existing equity incentive plans, (B) changes in the number of outstanding Common Stock of the Company due to the issuance of shares upon the exercise or conversion of securities exercisable for, or convertible into, Common Stock outstanding on the date hereof, (C) as described in a proxy statement filed on Schedule 14A or a Registration Statement on Form S-4, or (D) otherwise publicly announced on a Form 8-K or Company press release) or outstanding long-term indebtedness of the Company or any of its Subsidiaries or (v) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company or any Subsidiary, other than in each case above in the ordinary course of business or as otherwise disclosed in the Disclosure Documents (including any document deemed incorporated by reference therein).

Section 5.9. No Material Defaults. Neither the Company nor any of its Subsidiaries has defaulted on any installment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. The Company has not filed a report pursuant to Section 13(a) or 15(d) of the Exchange Act indicating that it (i) has failed to pay any dividend or sinking fund installment on preferred stock or (ii) has defaulted on any installment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries is (i) in violation of its Charter or Bylaws or other organizational documents; or (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of the property or assets of the Company or any of its Subsidiaries are subject, except, in the case of clause (ii) above, for any such violation or default that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.10. No Preferential Rights. Except as set forth in the Disclosure Documents or provided hereunder, (i) no Person, has the right, contractual or otherwise, to cause the Company to issue or sell to such Person any Common Stock or shares of any other capital stock or other securities of the Company, (ii) no Person has any preemptive rights, resale rights, rights of first refusal, rights of co-sale, or any other rights (whether pursuant to a “poison pill” provision or otherwise) to purchase any Common Stock or shares of any other capital stock or other securities of the Company, (iii) no Person has the right to act as an underwriter, agent or financial advisor to the Company in connection with the offer and sale of the Common Stock or to receive a fee with respect thereto, and (iv) no Person has the right, contractual or otherwise, to require the Company to register under the Securities Act any Common Stock or shares of any other capital stock or other securities of the Company, or to include any such shares or other securities in the Registration Statement or the offering contemplated thereby, whether as a result of the filing or effectiveness of the Registration Statement or the sale of the Registrable Shares as contemplated thereby or otherwise.

Section 5.11. Material Contracts. Neither the Company nor any of its Subsidiaries is in material breach of or default in any respect under the terms of any Material Contract and, to the Knowledge of the Company, as of the date hereof, no other party to any Material Contract is in material breach of or default under the terms of any Material Contract. Each agreement between the Company and a third party is in full force and effect and is a valid and binding obligation of the Company or the Subsidiary of the Company that is party thereto and, to the Knowledge of the Company, is a valid and binding obligation of each other party thereto. The Company has not received any written notice of the intention of any other party to a Material Contract to terminate for default, convenience or otherwise, or not renew, any Material Contract.

Section 5.12. Solvency. The Company has not taken any steps, and does not currently expect to take any steps, to seek protection pursuant to Title 11 of the United States Code or any similar federal or state bankruptcy law or law for the relief of debtors, nor does the Company have any Knowledge that its creditors intend to initiate involuntary bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for relief under Title 11 of the United States Code or any other federal or state bankruptcy law or any law for the relief of debtors. The Company is financially solvent and is generally able to pay its debts as they become due. All of the Company’s outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments through such date were as set forth in the Disclosure Documents as of the dates reflected therein. For the purposes of this Agreement, “Indebtedness” shall mean (a) any liabilities for borrowed money or amounts owed in excess of \$100,000 (other than trade accounts payable incurred in the ordinary course of business), (b) all guaranties, endorsements, indemnities and other contingent obligations in respect of Indebtedness of others in excess of \$100,000, whether or not the same are or should be reflected in the Company’s balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (c) the present value of any lease payments in excess of \$100,000 due under leases required to be capitalized in accordance with GAAP. There is no existing or continuing default or event of default in respect of any Indebtedness of the Company or any of its Subsidiaries.

Section 5.13. Real Property; Intellectual Property.

(a) Except as set forth in the Disclosure Documents, the Company and its Subsidiaries have good and marketable title in fee simple to all items of real property owned by them, good and valid title to all personal property described in the Commission Documents as being owned by them, in each case free and clear of all liens, encumbrances and claims, except those matters that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and any of its Subsidiaries or (ii) would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Any real or personal property described in the Commission Documents as being leased by the Company and any of its Subsidiaries is held by them under valid, existing and enforceable leases, except those matters that (A) do not materially interfere with the use made or proposed to be made of such property by the Company or any of its Subsidiaries or (B) would not be reasonably expected, individually or in the aggregate, to have a Material Adverse Effect. Each of the properties of the Company and its Subsidiaries complies with all applicable codes, laws and regulations (including, without limitation, building and zoning codes, laws and regulations and laws relating to access to such properties), except if and to the extent disclosed in the Disclosure Documents or except for such failures to comply that would not, individually or in the aggregate, reasonably be expected to interfere in any material respect with the use made and proposed to be made of such property by the Company and its Subsidiaries or otherwise have a Material Adverse Effect. None of the Company or its Subsidiaries has received from any Governmental Authorities any notice of any condemnation of, or zoning change affecting, the properties of the Company and its Subsidiaries, and the Company knows of no such condemnation or zoning change which is threatened, except for such that would not, individually or in the aggregate, reasonably be expected to interfere in any material respect with the use made and proposed to be made of such property by the Company and its Subsidiaries or otherwise have a Material Adverse Effect, individually or in the aggregate.

(b) Except as disclosed in the Disclosure Documents, the Company and its Subsidiaries own, possess, license or have other rights to use all foreign and domestic patents, patent applications, trade and service marks, trade and service mark registrations, trade names, copyrights, licenses, inventions, trade secrets, technology, Internet domain names, know-how and other intellectual property (collectively, the “**Intellectual Property**”), necessary for the conduct of their respective businesses as now conducted except to the extent that the failure to own, possess, license or otherwise hold adequate rights to use such Intellectual Property would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. None of the Company’s material trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, government authorizations, trade secrets or other intellectual property rights have expired or terminated, or, by the terms and conditions thereof, could expire or terminate within two years from the date of this Agreement. Except as disclosed in the Disclosure Documents (i) there are no rights of third parties to any such Intellectual Property owned by the Company and its Subsidiaries; (ii) to the Company’s Knowledge, there is no infringement by third parties of any such Intellectual Property; (iii) there is no pending or, to the Company’s Knowledge, threatened action, suit, proceeding or claim by others challenging the Company’s and its Subsidiaries’ rights in or to any such Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (iv) there is no pending or, to the Company’s Knowledge, threatened action, suit, proceeding or claim by others challenging the validity or scope of any such Intellectual Property; (v) there is no pending or, to the Company’s Knowledge, threatened action, suit, proceeding or claim by others that the Company and its Subsidiaries infringe or otherwise violate any patent, trademark, copyright, trade secret or other proprietary rights of others; (vi) to the Company’s Knowledge, there is no third-party U.S. patent or published U.S. patent application which contains claims for which an Interference Proceeding (as defined in 35 U.S.C. § 135) has been commenced against any patent or patent application described in the Commission Documents as being owned by or licensed to the Company; and (vii) the Company and its Subsidiaries have complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or such Subsidiary, and all such agreements are in full force and effect, except, in the case of any of clauses (i)-(vii) above, for any such rights infringement by third parties or any such pending or threatened suit, action, proceeding or claim as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The Company and its Subsidiaries have taken commercially reasonable efforts to maintain the confidentiality of all material trade secrets and other material confidential information of the Company and its Subsidiaries and any confidential information owned by any Person to whom the Company or any of its Subsidiaries has a written confidentiality obligation.

Section 5.14. Actions Pending. Except as disclosed in the Disclosure Documents, there are no actions, suits or proceedings by or before any Governmental Authority or legal proceedings pending, nor, to the Company’s Knowledge, any audits or investigations by or before any Governmental Authority to which the Company or a Subsidiary is a party or to which any property of the Company or any of its Subsidiaries is the subject that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect and, to the Company’s Knowledge, no such legal proceedings, actions, suits, proceedings, audits or investigations are threatened or contemplated by any Governmental Authority or threatened by others; and (i) there are no current or pending audits or investigations, actions, suits or proceedings by or before any Governmental Authority that are required under the Securities Act to be described in the Disclosure Documents that are not so described; and (ii) there are no contracts or other documents that are required under the Securities Act to be filed as exhibits to the Disclosure Documents that are not so filed.

Section 5.15. Compliance with Laws. The Company and each of its Subsidiaries are in compliance with all applicable laws, regulations and statutes (including all Environmental Laws and regulations) in the jurisdictions in which it carries on business (“**Applicable Laws**”), except where failure to be so in compliance, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. Each of the Company and its Subsidiaries: (A) has not received any notice of non-compliance, adverse finding, warning letter, untitled letter or other correspondence or notice from any Governmental Authority alleging or asserting noncompliance with any Applicable Laws or any licenses, certificates, approvals, clearances, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws (“**Authorizations**”); (B) does not know of, nor has any reasonable grounds to suspect, any facts that could give rise to a notice of non-compliance with any such Applicable Laws; (C) possesses all material Authorizations and such Authorizations are valid and in full force and effect and are not in material violation of any term of any such Authorizations; (D) has not received notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Governmental Authority or third party alleging that any product operation or activity is in violation of any Applicable Laws or Authorizations and has no Knowledge that any such Governmental Authority or third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding; (E) has not received notice that any Governmental Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations and has no Knowledge that any such Governmental Authority is considering such action; (F) has filed, obtained, maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations and that all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete and correct on the date filed (or were corrected or supplemented by a subsequent submission); and (G) has not, either voluntarily or involuntarily, initiated, conducted, or issued or caused to be initiated, conducted or issued, any recall, market withdrawal or replacement, safety alert, post sale warning, or other notice or action relating to the alleged lack of safety or efficacy of any product or any alleged product defect or violation and, to the Company’s Knowledge, no third party has initiated, conducted or intends to initiate any such notice or action, except in the case of each of (A) through (G) above, as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 5.16. Certain Fees. Neither the Company nor any of its Subsidiaries has incurred any liability for any finder's fees, brokerage commissions or similar payments in connection with the transactions herein contemplated.

Section 5.17. Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided the Investor or any of its agents, advisors or counsel with any information that constitutes or would reasonably be expected to constitute material, nonpublic information concerning the Company or any of its Subsidiaries, other than the existence of the transactions contemplated by the Transaction Documents. The Company understands and confirms that the Investor will rely on the foregoing representations in effecting resales of Registrable Shares under the Registration Statement.

Section 5.18. Broker/Dealer Relationships. Neither the Company nor any of the Subsidiaries (i) is required to register as a "broker" or "dealer" in accordance with the provisions of the Exchange Act or (ii) directly or indirectly through one or more intermediaries, controls or is a "person associated with a member" or "associated person of a member" (within the meaning set forth in the FINRA Manual).

Section 5.19. Accounting Controls and Disclosure Controls. The Company makes and keeps accurate books and records. The Company and each of its Subsidiaries maintain systems of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company's internal control over financial reporting is effective and the Company is not aware of any material weaknesses in its internal control over financial reporting (other than as set forth in the Disclosure Documents). The Company is not aware of any fraud, whether or not material, that involves management or other employees of the Company. Since the date of the latest audited financial statements of the Company included in the Disclosure Documents, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting (other than as set forth in the Disclosure Documents). The Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 and 15d-15) for the Company and designed such disclosure controls and procedures to ensure that material information relating to the Company and each of its Subsidiaries is made known to the certifying officers by others within those entities, particularly during the period in which the Company's Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, is being prepared. The Company's certifying officers have evaluated the effectiveness of the Company's disclosure controls and procedures as of a date within 90 days prior to the filing date of the Form 10-K for the fiscal year most recently ended (such date, the "**Evaluation Date**"). The Company presented in its Form 10-K for the fiscal year most recently ended the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date and the disclosure controls and procedures are effective. Since the Evaluation Date, there have been no significant changes in the Company's internal controls (as such term is defined in Item 307(b) of Regulation S-K under the Securities Act) or, to the Company's Knowledge, in other factors that could significantly affect the Company's internal controls. The Company's auditors and the Audit Committee of the board of directors have been advised of: (i) any significant deficiencies in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize and report financial data and (ii) any fraud, whether or not material, that involves management or other employees who have a role in the Company's internal controls.

Section 5.20. Permits. Except as disclosed in the Disclosure Documents, the Company and its Subsidiaries have made all filings, applications and submissions required by, and possesses and is operating in compliance with, all approvals, licenses, certificates, certifications, clearances, consents, grants, exemptions, marks, notifications, orders, permits and other authorizations issued by, the appropriate federal, state or foreign Governmental Authority necessary for the ownership or lease of their respective properties or to conduct its businesses as described in the Commission Documents (collectively, “**Permits**”), except for such Permits the failure of which to possess, obtain or make the same would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; the Company and its Subsidiaries are in compliance with the terms and conditions of all such Permits, except where the failure to be in compliance would not have a Material Adverse Effect; all of the Permits are valid and in full force and effect, except where any invalidity, individually or in the aggregate, would not be reasonably expected to have a Material Adverse Effect; and neither the Company nor any of its Subsidiaries has received any written notice relating to the limitation, revocation, cancellation, suspension, modification or non-renewal of any such Permit which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would reasonably be expected to have a Material Adverse Effect, or has any reason to believe that any such license, certificate, permit or authorization will not be renewed in the ordinary course.

Section 5.21. Environmental Compliance. Except as set forth in the Disclosure Documents, (i) except for any matters as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company and its Subsidiaries and their respective properties, assets and operations (a) are, and, have been, in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, requirements, decisions, judgments, decrees, orders and the common law relating to pollution or the protection of the environment, natural resources or human health or safety, including those relating to the manufacture, generation, storage, treatment, use, processing, distribution, handling, transportation, release or threat of release of Hazardous Materials (collectively, “**Environmental Laws**”), (b) have received and are, and, have been, in compliance with all permits, licenses, certificates or other authorizations or approvals required of them under applicable Environmental Laws to conduct their respective businesses, (c) have not received notice of any actual or potential liability under or relating to, or actual or potential violation of, any Environmental Laws, which notice remains unresolved, including for the investigation or remediation of any release or threat of release of Hazardous Materials, and have no Knowledge of any event or condition that would reasonably be expected to result in any such notice, (d) are not conducting or paying for, in whole or in part, any investigation, remediation or other corrective action pursuant to any Environmental Law at any location and (e) are not a party to any order, decree or agreement that imposes any obligation or liability under any Environmental Law; (ii) there are no costs or liabilities associated with Environmental Laws of or relating to the Company or its Subsidiaries, except for any such matter as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (iii) except as set forth in the Disclosure Documents, (a) there are no material proceedings that are pending, or that are known to be contemplated, against the Company and its Subsidiaries under any Environmental Laws in which a governmental entity is also a party, (b) neither the Company nor any of its subsidiaries is aware of any facts or issues regarding compliance with Environmental Laws, or liabilities or other obligations under Environmental Laws, including the release or threat of release of Hazardous Materials, that would reasonably be expected to have a Material Adverse Effect and (c) none of the Company and its Subsidiaries currently expects to make material capital expenditures in order to comply with any Environmental Laws.

Section 5.22. No Improper Practices. (i) Neither the Company nor the Subsidiaries, nor any director, officer, or employee of the Company or any Subsidiary nor, to the Company’s Knowledge, any agent, affiliate or other person acting on behalf of the Company or any Subsidiary has, in the past five years, made any unlawful contributions to any candidate for any political office (or failed fully to disclose any contribution in violation of applicable law) or made any contribution or other payment to any official of, or candidate for, any federal, state, municipal, or foreign office or other person charged with similar public or quasi-public duty in violation of any applicable law or of the character required to be disclosed in the Disclosure Documents; (ii) no relationship, direct or indirect, exists between or among the Company or any Subsidiary or any affiliate of any of them, on the one hand, and the directors, officers and stockholders of the Company or any Subsidiary, on the other hand, that is required by the Securities Act to be described in the Disclosure Documents that is not so described; (iii) no relationship, direct or indirect, exists between or among the Company or the Subsidiaries or any affiliate of them, on the one hand, and the directors, officers, or stockholders of the Company or any Subsidiary, on the other hand, that is required by the rules of FINRA to be described in the Disclosure Documents that is not so described; (iv) except as described in the Disclosure Documents, there are no material outstanding loans or advances or material guarantees of indebtedness by the Company or any Subsidiary to or for the benefit of any of their respective officers or directors or any of the members of the families of any of them; and (v) the Company has not offered, or caused any placement agent to offer, Common Stock to any person with the intent to influence unlawfully (A) a customer or supplier of the Company or the Subsidiaries to alter the customer’s or supplier’s level or type of business with the Company or any Subsidiary or (B) a trade journalist or publication to write or publish favorable information about the Company or the Subsidiaries or any of their respective products or services, and, (vi) neither the Company nor the Subsidiaries nor any director, officer or employee of the Company or any Subsidiary nor, to the Company’s Knowledge, any agent, affiliate or other person acting on behalf of the Company or any Subsidiary has (A) violated or is in violation of any applicable provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or any other applicable anti-bribery or anti-corruption law (collectively, “**Anti-Corruption Laws**”), (B) promised, offered, provided, attempted to provide or authorized the provision of anything of value, directly or indirectly, to any person for the purpose of obtaining or retaining business, influencing any act or decision of the recipient, or securing any improper advantage; or (C) made any payment of funds of the Company or any Subsidiary or received or retained any funds in violation of any Anti-Corruption Laws.

Section 5.23. AML Compliance. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions to which the Company or its Subsidiaries are subject, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Authority (collectively, the “**Money Laundering Laws**”); and no action, suit or proceeding by or before any Governmental Authority involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the Knowledge of the Company, threatened.

Section 5.24. OFAC. Neither the Company nor any of its Subsidiaries (collectively, the “**Entity**”), nor any director, officer, any employee, agent, affiliate or representative of the Company or any director or officer of any Subsidiary, is a Person that is, or is owned or controlled by a Person that is (i) the subject of any sanctions administered or enforced by the (“**OFAC**”), the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authorities, including, without limitation, designation on OFAC’s Specially Designated Nationals and Blocked Persons List or OFAC’s Foreign Sanctions Evaders List or other relevant sanctions authority (collectively, “**Sanctions**”), nor (ii) located, organized or resident in a country or territory that is the subject of Sanctions that broadly prohibit dealings with that country or territory (including, without limitation, the Crimea region of the Ukraine, Russia, Cuba, Iran, North Korea, Sudan and Syria (the “**Sanctioned Countries**”)). The Entity will not, directly or indirectly, use the proceeds from the sale of Shares, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person (a) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions or is a Sanctioned Country, or (b) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the transactions contemplated by the Transaction Documents, whether as underwriter, advisor, investor or otherwise). The Entity has not engaged in, and is now not engaged in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions or was a Sanctioned Country.

Section 5.25. Off-Balance Sheet Arrangements. There are no transactions, arrangements and other relationships between and/or among the Company, and/or any of its affiliates and any unconsolidated entity, including, but not limited to, any structural finance, special purpose or limited purpose entity (each, an “**Off-Balance Sheet Transaction**”) that could reasonably be expected to affect materially the Company’s liquidity or the availability of or requirements for its capital resources, including those Off-Balance Sheet Transactions described in the Commission’s Statement about Management’s Discussion and Analysis of Financial Conditions and Results of Operations (Release Nos. 33-8056; 34-45321; FR-61), required to be described in the Disclosure Documents which have not been described as required.

Section 5.26. Transactions with Affiliates. No relationship, direct or indirect, exists between or among the Company or any of its Subsidiaries on the one hand, and the directors, officers, trustees, managers, stockholders, partners, customers or suppliers of the Company or any of the Subsidiaries on the other hand, which would be required by the Securities Act or the Exchange Act to be disclosed in the Disclosure Documents, which is not so disclosed.

Section 5.27. Labor Disputes. None of the Company nor any of its Subsidiaries is bound by or subject to any collective bargaining or similar agreement with any labor union, and, to the Knowledge of the Company, none of the employees, representatives or agents of the Company or any of its Subsidiaries is represented by any labor union. The Company and its Subsidiaries have complied with all employment laws applicable to employees of the Company and its Subsidiaries, except where non-compliance with any such employment laws would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No labor disturbance by or dispute with employees of the Company or any of its Subsidiaries exists or, to the Knowledge of the Company, is threatened which, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

Section 5.28. Use of Proceeds. The proceeds from the sale of the Shares by the Company to Investor shall be used by the Company in the manner as will be set forth in the Prospectus included in any Registration Statement (and any post-effective amendment thereto) and any Prospectus Supplement thereto filed pursuant to the Registration Rights Agreement.

Section 5.29. Investment Company Act Status. The Company is not, and as a result of the consummation of the transactions contemplated by the Transaction Documents and the application of the proceeds from the sale of the Shares as will be set forth in the Prospectus included in any Registration Statement (and any post-effective amendment thereto) and any Prospectus Supplement thereto filed pursuant to the Registration Rights Agreement the Company will not be an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

Section 5.30. Margin Rules. Neither the issuance, sale and delivery of the Shares nor the application of the proceeds thereof by the Company as described in the Disclosure Documents will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

Section 5.31. Taxes. The Company and each of its Subsidiaries have filed all federal, state, local and foreign tax returns which have been required to be filed and paid all taxes shown thereon through the date hereof, to the extent that such taxes have become due and are not being contested in good faith, except where the failure to so file or pay would not, individually or in the aggregate, have a Material Adverse Effect. Except as otherwise disclosed in or contemplated by the Disclosure Documents, no tax deficiency has been determined adversely to the Company or any of its Subsidiaries which has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company has no Knowledge of any federal, state or other governmental tax deficiency, penalty or assessment which has been or might be asserted or threatened against it which would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.32. ERISA. To the Knowledge of the Company, each material employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), that is maintained, administered or contributed to by the Company or any of its affiliates for employees or former employees of the Company and any of its Subsidiaries has been maintained in material compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the “**Code**”); no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred which would result in a material liability to the Company with respect to any such plan excluding transactions effected pursuant to a statutory or administrative exemption; and for each such plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the minimum funding standards in Section 412 of the Code have been satisfied and the fair market value of the assets of each such plan (excluding for these purposes accrued but unpaid contributions) exceeds the present value of all benefits accrued under such plan determined using reasonable actuarial assumptions; no litigation or governmental administrative proceeding, audit or other proceeding (other than those relating to routine claims for benefits) is pending or, to the Knowledge of the Company, threatened with respect to any material employee benefit plan or any fiduciary or service provider thereof and, to the Knowledge of the Company, there is no reasonable basis for any such litigation or proceeding.

Section 5.33. Stock Transfer Taxes. All stock transfer or other taxes (other than income taxes) which are required to be paid in connection with the sale and transfer of the Registrable Shares to be sold hereunder will be, or will have been, fully paid or provided for by the Company and all laws imposing such taxes will be or will have been fully complied with.

Section 5.34. Insurance. The Company and each of its Subsidiaries carry, or are covered by, insurance in such amounts and covering such risks as the Company and each of its Subsidiaries reasonably believe are adequate for the conduct of their business and as is customary for companies engaged in similar businesses in similar industries.

Section 5.35. Exemption from Registration. Subject to, and in reliance on, the representations, warranties and covenants made herein by the Investor, the offer and sale of the Registrable Shares in accordance with the terms and conditions of this Agreement is exempt from the registration requirements of the Securities Act pursuant to Section 4(a)(2) and/or Rule 506(b) of Regulation D; provided, however, that at the request of (including any request through the Investor's custodian) and with the express agreements of the Investor (including, without limitation, the representations, warranties and covenants of Investor set forth in Section 4.8 through 4.11), the Shares to be issued from and after Commencement to or for the benefit of the Investor pursuant to this Agreement shall be issued to the Investor or its designee only as DWAC Shares and will not bear legends noting restrictions as to resale of such securities under federal or state securities laws, nor will any such securities be subject to stop transfer instructions.

Section 5.36. No General Solicitation or Advertising. Neither the Company, nor any of its Subsidiaries or Affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Registrable Shares.

Section 5.37. No Integrated Offering. None of the Company, its Subsidiaries or any of their Affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Registrable Shares under the Securities Act, whether through integration with prior offerings or otherwise, or cause this offering of the Shares to require approval of stockholders of the Company under any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of the Principal Market. None of the Company, its Subsidiaries, their Affiliates nor any Person acting on their behalf will take any action or steps referred to in the preceding sentence that would require registration of the issuance of any of the Registrable Shares under the Securities Act or cause the offering of any of the Shares to be integrated with other offerings.

Section 5.38. Dilutive Effect. The Company is aware and acknowledges that issuance of the Registrable Shares could cause dilution to existing stockholders and could significantly increase the outstanding number of shares of Common Stock. The Company further acknowledges that its obligation to issue the Shares to be purchased by the Investor pursuant to a VWAP Purchase is, upon the Company's delivery to the Investor of a VWAP Purchase Notice for a VWAP Purchase in accordance with this Agreement, absolute and unconditional following the delivery of such VWAP Purchase Notice to the Investor, regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company.

Section 5.39. Manipulation of Price. Neither the Company nor any of its officers, directors or its Affiliates has, and, to the Knowledge of the Company, no Person acting on their behalf has, (i) taken, directly or indirectly, any action designed or intended to cause or to result in the stabilization or manipulation of the price of any security of the Company, or which caused or resulted in, or which would in the future reasonably be expected to cause or result in, the stabilization or manipulation of the price of any security of the Company, in each case to facilitate the sale or resale of any of the Registrable Shares, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Registrable Shares, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company. Neither the Company nor any of its officers, directors or its Affiliates will during the term of this Agreement, and, to the Knowledge of the Company, no Person acting on their behalf will during the term of this Agreement, take any of the actions referred to in the immediately preceding sentence.

Section 5.40. Listing and Maintenance Requirements; DTC Eligibility. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to, or which to its Knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act, nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company has not received any final and non-appealable notice from the Principal Market to the effect that the Company is not in compliance with the listing or maintenance requirements of the Principal Market or any notice from the Principal Market to the effect that the Company is not in compliance with the listing or maintenance requirements of the Principal Market that the Company has not appealed or responded to within the requisite time period. The Shares are, or will be after the Commencement Date, eligible for participation in the DTC book-entry system and deposit at DTC such that they may be transferred electronically to third parties via DTC through its Deposit/Withdrawal at Custodian (“**DWAC**”) delivery system. The Company has not received notice from DTC to the effect that a suspension of, or restriction on, accepting additional deposits of the Common Stock, electronic trading or book-entry services by DTC with respect to the Common Stock is being imposed or is contemplated.

Section 5.41. Application of Takeover Protections. The Company and its Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company’s Charter or the laws of its state of incorporation that is or could become applicable to the Investor as a result of the Investor and the Company fulfilling their respective obligations or exercising their respective rights under the Transaction Documents (as applicable), including, without limitation, as a result of the Company’s issuance of the Registrable Shares and the Investor’s ownership of the Registrable Shares.

Section 5.42. Information Technology; Compliance with Data Privacy Laws.

(a) The Company and its Subsidiaries’ information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, “**IT Systems**”) are adequate for, and operate and perform as required in connection with the operation of the business of the Company as currently conducted, and, to the Company’s Knowledge, are free and clear of all bugs, errors, viruses, Trojan horses, trap doors, time bombs, and any other malware.

(b) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company and its Subsidiaries have implemented and maintain commercially reasonable physical, technical and administrative controls, policies, procedures, and safeguards designed to maintain and protect their confidential information and the integrity, continuous operation, redundancy and security of their IT Systems and data, including all “**Personal Data**” (defined below) and all sensitive, confidential or regulated data (“**Confidential Data**”) used in connection with their businesses. “**Personal Data**” means (A) a natural person’s name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver’s license number, passport number, credit card number, bank information, or customer or account number; (B) any information which would qualify as “personally identifying information” under the Federal Trade Commission Act, as amended; (C) “personal data” as defined by the European Union General Data Protection Regulation (“**GDPR**”) (EU 2016/679); (D) any “personal information” as defined by the California Consumer Privacy Act (“**CCPA**”); and (E) any other piece of information that allows the identification of such natural person, or his or her family, or permits the collection or analysis of any data related to an identified person’s health or sexual orientation. Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (x) to the Knowledge of the Company, there have been no breaches, violations, outages or unauthorized uses of or accesses to their IT Systems or Personal Data maintained or processed by the Company, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same and (y) the Company and its Subsidiaries are presently in compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, external policies and contractual obligations relating to the privacy and security of their IT Systems, Confidential Data, and Personal Data (collectively, “**Privacy Laws**”) and to the protection of such IT Systems, Confidential Data, and Personal Data from unauthorized use, access, misappropriation or modification.

(c) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) to the extent required by applicable Privacy Laws, the Company has in place commercially reasonable policies and procedures relating to data privacy and security and the collection, storage, use, processing, disclosure, handling, and analysis of Personal Data and Confidential Data (the “**Policies**”); (ii) the Company has made disclosures to users or customers to the extent required by applicable Privacy Laws, and none of such disclosures made or contained in any Policy have been inaccurate or in violation of any applicable Privacy Laws; (iii) neither the Company nor any Subsidiary has received written notice of any actual or potential liability under or relating to, or actual or potential violation of, any applicable Privacy Laws, and there is no action, suit or proceeding by or before any court or governmental agency, authority or body pending or, to the Company’s Knowledge, threatened alleging non-compliance with any applicable Privacy Laws.

Section 5.43. Acknowledgement Regarding Investor’s Acquisition of Shares; Affiliate Relationships. The Company acknowledges and agrees, to the fullest extent permitted by law, that the Investor is acting solely in the capacity of an arm’s-length purchaser with respect to this Agreement and the transactions contemplated by the Transaction Documents. The Company further acknowledges that the Investor will be deemed to be a statutory “underwriter” with respect to the transactions contemplated by the Transaction Documents in accordance with interpretive positions of the Commission and the Investor is a “trader” that is registered with the Commission as a broker-dealer under Section 15(a) of the Securities Exchange Act of 1934. The Company further acknowledges that the Investor and its representatives are not acting as a financial advisor or fiduciary of the Company (or in any similar capacity, except as noted above) with respect to this Agreement and the transactions contemplated by the Transaction Documents, and any advice given by the Investor or any of its representatives or agents in connection therewith is merely incidental to the Investor’s acquisition of the Shares. The Company further represents to the Investor that the Company’s decision to enter into the Transaction Documents to which it is a party has been based solely on the independent evaluation of the transactions contemplated thereby by the Company and its representatives. The Company acknowledges and agrees that the Investor has not made and does not make any representations or warranties with respect to the transactions contemplated by the Transaction Documents other than those specifically set forth in Article IV. Affiliates of the Investor engage in a wide range of activities for their own accounts and the accounts of customers, including corporate finance, mergers and acquisitions, merchant banking, equity and fixed income sales, trading and research, derivatives, foreign exchange, futures, asset management, custody, clearance and securities lending. In the course of its business, affiliates of Investor may, directly or indirectly, hold long or short positions, trade and otherwise conduct such activities in or with respect to debt or equity securities and/or bank debt of, and/or derivative products relating to, the Company. Any such position will be created, and maintained, independently of the position Investor takes in the Company, and Investor. In addition, at any given time affiliates of Investor may have been and/or be engaged by one or more entities that may be competitors with, or otherwise adverse to, the Company in matters unrelated to the transactions contemplated by the Transaction Documents, and affiliates of Investor may have or may in the future provide investment banking or other services to the Company in matters unrelated to the transactions contemplated by the Transaction Documents. Activities of any of Investor’s affiliates performed on behalf of the Company may give rise to actual or apparent conflicts of interest given Investor’s potentially competing interests with those of the Company. The Company expressly acknowledges the benefits it receives from Investor’s participation in the transactions contemplated by the Transaction Documents, on the one hand, and Investor’s affiliates’ activities, if any, on behalf of the Company unrelated to the transactions contemplated by the Transaction Documents, on the other hand, and understands the conflict or potential conflict of interest that may arise in this regard, and has consulted with such independent advisors as it deems appropriate in order to understand and assess the risks associated with these potential conflicts of interest. Consistent with applicable legal and regulatory requirements, applicable affiliates of the Investor have adopted policies and procedures to establish and maintain the independence of their research departments and personnel from their investment banking groups and Investor. As a result, research analysts employed by affiliates of the Investor may hold views, make statements or investment recommendations and/or publish research reports with respect to the Company or the transactions contemplated by the Transaction Documents that differ from the views of Investor.

Section 5.44. Emerging Growth Company Status. From the time of the initial filing of the Company’s first registration statement with the Commission through the date hereof, the Company has been and is an “emerging growth company,” as defined in Section 2(a) of the Securities Act.

Section 5.45. Certificates. Any certificate signed by any officer, including the Chief Executive Officer, Chief Financial Officer, General Counsel or representative of the Company or any of its subsidiaries and delivered to the Investor or counsel for the Investor in connection with the transactions contemplated by the Transaction Documents shall be deemed a representation and warranty by the Company to the Investor as to the matters covered thereby on the date of such certificate.

ARTICLE VI

ADDITIONAL COVENANTS

The Company covenants with the Investor, and the Investor covenants with the Company, as follows, which covenants of one party are for the benefit of the other party, during the Investment Period (and with respect to the Company, for the period following the termination of this Agreement specified in Section 8.3 pursuant to and in accordance with Section 8.3):

Section 6.1. Securities Compliance. The Company shall notify the Commission and the Principal Market, if and as applicable, in accordance with their respective rules and regulations, of the transactions contemplated by the Transaction Documents, and shall take all necessary action, undertake all proceedings and obtain all registrations, permits, consents and approvals for the legal and valid issuance of the Shares to the Investor in accordance with the terms of the Transaction Documents, as applicable.

Section 6.2. Reservation of Common Stock. The Company has available and the Company shall reserve and keep available at all times, free of preemptive and other similar rights of stockholders, the requisite aggregate number of authorized but unissued shares of Common Stock to enable the Company to timely effect the issuance, sale and delivery of all Shares to be issued, sold and delivered in respect of each VWAP Purchase effected under this Agreement. Without limiting the generality of the foregoing, as of the Commencement Date, the Company shall have reserved, out of its authorized and unissued Common Stock, a number of shares of Common Stock equal to the Exchange Cap solely for the purpose of effecting VWAP Purchases under this Agreement. The number of shares of Common Stock so reserved for the purpose of effecting VWAP Purchases under this Agreement may be increased from time to time by the Company from and after the Commencement Date, and such number of reserved shares may be reduced from and after the Commencement Date only by the number of Shares actually issued, sold and delivered to the Investor pursuant to any VWAP Purchase effected from and after the Commencement Date pursuant to this Agreement.

Section 6.3. Registration and Listing. The Company shall use its commercially reasonable efforts to cause the Common Stock to continue to be registered as a class of securities under Sections 12(b) of the Exchange Act, and to comply with its reporting and filing obligations under the Exchange Act, and shall not take any action or file any document (whether or not permitted by the Securities Act or the Exchange Act) to terminate or suspend such registration or to terminate or suspend its reporting and filing obligations under the Exchange Act or Securities Act, except as permitted herein. The Company shall use its commercially reasonable efforts to continue the listing and trading of its Common Stock and the listing of the Shares to be issued, sold and delivered in respect of each VWAP Purchase effected under this Agreement hereunder on the Principal Market and to comply with the Company's reporting, filing and other obligations under the rules and regulations of the Principal Market. The Company shall not take any action which could be reasonably expected to result in the delisting or suspension of the Common Stock on the Principal Market. If the Company receives any final and non-appealable notice that the listing or quotation of the Common Stock on the Principal Market shall be terminated on a date certain or any notice that the listing or quotation of the Common Stock on the Principal Market shall be terminated on a date certain that the Company has not appealed or responded to within the requisite time period, the Company shall promptly (and in any case within 24 hours) notify the Investor of such fact in writing and shall use its commercially reasonable efforts to cause the Common Stock to be listed or quoted on another Principal Market.

Section 6.4. Compliance with Laws.

(a) During the Investment Period, the Company shall comply with applicable provisions of the Securities Act and the Exchange Act, including Regulation M thereunder, applicable state securities or "Blue Sky" laws, and applicable listing rules of the Principal Market, in connection with the transactions contemplated by the Transaction Documents, except as would not, individually or in the aggregate, prohibit or otherwise interfere with the ability of the Company to enter into and perform its obligations under this Agreement in any material respect or the ability of the Investor to sell or resell shares of Common Stock under the Registration Statement in any material respect.

(b) The Investor shall comply with all laws, rules, regulations and orders applicable to the performance by it of its obligations under this Agreement and its investment in the Shares, except as would not, individually or in the aggregate, prohibit or otherwise interfere with the ability of the Investor to enter into this Agreement and to purchase or acquire the Shares in accordance with the terms hereof in any material respect. Without limiting the foregoing, the Investor shall comply with all applicable provisions of the Securities Act and the Exchange Act, including Regulation M thereunder, and all applicable state securities or “Blue Sky” laws, in connection with the transactions contemplated by the Transaction Documents.

Section 6.5. Keeping of Records and Books of Account; Due Diligence.

(a) The Investor and the Company shall each maintain records showing the remaining Total Commitment, the remaining Aggregate Limit and the dates and VWAP Purchase Share Amount for each VWAP Purchase.

(b) Subject to the requirements of [Section 6.12](#), from time to time from and after the Closing Date, the Company shall make available for inspection and review by the Investor during normal business hours and after reasonable notice, customary documentation reasonably requested by the Investor and/or its appointed counsel or advisors to conduct due diligence; provided, however, that after the Closing Date, the Investor’s continued due diligence shall not be a condition precedent to the Company’s right to deliver to the Investor any VWAP Purchase Notice or the settlement thereof except to the extent expressly contemplated by this Agreement.

Section 6.6. No Frustration; No Specified Transactions; No Equity Lines of Credit.

(a) **No Frustration.** The Company shall not enter into, announce or recommend to its stockholders any agreement, plan, arrangement or transaction in or of which the terms thereof would restrict, materially delay, conflict with or impair the ability of (i) the Company to deliver the Shares to the Investor in respect of a VWAP Purchase not later than the VWAP Purchase Share Delivery Date or (ii) the Investor to sell such Shares, including pursuant to an effective Registration Statement. For the avoidance of doubt, nothing in this [Section 6.6\(a\)](#) shall in any way limit the Company’s right to terminate this Agreement in accordance with [Section 8.2](#) (subject in all cases to [Section 8.3](#)).

(b) **No Specified Transactions.** The Company shall not effect or enter into an agreement to effect any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents (or a combination of units thereof) involving a Specified Transaction other than in connection with an Exempt Issuance. The Investor shall be entitled to seek injunctive relief against the Company and its Subsidiaries to preclude any such issuance, which remedy shall be in addition to any right to collect damages, without the necessity of showing economic loss and without any bond or other security being required.

Section 6.7. Corporate Existence. The Company shall take all steps necessary to preserve and continue the corporate existence of the Company; provided, however, that, except as provided in [Section 6.8](#), nothing in this Agreement shall be deemed to prohibit the Company from engaging in any Fundamental Transaction with another Person. For the avoidance of doubt, nothing in this [Section 6.7](#) shall in any way limit the Company’s right to terminate this Agreement in accordance with [Section 8.2](#) (subject in all cases to [Section 8.3](#)).

Section 6.8. Fundamental Transaction. If a VWAP Purchase Notice has been delivered to the Investor, the Company shall not effect any Fundamental Transaction until the expiration of five (5) Trading Days following the date on which the Company has issued all Shares issuable pursuant to the VWAP Purchase to which such VWAP Purchase Notice relates.

Section 6.9. Selling Restrictions. Except as expressly set forth below, the Investor covenants that from and after the Closing Date through and including the Trading Day next following the expiration or termination of this Agreement as provided in Article VIII (the “**Restricted Period**”), none of the Investor or any entity managed or controlled by the Investor (collectively, the “Restricted Persons” and each of the foregoing is referred to herein as a “**Restricted Person**”) shall, directly or indirectly, (i) engage in any Short Sales of the Common Stock or (ii) hedging transaction, which, with respect to each of clauses (i) and (ii) hereof, establishes a net short position with respect to the Common Stock (i.e., taking into account the holdings of all Restricted Persons), either for its own principal account or for the principal account of any other Restricted Person. Notwithstanding the foregoing, it is expressly understood and agreed that nothing contained herein shall (without implication that the contrary would otherwise be true) prohibit any Restricted Person during the Restricted Period from: (1) selling “long” (as defined under Rule 200 promulgated under Regulation SHO) the Shares or any other shares of Common Stock or the Company’s other securities; or (2) selling a number of shares of Common Stock equal to the number of Shares that such Restricted Person may purchase under a pending VWAP Purchase Notice but has not yet received from the Company or the Transfer Agent pursuant to this Agreement, so long as (x) such Restricted Person (including the Investor or any Broker-Dealer it designates, as applicable) delivers the Shares purchased pursuant to such VWAP Purchase Notice to the purchaser thereof or the applicable Broker-Dealer promptly upon such Restricted Person’s receipt of such Shares from the Company in accordance with [Section 3.2](#) of this Agreement or (y) the Company or the Transfer Agent fails for any reason to deliver such Shares to the Investor or any Broker-Dealer it designates so that such Shares are received by the Investor as DWAC Shares on the applicable VWAP Purchase Share Delivery Date in accordance with [Section 3.2](#) of this Agreement, including, without limitation, within the time period specified for receipt of such Shares by the Investor or its Broker-Dealer as DWAC Shares from the Company or the Transfer Agent.

Section 6.10. Effective Registration Statement During the Registration Period, the Company shall use its commercially reasonable efforts to maintain the continuous effectiveness of the Initial Registration Statement and each New Registration Statement filed with the Commission under the Securities Act for the applicable Registration Period pursuant to and in accordance with the Registration Rights Agreement.

Section 6.11. Blue Sky The Company shall take such action, if any, as is necessary by the Company in order to obtain an exemption for or to qualify the Shares for sale by the Company to the Investor pursuant to the Transaction Documents, and at the request of the Investor, the subsequent resale of Registrable Securities by the Investor, in each case, under applicable state securities or “Blue Sky” laws and shall provide evidence of any such action so taken to the Investor from time to time following the Closing Date; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this **Section 6.11**, (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction.

Section 6.12. Non-Public Information Neither the Company or any of its Subsidiaries, nor any of their respective directors, officers, employees or agents shall disclose any material non-public information about the Company to the Investor other than by providing such material non-public information to (x) the Investor’s Compliance team at the email address set forth in Exhibit E and (y) the Investor’s designated officers or employees, as designated by the Investor’s Compliance team in writing from time to time, unless a simultaneous public announcement thereof is made by the Company in the manner contemplated by Regulation FD; provided, however, that any information disclosed to or obtained by any Affiliated Director shall not be considered to constitute material non-public information about the Company for purposes hereof. In the event of a breach of the foregoing covenant by the Company or any of its Subsidiaries, or any of their respective directors, officers, employees and agents (as determined in the reasonable good faith judgment of the Investor), (i) the Investor shall promptly provide written notice of such breach to the Company and (ii) after such notice has been provided to the Company and, provided that the Company shall have failed to demonstrate to the Investor in writing within 24 hours that such information does not constitute material, non-public information or the Company shall have failed to publicly disclose such material, non-public information within 24 hours following demand therefor by the Investor, in addition to any other remedy provided herein or in the other Transaction Documents, if the Investor is holding any Shares at the time of the disclosure of material, non-public information, the Investor shall have the right to make a public disclosure, in the form of a press release, public advertisement or otherwise (the “**Cleansing Materials**”), of such material, non-public information without the prior approval by the Company, any of its Subsidiaries, or any of their respective directors, officers, employees or agents or the Investor may in its sole discretion return such Shares to the Company and the Company shall immediately return any VWAP Purchase Amount that the Investor has paid for any Shares held by the Investor at the time of the disclosure of material, non-public information. In the event that the Investor chooses to disclose Cleansing Materials, then, as soon as reasonably practicable under the circumstances prior to such disclosure, the Investor shall give the Company a written notice (which may be via e-mail) of its intent to disclose (the “**Disclosure Notice**”), which Disclosure Notice shall also contain the proposed form of the Cleansing Materials and the Investor will use reasonable efforts to, in good faith, incorporate the Company’s reasonable requests for additions to or other modifications of the Cleansing Materials provided within eight hours after the time of the email or other written notice containing the Disclosure Notice. The Investor shall not have any liability to the Company, any of its Subsidiaries, or any of their respective directors, officers, employees, stockholders or agents, for any such disclosure or return of Shares.

Section 6.13. Broker/Dealer. The Investor shall use one or more broker-dealers (which may be the Investor) to effectuate all sales, if any, of the Shares that it may purchase or otherwise acquire from the Company pursuant to the Transaction Documents, as applicable, which (or whom) shall be a DTC participant (collectively, the “**Broker-Dealer**”). The Investor shall, from time to time, provide the Company and the Transfer Agent with all information regarding the Broker-Dealer reasonably requested by the Company. The Investor shall be solely responsible for all fees and commissions of the Broker-Dealer (if any), which shall not exceed customary brokerage fees and commissions and shall be responsible for designating only a DTC participant eligible to receive DWAC Shares.

Section 6.14. FINRA Filing and Fee. In connection with the filing to be made with the FINRA Corporate Financing Department (the “**Department**”) pursuant to Rule 5110 of the FINRA Manual with respect to the transactions contemplated by this Agreement (the “**FINRA Filing**”), on or prior to the date of the initial FINRA Filing, the Company shall pay the applicable FINRA filing fee by wire transfer of immediately available funds. The Company shall provide Investor with any information and documents reasonably requested by the Investor in order to complete the FINRA Filing and obtain as promptly as practicable a letter from the Department to the effect that the Department has determined not to raise any objection with respect to the fairness and reasonableness of the terms of the transactions contemplated by the Transaction Documents (a “**No Objections Letter**”). The Commencement Date shall not occur until such No Objections Letter has been received.

Section 6.15. Qualified Independent Underwriter (“QIU”). If the Investor determines that a QIU is required to participate in the transactions contemplated by the Transaction Documents pursuant to Rule 5121 of the FINRA Manual, (i) each of the parties hereto shall cooperate and execute such documentation as may reasonably be required to engage a QIU and (ii) the Company shall cause any opinion or opinions, 10b-5 letter, comfort letters and Bring-Down Comfort Letters to be delivered under this Agreement to be addressed to the QIU in addition to the Investor.

Section 6.16. Delivery of Bring-Down Opinions and Officer’s and Secretary’s Certificates Upon Occurrence of Certain Events. The Company agrees that on or prior to the date of the first VWAP Purchase Notice and, during the term of this Agreement after the date of the first VWAP Purchase Notice, within three (3) Trading Days after each of the following: (i) the date of filing of an annual report on Form 10-K under the Exchange Act (including any Form 10-K/A containing amended financial information or a material amendment to the previously filed Form 10-K); (ii) the date of filing of a quarterly report on Form 10-Q under the Exchange Act; (iii) the date of filing of a current report on Form 8-K containing amended financial information (other than information “furnished” pursuant to Items 2.02 or 7.01 of Form 8-K or to provide disclosure pursuant to Item 8.01 of Form 8-K relating to the reclassification of certain properties as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144) under the Exchange Act; (iv) the date of effectiveness of the Initial Registration Statement, any New Registration Statement, or any supplement or post-effective amendment thereto, or (v) the date of each reasonable request by the Investor, not more than once per calendar quarter (the date within such three (3) Trading Days after the foregoing dates in items (i) through (v) on which the documents set forth in items (1) through (3) below are delivered, each, a “**Representation Date**”) the Company shall (1) deliver to the Investor an Officer’s Certificate in the form attached hereto as Exhibit B (the “**Officer’s Certificate**”), dated as of such Representation Date, and a Secretary’s Certificate in the form attached hereto as Exhibit C (the “**Secretary’s Certificate**”), dated as of such Representation Date, (2) cause to be furnished to the Investor an opinion and a 10b-5 letter, dated as of such Representation Date, each from outside counsel to the Company and in the form mutually agreed to by the Company and the Investor prior to the date of this Agreement and (3) cause to be furnished to the Investor a comfort letter, dated as of such Representation Date (each such letter, a “**Bring-Down Comfort Letter**”) from each of Withum and BDO or a successor independent registered public accounting firm for the Company, or such other accounting firm as applicable, who has audited any financial statements of the Company, its predecessors or any other entity included or incorporated by reference in the Registration Statement and the Prospectus, (in the case of a post-effective amendment, only if such amendment contains amended or new financial information), or any other independent registered public accounting firm that has certified financial statements of any Acquired Entity, in each case, that are included or incorporated by reference in the Registration Statement and the Prospectus, modified, as necessary, to relate to such Registration Statement or post-effective amendment, or the Prospectus contained therein as then amended or supplemented by such Prospectus Supplement, as applicable, each in the form mutually agreed to by the Company and the Investor prior to the date of this Agreement. The Investor shall have been furnished with such further certificates and documents as it may reasonably request. For the avoidance of doubt, following a Representation Date, the right of the Company to deliver VWAP Purchase Notices under this Agreement, and the obligation of the Investor to accept VWAP Purchase Notices under this Agreement, are subject to the Company having delivered to the Investor the Officer’s Certificate, the Secretary’s Certificate, opinions, 10b-5 letter and Bring-Down Comfort Letters referred to in clauses (1) through (3) above, each for the most recent Representation Date.

Section 6.17. Trading in the Common Stock. The Company acknowledges that the Investor may trade in compliance with all relevant applicable laws, in the Company's Common Stock for the Investor's own account and for the account of its clients at the same time as sales of Shares occur pursuant to this Agreement.

ARTICLE VII

CONDITIONS TO CLOSING AND CONDITIONS TO THE SALE AND PURCHASE OF THE SHARES

Section 7.1. Conditions Precedent to Closing. The Closing is subject to the satisfaction of each of the conditions set forth in this Section 7.1 on the Closing Date.

(i) **Accuracy of the Investor's Representations and Warranties.** The representations and warranties of the Investor contained in this Agreement (a) that are not qualified by "materiality" shall be true and correct in all material respects as of the Closing Date, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct in all material respects as of such other date and (b) that are qualified by "materiality" shall be true and correct as of the Closing Date, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct as of such other date.

(ii) **Accuracy of the Company's Representations and Warranties.** The representations and warranties of the Company contained in this Agreement (a) that are not qualified by "materiality" or "Material Adverse Effect" shall be true and correct in all material respects as of the Closing Date, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct in all material respects as of such other date and (b) that are qualified by "materiality" or "Material Adverse Effect" shall be true and correct as of the Closing Date, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct as of such other date.

(iii) **Reserved.**

(iv) **Closing Deliverables.** At the Closing, counterpart signature pages of this Agreement and the Registration Rights Agreement executed by each of the parties hereto shall be delivered as provided in Section 2.2. Simultaneously with the execution and delivery of this Agreement and the Registration Rights Agreement, the Investor's counsel shall have (a) agreed to the forms of opinions to be delivered to the Investor on the Commencement Date, and (b) received the Officer's Certificate and the Secretary's Certificate, dated the Closing Date.

Section 7.2. Conditions Precedent to Commencement. The right of the Company to commence delivering VWAP Purchase Notices under this Agreement, and the obligation of the Investor to accept VWAP Purchase Notices delivered to the Investor by the Company under this Agreement, are subject to the initial satisfaction, at Commencement, of each of the conditions set forth in this Section 7.2.

(i) **Accuracy of the Company's Representations and Warranties.** The representations and warranties of the Company contained in this Agreement (a) that are not qualified by "materiality" or "Material Adverse Effect" shall have been true and correct in all material respects when made and shall be true and correct in all material respects as of the Commencement Date with the same force and effect as if made on such date, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct in all material respects as of such other date and (b) that are qualified by "materiality" or "Material Adverse Effect" shall have been true and correct when made and shall be true and correct as of the Commencement Date with the same force and effect as if made on such date, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct as of such other date.

(ii) **Performance of the Company.** The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement and the Registration Rights Agreement to be performed, satisfied or complied with by the Company at or prior to the Commencement. The Company shall deliver to the Investor on the Commencement Date an Officer's Certificate and a Secretary's Certificate.

(iii) **Initial Registration Statement Effective.** The Initial Registration Statement covering the resale by the Investor of the Registrable Securities included therein required to be filed by the Company with the Commission pursuant to Section 2(a) of the Registration Rights Agreement shall have been declared effective under the Securities Act by the Commission, and the Investor shall be permitted to utilize the Prospectus therein to resell all of the Shares included in such Prospectus.

(iv) **No Material Notices.** None of the following events shall have occurred and be continuing: (a) receipt of any request by the Commission or any other federal or state governmental authority for any additional information relating to the Initial Registration Statement, the Prospectus contained therein or any Prospectus Supplement thereto, or for any amendment of or supplement to the Initial Registration Statement, the Prospectus contained therein or any Prospectus Supplement thereto; (b) the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of the Initial Registration Statement or prohibiting or suspending the use of the Prospectus contained therein or any Prospectus Supplement thereto, or of the suspension of qualification or exemption from qualification of the Shares for offering or sale in any jurisdiction, or the initiation or contemplated initiation of any proceeding for such purpose or the receipt of a notice of objection of the Commission to the use of the Initial Registration Statement pursuant to Rule 401(g)(2) of the 1933 Act Regulations; (c) the objection of FINRA to the terms of the transactions contemplated by the Transaction Documents or to the underwriting compensation or (d) the occurrence of any event or the existence of any condition or state of facts, which makes any statement of a material fact made in the Initial Registration Statement, the Prospectus contained therein or any Prospectus Supplement thereto untrue or which requires the making of any additions to or changes to the statements then made in the Initial Registration Statement, the Prospectus contained therein or any Prospectus Supplement thereto in order to state a material fact required by the Securities Act to be stated therein or necessary in order to make the statements then made therein (in the case of the Prospectus or any Prospectus Supplement, in the light of the circumstances under which they were made) not misleading, or which requires an amendment to the Initial Registration Statement or a supplement to the Prospectus contained therein or any Prospectus Supplement thereto to comply with the Securities Act or any other law. The Company shall have no Knowledge of any event that would reasonably be expected to have the effect of causing the suspension of the effectiveness of the Initial Registration Statement or the prohibition or suspension of the use of the Prospectus contained therein or any Prospectus Supplement thereto in connection with the resale of the Registrable Securities by the Investor.

(v) **Other Commission Filings.** The Current Report shall have been filed with the Commission as required pursuant to Section 2.3. The final Prospectus included in the Initial Registration Statement shall have been filed with the Commission prior to Commencement in accordance with Section 2.3 and the Registration Rights Agreement. All reports, schedules, registrations, forms, statements, information and other documents required to have been filed by the Company with the Commission pursuant to the reporting requirements of the Exchange Act, including all material required to have been filed pursuant to Section 13(a) or 15(d) of the Exchange Act, prior to Commencement shall have been filed with the Commission.

(vi) **No Suspension of Trading in or Notice of Delisting of Common Stock.** Trading in the Common Stock shall not have been suspended by the Commission, the Principal Market or FINRA (except for any suspension of trading of limited duration agreed to by the Company, which suspension shall be terminated prior to the Commencement Date), the Company shall not have received any final and non-appealable notice that the listing or quotation of the Common Stock on the Principal Market shall be terminated on a date certain or any notice that the listing or quotation of the Common Stock on the Principal Market shall be terminated on a date certain that the Company has not appealed or responded to within the requisite time period (unless, prior to such date certain, the Common Stock is listed or quoted on any other Principal Market), nor shall there have been imposed any suspension of, or restriction on, accepting additional deposits of the Common Stock, electronic trading or book-entry services by DTC with respect to the Common Stock that is continuing, the Company shall not have received any notice from DTC to the effect that a suspension of, or restriction on, accepting additional deposits of the Common Stock, electronic trading or book-entry services by DTC with respect to the Common Stock is being imposed or is contemplated (unless, prior to such suspension or restriction, DTC shall have notified the Company in writing that DTC has determined not to impose any such suspension or restriction).

(vii) **Compliance with Laws.** The Company shall have complied with all applicable federal, state and local governmental laws, rules, regulations and ordinances in connection with the execution, delivery and performance of this Agreement and the other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby, including, without limitation, the Company shall have obtained all permits and qualifications required by any applicable state securities or "Blue Sky" laws for the offer and sale of the Shares by the Company to the Investor and the subsequent resale of the Registrable Securities by the Investor (or shall have the availability of exemptions therefrom).

(viii) **No Injunction.** No statute, regulation, order, decree, writ, ruling or injunction shall have been enacted, entered, promulgated, threatened or endorsed by any court or governmental authority of competent jurisdiction which prohibits the consummation of or which would materially modify or delay any of the transactions contemplated by the Transaction Documents.

(ix) **No Proceedings or Litigation.** No action, suit or proceeding before any arbitrator or any court or governmental authority shall have been commenced, and no inquiry or investigation by any governmental authority shall have been commenced, against the Company or any Subsidiary, or any of the officers, directors or Affiliates of the Company or any Subsidiary, seeking to restrain, prevent or change the transactions contemplated by the Transaction Documents, including by way of restraining trading in the shares of the Common Stock on the Principal Market, or seeking material damages in connection with such transactions.

(x) **Listing of Shares.** All of the Shares that have been and may be issued pursuant to this Agreement shall have been approved for listing or quotation on the Principal Market as of the Commencement Date, subject only to notice of issuance.

(xi) **No Material Adverse Effect.** No condition, occurrence, state of facts or event constituting a Material Adverse Effect shall have occurred and be continuing.

(xii) **No Bankruptcy Proceedings.** No Person shall have commenced a proceeding against the Company pursuant to or within the meaning of any Bankruptcy Law. The Company shall not have, pursuant to or within the meaning of any Bankruptcy Law, (a) commenced a voluntary case, (b) consented to the entry of an order for relief against it in an involuntary case, (c) consented to the appointment of a Custodian of the Company or for all or substantially all of its property, or (d) made a general assignment for the benefit of its creditors. A court of competent jurisdiction shall not have entered an order or decree under any Bankruptcy Law that (I) is for relief against the Company in an involuntary case, (II) appoints a Custodian of the Company or for all or substantially all of its property, or (III) orders the liquidation of the Company or any of its Subsidiaries.

(xiii) **Payment of Structuring Fee.** The Company shall pay by wire transfer of immediately available funds to an account designated by the Investor (or the Investor's counsel) on the Effective Date of the Initial Registration Statement, the Structuring Fee (as defined below) in accordance with Section 10.1(i), all of which Structuring Fee shall be fully earned and non-refundable as of the Effective Date of the Initial Registration Statement.

(xiv) **Reserved.**

(xv) **Delivery of Commencement Irrevocable Transfer Agent Instructions and Notice of Effectiveness.** The Commencement Irrevocable Transfer Agent Instructions shall have been executed by the Company and delivered to acknowledged in writing by the Company's transfer agent, and the Notice of Effectiveness relating to the Initial Registration Statement shall have been executed by the Company's outside counsel and delivered to the Transfer Agent, in each case directing the Transfer Agent to issue to the Investor or its designated Broker-Dealer all of the Shares included in the Initial Registration Statement as DWAC Shares in accordance with this Agreement and the Registration Rights Agreement.

(xvi) **Reservation of Shares.** As of the Commencement Date, the Company shall have reserved out of its authorized and unissued Common Stock a number of shares of Common Stock equal to the Exchange Cap solely for the purpose of effecting VWAP Purchases under this Agreement.

(xvii) **Opinions of Company Counsel.** On the Commencement Date, the Investor shall have received an opinion and a 10b-5 letter, dated as of the Commencement Date, each from outside counsel to the Company, each in the form mutually agreed to by the Company and the Investor prior to the date of this Agreement.

(xviii) **Comfort Letter of Accountants.** On the Commencement Date, the Investor shall have received from each of Withum and BDO or a successor independent registered public accounting firm for the Company (or such other accounting firm as applicable) or any other independent registered public accounting firm, who has audited any financial statements of the Company, its predecessors, any Acquired Entity or any other entity, in each case, that are included or incorporated by reference in the Registration Statement and the Prospectus, a comfort letter dated as of the Commencement Date addressed to the Investor, in form and substance reasonably satisfactory to the Investor with respect to the audited and unaudited financial statements and certain financial information contained in the Registration Statement and the Prospectus, and any Prospectus Supplement, except that the specific date referred to therein for the carrying out of procedures shall be no more than three business days prior to the Commencement Date.

(xix) **Due Diligence Review.** In connection with the Commencement Date, the Company will timely cooperate with any reasonable due diligence review conducted by the Investor or counsel for the Investor in connection with the sale of Shares contemplated herein, including upon reasonable notice, providing such information and making available such documents and appropriate corporate officers, as the Investor may reasonably request.

(xx) **Research and Marketing Efforts.** Neither the Investor nor any Affiliate of the Investor shall have, during the five (5) Trading Day period immediately prior to, but not including, the Commencement Date: (i) published or distributed any research report (as such term is defined in Rule 500 of Regulation AC) concerning the Company or (ii) assisted the Company with, or participated in, any activities in connection with the marketing of the Company's shares of Common Stock, including without limitation, any non-deal road shows.

(xxi) **Payment of QIU Fee.** Prior to Commencement, LifeSci Capital, LLC, a New York limited liability company ("***LifeSci***"), shall have received the compensation set forth in Section 1(i) of the Engagement and Indemnity Agreement dated the date hereof, by and between the Company and LifeSci (the "***Indemnity Agreement***").

Section 7.3. Conditions Precedent to VWAP Purchases after Commencement Date. The right of the Company to deliver VWAP Purchase Notices under this Agreement after the Commencement Date, and the obligation of the Investor to accept VWAP Purchase Notices under this Agreement after the Commencement Date, are subject to the satisfaction of each of the conditions set forth in this Section 7.3 at the applicable VWAP Purchase Commencement Time for the VWAP Purchase to be effected pursuant to the applicable VWAP Purchase Notice timely delivered by the Company to the Investor in accordance with this Agreement, including the conditions set forth in Section 3.1 of this Agreement (each such time, a “**VWAP Purchase Condition Satisfaction Time**”).

(i) **Satisfaction of Certain Prior Conditions.** Each of the conditions set forth in subsections (i), (ii), (vi) through (xii) and (xvii) through (xx) set forth in Section 7.2 shall be satisfied at the applicable VWAP Purchase Condition Satisfaction Time after the Commencement Date (with the terms “**Commencement**” and “**Commencement Date**” in the conditions set forth in subsections (i), (ii) and (xx) of Section 7.2 replaced with “**applicable VWAP Purchase Condition Satisfaction Time**”); provided, however, that the Company shall not be required to deliver the Officer’s Certificate and Secretary’s Certificate after the Commencement Date, except as provided in Section 6.16 and Section 7.3(x).

(ii) **Initial Registration Statement Effective.** The Initial Registration Statement covering the resale by the Investor of the Registrable Securities included therein required to be filed by the Company with the Commission pursuant to Section 2(a) of the Registration Rights Agreement, and any post-effective amendment thereto required to be filed by the Company with the Commission after the Commencement Date and prior to the applicable VWAP Purchase Date pursuant to the Registration Rights Agreement, in each case shall have been declared effective under the Securities Act by the Commission and shall remain effective for the applicable Registration Period (as defined in the Registration Rights Agreement), and the Investor shall be permitted to (and to continue to) utilize the Prospectus therein, and any Prospectus Supplement thereto, to resell all of the Shares included in the Initial Registration Statement, and any post-effective amendment thereto, that have been issued and sold to the Investor hereunder pursuant to all VWAP Purchase Notices delivered by the Company to the Investor prior to such applicable VWAP Purchase Date, and all of the Shares included in the Initial Registration Statement, and any post-effective amendment thereto, that are issuable pursuant to the applicable VWAP Purchase Notice delivered by the Company to the Investor with respect to a VWAP Purchase to be effected hereunder on such applicable VWAP Purchase Date.

(iii) **Any Required New Registration Statement Effective.** Any New Registration Statement covering the resale by the Investor of the Registrable Securities included therein, and any post-effective amendment thereto, required to be filed by the Company with the Commission pursuant to the Registration Rights Agreement after the Commencement Date and prior to the applicable VWAP Purchase Date, in each case shall have been declared effective under the Securities Act by the Commission and shall remain effective for the applicable Registration Period, and the Investor shall be permitted to utilize the Prospectus therein, and any Prospectus Supplement thereto, to resell all of the Shares included in such New Registration Statement, and any post-effective amendment thereto, that have been issued and sold to the Investor hereunder pursuant to all VWAP Purchase Notices delivered by the Company to the Investor prior to such applicable VWAP Purchase Date and (c) all of the Shares included in such new Registration Statement, and any post-effective amendment thereto, that are issuable pursuant to the applicable VWAP Purchase Notice delivered by the Company to the Investor with respect to a VWAP Purchase to be effected hereunder on such applicable VWAP Purchase Date.

(iv) **Delivery of Subsequent Irrevocable Transfer Agent Instructions and Notice of Effectiveness.** With respect to any post-effective amendment to the Initial Registration Statement, any New Registration Statement or any post-effective amendment to any New Registration Statement, in each case declared effective by the Commission after the Commencement Date, the Company shall have delivered or caused to be delivered to the Transfer Agent (a) irrevocable instructions in the form substantially similar to the Commencement Irrevocable Transfer Agent Instructions executed by the Company and acknowledged in writing by the Transfer Agent and (b) the Notice of Effectiveness, in each case modified as necessary to refer to such Registration Statement or post-effective amendment and the Registrable Securities included therein, to issue the Registrable Securities included therein as DWAC Shares in accordance with the terms of this Agreement and the Registration Rights Agreement.

(v) **No Material Notices.** None of the following events shall have occurred and be continuing: (a) receipt of any request by the Commission or any other federal or state governmental authority for any additional information relating to the Initial Registration Statement or any post-effective amendment thereto, any New Registration Statement or any post-effective amendment thereto, or the Prospectus contained in any of the foregoing or any Prospectus Supplement thereto, or for any amendment of or supplement to the Initial Registration Statement or any post-effective amendment thereto, any New Registration Statement or any post-effective amendment thereto, or the Prospectus contained in any of the foregoing or any Prospectus Supplement thereto; (b) the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of the Initial Registration Statement or any post-effective amendment thereto, any New Registration Statement or any post-effective amendment thereto, or prohibiting or suspending the use of the Prospectus contained in any of the foregoing or any Prospectus Supplement thereto, or of the suspension of qualification or exemption from qualification of the Shares for offering or sale in any jurisdiction, or the initiation or contemplated initiation of any proceeding for such purpose or the receipt of a notice of objection of the Commission to the use of the Initial Registration Statement pursuant to Rule 401(g)(2) of the 1933 Act Regulations; (c) the objection of FINRA to the terms of the transactions contemplated by the Transaction Documents or to the underwriting compensation or (d) the occurrence of any event or the existence of any condition or state of facts, which makes any statement of a material fact made in the Initial Registration Statement or any post-effective amendment thereto, any New Registration Statement or any post-effective amendment thereto, or the Prospectus contained in any of the foregoing or any Prospectus Supplement thereto untrue or which requires the making of any additions to or changes to the statements then made in the Initial Registration Statement or any post-effective amendment thereto, any New Registration Statement or any post-effective amendment thereto, or the Prospectus contained in any of the foregoing or any Prospectus Supplement thereto in order to state a material fact required by the Securities Act to be stated therein or necessary in order to make the statements then made therein (in the case of the Prospectus or any Prospectus Supplement, in the light of the circumstances under which they were made) not misleading, or which requires an amendment to the Initial Registration Statement or any post-effective amendment thereto, any New Registration Statement or any post-effective amendment thereto, or the Prospectus contained in any of the foregoing or any Prospectus Supplement thereto to comply with the Securities Act or any other law (other than the transactions contemplated by the applicable VWAP Purchase Notice delivered by the Company to the Investor with respect to a VWAP Purchase to be effected hereunder on such applicable VWAP Purchase Date and the settlement thereof). The Company shall have no Knowledge of any event that would reasonably be expected to have the effect of causing the suspension of the effectiveness of the Initial Registration Statement or any post-effective amendment thereto, any New Registration Statement or any post-effective amendment thereto, or the prohibition or suspension of the use of the Prospectus contained in any of the foregoing or any Prospectus Supplement thereto in connection with the resale of the Registrable Securities by the Investor.

(vi) **Other Commission Filings.** The final Prospectus included in any post-effective amendment to the Initial Registration Statement, and any Prospectus Supplement thereto, required to be filed by the Company with the Commission pursuant to [Section 2.3](#) and the Registration Rights Agreement after the Commencement Date and prior to the applicable VWAP Purchase Date, shall have been filed with the Commission in accordance with [Section 2.3](#) and the Registration Rights Agreement. The final Prospectus included in any New Registration Statement and in any post-effective amendment thereto, and any Prospectus Supplement thereto, required to be filed by the Company with the Commission pursuant to [Section 2.3](#) and the Registration Rights Agreement after the Commencement Date and prior to the applicable VWAP Purchase Date, shall have been filed with the Commission in accordance with [Section 2.3](#) and the Registration Rights Agreement. All reports, schedules, registrations, forms, statements, information and other documents required to have been filed by the Company with the Commission pursuant to the reporting requirements of the Exchange Act, including all material required to have been filed pursuant to Section 13(a) or 15(d) of the Exchange Act, after the Commencement Date and prior to the applicable VWAP Purchase Date, shall have been filed with the Commission.

(vii) **No Suspension of Trading in or Notice of Delisting of Common Stock.** Trading in the Common Stock shall not have been suspended by the Commission, the Principal Market or the FINRA (except for any suspension of trading of limited duration agreed to by the Company, which suspension shall be terminated prior to the applicable VWAP Purchase Date), the Company shall not have received any final and non-appealable notice that the listing or quotation of the Common Stock on the Principal Market shall be terminated on a date certain or any notice that the listing or quotation of the Common Stock on the Principal Market shall be terminated on a date certain that the Company has not appealed or responded to within the requisite time period (unless, prior to such date certain, the Common Stock is listed or quoted on any other Principal Market), nor shall there have been imposed any suspension of, or restriction on, accepting additional deposits of the Common Stock, electronic trading or book-entry services by DTC with respect to the Common Stock that is continuing, the Company shall not have received any notice from DTC to the effect that a suspension of, or restriction on, accepting additional deposits of the Common Stock, electronic trading or book-entry services by DTC with respect to the Common Stock is being imposed or is contemplated (unless, prior to such suspension or restriction, DTC shall have notified the Company in writing that DTC has determined not to impose any such suspension or restriction).

(viii) **Certain Limitations.** The issuance and sale of the Shares issuable pursuant to the applicable VWAP Purchase Notice shall not (a) without the Investor's express written agreement, exceed the applicable VWAP Purchase Commitment Amount; provided that acceptance by the Investor through an Acknowledgement Receipt pursuant to **Section 3.1** shall constitute such express written agreement; provided further, that for the avoidance of doubt, the Investor shall not be obligated to purchase any amount of Shares that is in excess of the VWAP Purchase Commitment Amount, (b) without the Investor's express written agreement, cause the Aggregate Limit or the Beneficial Ownership Limitation to be exceeded, or (c) cause the Exchange Cap (to the extent applicable under **Section 3.3**) to be exceeded, unless (in the case of this clause (c)), the Company's stockholders have theretofore approved the issuance of Common Stock under this Agreement in excess of the Exchange Cap in accordance with the applicable rules of the Principal Market.

(ix) **Shares Authorized and Delivered.** All of the Shares issuable pursuant to the applicable VWAP Purchase Notice shall have been duly authorized by all necessary corporate action of the Company. All Shares relating to all prior VWAP Purchase Notices required to have been received by the Investor as DWAC Shares under this Agreement prior to the applicable VWAP Purchase Condition Satisfaction Time for the applicable VWAP Purchase shall have been delivered to the Investor as DWAC Shares in accordance with this Agreement.

(x) **Bring-Down Opinions of Company Counsel, Bring-Down Comfort Letters and Officer's Certificates and Secretary's Certificates.** The Investor shall have received (a) an opinion and a 10b-5 letter, dated as of the most recent Representation Date, each from outside counsel to the Company, for which the Company was obligated to instruct its outside counsel to deliver to the Investor prior to the applicable VWAP Purchase Condition Satisfaction Time for the applicable VWAP Purchase, (b) all Bring-Down Comfort Letters, dated as of the most recent Representation Date, provided by the Company's auditors and delivered to the Investor prior to the applicable VWAP Purchase Condition Satisfaction Time for the applicable VWAP Purchase and (c) all Officer's Certificates and Secretary's Certificates, dated as of the most recent Representation Date, from the Company that the Company was obligated to deliver to the Investor prior to the applicable VWAP Purchase Condition Satisfaction Time for the applicable VWAP Purchase, in each case in accordance with **Section 6.16**.

(xi) **Due Diligence Review.** In connection with each Representation Date, the Company will timely cooperate with any reasonable due diligence review conducted by the Investor or counsel for the Investor in connection with the sale of Shares contemplated herein, including upon reasonable notice, providing such information and making available such documents and appropriate corporate officers, as the Investor may reasonably request.

(xii) **Material Non-Public Information.** Neither the Company nor, in the Investor's sole discretion, the Investor, shall be in possession of any material non-public information concerning the Company.

(xiii) **Payment of Expenses.** The Company shall be in compliance with its obligations pursuant to Section 10.1(i) of this Agreement and invoices for reimbursement the fees and disbursements of legal counsel to the Investor shall not be more than 30 days in arrears.

ARTICLE VIII

TERMINATION

Section 8.1. Automatic Termination. Unless earlier terminated as provided hereunder, this Agreement shall terminate automatically on the earliest to occur of (i) the 36-month anniversary of the later of (x) the closing of the Business Combination ("**Business Combination Closing Date**") as defined in the Merger Agreement (as defined below) and (y) the Effective Date of the Initial Registration Statement (it being hereby acknowledged and agreed that such term may be extended by the parties hereto), (ii) the date on which the Investor shall have purchased the Total Commitment worth of Shares pursuant to this Agreement, (iii) the date on which the Common Stock shall have failed to be listed or quoted on the Principal Market or any successor Principal Market, (iv) the date on which, pursuant to or within the meaning of any Bankruptcy Law, the Company commences a voluntary case or any Person commences a proceeding against the Company, a Custodian is appointed for the Company or for all or substantially all of its property, or the Company makes a general assignment for the benefit of its creditors and (v) in the event the Merger Agreement terminates prior to the occurrence of the closing (as defined in the Merger Agreement) of the Business Combination, the date on which such Merger Agreement terminates (each date of such termination, an "**Automatic Termination Event**"); provided, however, that if the VWAP Purchase Price Reduction Aggregate Amount as of the date of such Automatic Termination Event is less than \$1,000,000, the Company shall pay to the Investor, by wire transfer of immediately available funds to an account designated by the Investor on the date of such Automatic Termination Event, an amount equal to \$1,000,000 less the VWAP Purchase Price Reduction Aggregate Amount as of the date of such Automatic Termination Event.

Section 8.2. Other Termination.

(a) Subject to Section 8.3, the Company may terminate this Agreement after the Commencement effective upon five (5) Trading Days' prior written notice to the Investor in accordance with Section 10.4 (the date of such termination, a "**Company Termination Event**"); provided, however, that (i) the Company shall have paid the Structuring Fee and reimbursed the fees and disbursements of legal counsel required to be paid to the Investor or its counsel pursuant to Section 10.1(i) of this Agreement, in each case prior to such termination, (ii) if the VWAP Purchase Price Reduction Aggregate Amount as of the date of the Company Termination Event is less than \$1,000,000, the Company shall pay to the Investor, by wire transfer of immediately available funds to an account designated by the Investor on the date of the Company Termination Event, an amount equal to \$1,000,000 less the VWAP Purchase Price Reduction Aggregate Amount as of the date of the Company Termination Event and (iii) prior to issuing any press release, or making any public statement or announcement, with respect to such termination, the Company shall consult with the Investor and its counsel on the form and substance of such press release or other disclosure. Subject to Section 8.3, this Agreement may be terminated at any time by the mutual written consent of the parties, effective as of the date of such mutual written consent unless otherwise provided in such written consent. Subject to Section 8.3, the Investor shall have the right to terminate this Agreement effective upon ten (10) Trading Days' prior written notice to the Company, which notice shall be made in accordance with Section 10.4, if: (a) any condition, occurrence, state of facts or event constituting a Material Adverse Effect has occurred and is continuing; (b) a Fundamental Transaction shall have occurred; or (c) the Company is in breach or default in any material respect of any of its covenants and agreements in the Registration Rights Agreement, and, if such breach or default is capable of being cured, such breach or default is not cured within fifteen (15) Trading Days after notice of such breach or default is delivered to the Company pursuant to Section 10.4; (d) while a Registration Statement, or any post-effective amendment thereto, is required to be maintained effective pursuant to the terms of the Registration Rights Agreement and the Investor holds any Registrable Securities, the effectiveness of such Registration Statement, or any post-effective amendment thereto, lapses for any reason (including, without limitation, the issuance of a stop order by the Commission) or such Registration Statement or any post-effective amendment thereto, the Prospectus contained therein or any Prospectus Supplement thereto otherwise becomes unavailable to the Investor for the resale of all of the Registrable Securities included therein in accordance with the terms of the Registration Rights Agreement, and such lapse or unavailability continues for a period of forty-five (45) consecutive Trading Days or for more than an aggregate of ninety (90) Trading Days in any three hundred and sixty-five (365)-day period, other than due to acts of the Investor; (e) trading in the Common Stock on the Principal Market (or successor Principal Market) shall have been suspended and such suspension continues for a period of five (5) consecutive Trading Days; (f) the Company is in material breach or default of any of its covenants and agreements contained in this Agreement, and, if such breach or default is capable of being cured, such breach or default is not cured within fifteen (15) Trading Days after notice of such breach or default is delivered to the Company pursuant to Section 10.4 of this Agreement; or (g) the Company has been required to pay the Cover Price or similar charges under Section 3.2 of this Agreement more than twice. Unless notification thereof is required elsewhere in this Agreement (in which case such notification shall be provided in accordance with such other provision), the Company shall promptly (but in no event later than twenty-four (24) hours) notify the Investor (and, if required under applicable law, including, without limitation, Regulation FD promulgated by the Commission, or under the applicable rules and regulations of the Principal Market (or successor Principal Market), the Company shall publicly disclose such information in accordance with Regulation FD and the applicable rules and regulations of the Principal Market (or successor Principal Market, as applicable)) upon becoming aware of any of the events set forth in the immediately preceding sentence.

(b) For a period of thirty (30) months from the Business Combination Closing Date, the Company shall give the Investor or an Affiliate of the Investor a right of first refusal (a “**Right of First Refusal**”) to act as (i) book-running manager or placement agent, as applicable, for any and all future public and private equity and debt offerings during such period by the Company or any successor to, or any subsidiary of, the Company, and to receive at least 20% of the aggregate gross fees from any such offerings and to hold the role of lead, second or third book-running manager or placement agent, as applicable, and (ii) exclusive sales agent in any “at-the-market offering” as defined in Rule 415(a)(4) under the Securities Act during such period by the Company or any successor to, or any subsidiary of, the Company. If the Investor provides any such additional services, separate agreements containing customary terms and conditions, including appropriate indemnification and fee provisions based on the prevailing market for similar services for global, full-service investment banks, will be entered into. Notwithstanding the foregoing, under no circumstances shall the Investor or any of its affiliates be obligated to accept any offer to act as agent, underwriter or placement agent and nothing contained herein shall constitute the agreement of the Investor or any of its affiliates to so act. In addition, after notice and a reasonable opportunity to cure, the Company will have a right to terminate the Investor’s engagement hereunder for cause in the event of the Investor’s material failure to provide the services contemplated hereunder (other than a failure caused by or as a result of circumstances outside of the Investor’s control (including, without limitation, market, economic or political conditions)) (a “**Termination for Cause**”). The Company’s exercise of its right of Termination for Cause will eliminate any obligations with respect to the provision of the Right of First Refusal to the Investor. Notwithstanding anything else in this Agreement, the Right of First Refusal will not have a duration of more than three years from the commencement of the resale of Shares pursuant to the Registration Statement or the termination of this Agreement.

Section 8.3. Effect of Termination. In the event of termination by the Company or the Investor (other than by mutual termination) pursuant to **Section 8.2**, written notice thereof shall forthwith be given to the other party as provided in **Section 10.4** and the transactions contemplated by this Agreement following the effectiveness of termination shall be terminated without further action by either party as of the effectiveness of termination. If this Agreement is terminated as provided in **Section 8.1** or **Section 8.2**, this Agreement shall become void and of no further force and effect, except that (i) the provisions of **Article V** (Representations, Warranties and Covenants of the Company), **Article IX** (Indemnification), **Article X** (Miscellaneous) and this **Article VIII** (Termination) shall remain in full force and effect indefinitely notwithstanding such termination, and, (ii) so long as the Investor owns any Registrable Shares, the covenants and agreements of the Company contained in **Article VI** (Additional Covenants) shall remain in full force and notwithstanding such termination for a period of thirty (30) days following such termination. Notwithstanding anything in this Agreement to the contrary, no termination of this Agreement by any party shall (i) become effective prior to the second (2nd) Trading Day immediately following the date on which the purchase of Shares by the Investor pursuant to any pending VWAP Purchase has been fully settled, including, without limitation, the delivery by the Company to the Investor of all Shares purchased by the Investor pursuant to such pending VWAP Purchase as DWAC Shares on the applicable VWAP Purchase Share Delivery Date therefor, and the delivery by the Investor to the Company of the aggregate VWAP Purchase Price payable by the Investor for such Shares, in each case in accordance with the settlement procedures set forth in **Section 3.2** of this Agreement (it being hereby acknowledged and agreed that no termination of this Agreement shall limit, alter, modify, change or otherwise affect any of the Company’s or the Investor’s rights or obligations under the Transaction Documents with respect to any pending VWAP Purchase that has not fully settled, and that the parties shall fully perform their respective obligations with respect to any such pending VWAP Purchase under the Transaction Documents), (ii) limit, alter, modify, change or otherwise affect the Company’s or the Investor’s rights or obligations under the Registration Rights Agreement, all of which shall survive any such termination, (iii) affect any Commitment Fee paid to the Investor pursuant to **Section 10.1(ii)**, it being hereby acknowledged and agreed that the amount of the Commitment Fee shall be fully earned by the Investor and shall be non-refundable as of the date on which they are paid pursuant to **Section 10.1(ii)**, or (iv) affect the Structuring Fee payable or paid to the Investor (or to its counsel directly), all of which Structuring Fee and reimbursement of fees and disbursements of legal counsel to the Investor shall be non-refundable when paid pursuant to **Section 10.1(i)**. Nothing in this **Section 8.3** shall be deemed to release the Company or the Investor from any liability for any breach or default under this Agreement, the Registration Rights Agreement or any of the other Transaction Documents, or to impair the rights of the Company and the Investor to compel specific performance by the other party of its obligations under this Agreement, the Registration Rights Agreement or any of the other Transaction Documents.

ARTICLE IX

INDEMNIFICATION

Section 9.1. Indemnification of Investor. In consideration of the Investor's execution and delivery of this Agreement and acquiring the Shares hereunder and in addition to all of the Company's other obligations under the Transaction Documents, subject to the provisions of this Section 9.1, the Company shall indemnify and hold harmless the Investor, its affiliates, each of their respective directors, officers, stockholders, members, partners, employees, agents and representatives (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding the lack of such title or any other title) and each Person, if any, who controls the Investor within the meaning of the Securities Act or the Exchange Act and each of the directors, officers, stockholders, members, partners, employees, agents, and representatives (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding the lack of such title or any other title) of such controlling Person (each, an "**Investor Party**" and collectively, the "**Investor Parties**"), from and against all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses (including all judgments, amounts paid in settlement, court costs, all reasonable out-of-pocket legal or other expenses reasonably incurred in investigating, preparing or defending any litigation, commenced or threatened, or any claim whatsoever), amounts paid in settlement or expenses, joint or several, (collectively, "**Claims**") reasonably incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the Commission, whether commenced, pending or threatened, whether or not an Investor Party is or may be a party thereto ("**Indemnified Damages**"), to which any Investor Party may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) are (a) as a result of, relate to or arise out of, or are based upon any untrue statement or alleged untrue statement of a material fact contained in any Commission Document (or any amendment thereto), or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact included in any Commission Document, or the omission or alleged omission therefrom of 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 this indemnity in (a) shall not apply to any Claim to the extent arising out of an untrue statement or omission, or alleged untrue statement or omission in a Commission Document, made in reliance upon and in conformity with information furnished in writing to the Company by the Investor for the Investor expressly for use in connection with the preparation of the Registration Statement, Prospectus or Prospectus Supplement or any such amendment thereof or supplement thereto (it being hereby acknowledged and agreed that the written information set forth on Exhibit B to the Registration Rights Agreement is the only written information furnished to the Company by or on behalf of the Investor expressly for use in any Registration Statement, Prospectus or Prospectus Supplement), (b) incurred or suffered to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any Governmental Authority, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, provided that any such settlement is effected with the written consent of the Company if required by Section 9.2 of this agreement, which consent shall not be unreasonably delayed, conditioned or withheld, (c) incurred or suffered in investigating, preparing or defending against any litigation, or any investigation or proceeding by any Governmental Authority, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission (whether or not a party), to the extent that any such expense is not paid under (a) or (b) above, (d) as a result of, relating to or arising out of any breach by the Company of its representations, warranties, covenants or agreements under this Agreement, or (e) as a result of, relating to or arising out of any other action, suit, claim or proceeding against an Investor Party arising out of or otherwise in connection with the Transaction Documents. The Company agrees to promptly notify the Investor of the commencement of any litigation or proceedings against the Company or any of its officers, directors or controlling person in connection with the issue and sale of the Shares or in connection with the Registration Statement or the Prospectus.

The Company shall reimburse any Investor Party promptly upon demand (with accompanying presentation of documentary evidence) for all legal and other costs and expenses reasonably incurred by such Investor Party in connection with (i) any action, suit, claim or proceeding, whether at law or in equity, to enforce compliance by the Company with any provision of the Transaction Documents or (ii) any other any action, suit, claim or proceeding, whether at law or in equity, with respect to which it is entitled to indemnification under this [Section 9.1](#); provided that the Investor shall promptly reimburse the Company for all such legal and other costs and expenses to the extent a court of competent jurisdiction determines in a final judgment that any Investor Party was not entitled to such reimbursement pursuant to this [Section 9.1](#).

Section 9.2. Indemnification Procedures.

(a) Promptly after an Investor Party receives notice of a claim or the commencement of an action for which the Investor Party intends to seek indemnification under [Section 9.1](#), the Investor Party will notify the Company in writing of the claim or commencement of the action, suit or proceeding; provided, however, that failure to notify the Company will not relieve the Company from liability under [Section 9.1](#), except to the extent it has been materially prejudiced by the failure to give such notice as evidenced by the forfeiture of by the Company of substantive rights or defenses. The Company will be entitled to participate in the defense of any claim, action, suit or proceeding as to which indemnification is being sought, and if the Company acknowledges in writing the obligation to indemnify the Investor Party against whom the claim or action is brought, the Company may (but will not be required to) assume the defense against the claim, action, suit or proceeding with counsel reasonably satisfactory to Investor Party. After the Company notifies the Investor Party that the Company wishes to assume the defense of a claim, action, suit or proceeding, the Company will not be liable for any further legal or other expenses incurred by the Investor Party in connection with the defense against the claim, action, suit or proceeding unless (1) the employment of counsel by the Investor Party has been authorized in writing by the Company, (2) the Investor Party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or another Investor Party that are different from or in addition to those available to the Company, (3) a conflict or potential conflict exists (based on advice of counsel to the Investor Party) between an Investor Party and the Company (in which case the Company will not have the right to direct the defense of such action on behalf of the Investor Party) or (4) the Company has not in fact employed counsel to assume the defense of such action or counsel reasonably satisfactory to the indemnified party, in each case, within a reasonable time after receiving notice of the commencement of the action; in each of which cases the reasonable fees, disbursements and other charges of counsel will be at the expense of the Company. It is understood that the Company shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm (plus local counsel) admitted to practice in such jurisdiction at any one time for all such similarly situated Investor Parties. The Company will not be liable for any settlement of any action effected without its prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding anything in this Agreement, if at any time an Investor Party shall have requested the Company to reimburse the Investor Party for fees and expenses of counsel as contemplated by the third sentence of this paragraph, the Company agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than fifteen (15) days after receipt by the Company of the aforesaid request and (ii) the Company shall not have reimbursed the Investor Party in accordance with such request prior to the date of such settlement. The Company shall not, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated by this section (whether or not any indemnified party is a party thereto), unless such settlement, compromise or consent (1) includes an express and unconditional release of each indemnified party, in form and substance reasonably satisfactory to such indemnified party, from all liability arising out of such litigation, investigation, proceeding or claim and (2) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(b) To the fullest extent permissible under applicable law, if the indemnification, hold harmless and/or exoneration rights, obligations and undertakings by the Company set forth in Section 9.1 are unavailable to Investor in whole or in part for any reason whatsoever (including in accordance with the proviso in Section 9.1(a)), the Company, in lieu of indemnifying, holding harmless or exonerating Investor, shall pay, in the first instance, the entire amount incurred by Investor for losses, liabilities, obligations, claims, contingencies, damages, costs and expenses (including all judgments, amounts paid in settlement, court costs, all legal or other expenses reasonably incurred in investigating, preparing or defending any litigation, commenced or threatened, or any claim whatsoever), in connection with any actual or threatened proceeding without requiring Investor to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have at any time against Investor. Any liability Investor may have arising out of or relating to the Transaction Documents or the Commission Document (or any amendment thereto), for loss or damage to which any other persons have also contributed, shall be several, and not joint, and, if the immediately preceding sentence of this Section 9.2(b) is held to be void, invalid, or unenforceable or if the indemnity in Section 9.1 is unavailable in accordance with the proviso in Section 9.1(a), shall be limited to the fees Investor actually receives pursuant to this agreement, and in no event shall the Investor be obligated to contribute any amount to the Company in excess of the fees it actually receives pursuant to this Agreement. No exclusion or limitation on the liability of other responsible persons imposed or agreed at any time shall affect any assessment of Investor's liability hereunder, nor shall settlement of or difficulty enforcing any claim, or the death, dissolution or insolvency of any such other responsible persons or their ceasing to be liable for the loss or damage or any portion thereof, affect any such assessment. Investor does not accept liability to any third party. For purposes of this Section 9.2(b), any person who controls a party to this Agreement within the meaning of the Securities Act, any affiliates of the Investor Party and any officers, directors, partners, employees or agents of the Investor Party or any of its affiliates, will have the same rights to contribution as that party, and each director of the Company and each officer of the Company who signed the Registration Statement will have the same rights to contribution as the Company, subject in each case to the provisions hereof. Any party entitled to contribution, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made under this Section 9.2(b), will notify any such party or parties from whom contribution may be sought, but the omission to so notify will not relieve that party or parties from whom contribution may be sought from any other obligation it or they may have under this Section 9.2(b) except to the extent that the failure to so notify such other party materially prejudiced the substantive rights or defenses of the party from whom contribution is sought. No party will be liable for contribution with respect to any action or claim settled without its written consent if such consent is required pursuant to Section 9.2(a) hereof. The Company shall not enter into any settlement of any proceeding in which the Company is jointly liable with Investor (or would be if joined in such proceeding) unless such settlement provides for a full and final release of all claims against Investor.

The remedies provided for in this Article IX are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Investor Party at law or in equity.

ARTICLE X

MISCELLANEOUS

Section 10.1. Certain Fees and Expenses.

(i) **Certain Fees and Expenses.** Each party shall bear its own fees and expenses related to the transactions contemplated by the Transaction Documents, except that (i) the Company shall pay, by wire transfer of immediately available funds to an account designated by the Investor (or to an account designated by the Investor's counsel) on the Effective Date of the Initial Registration Statement, a non-refundable structuring fee of \$50,000, exclusive of disbursements and out-of-pocket expenses (the "**Structuring Fee**") and (ii) the Company will reimburse the fees and disbursements of legal counsel to the Investor in an amount not to exceed (x) \$125,000 in connection with the entry into the Transaction Documents and the review of the Initial Registration Statement within fourteen (14) calendar days following the Closing Date and (y) \$25,000 per fiscal quarter in connection with the Investor's ongoing due diligence and review of any registration statements (including any supplements or amendments thereto) and deliverables subject to Section 6.16 (in each case, with any unused amounts of such dollar amounts being rolled forward to and available to be used in subsequent fiscal quarters until used) within fourteen (14) calendar days following the applicable Representation Date, up to an aggregate maximum amount of \$425,000. The Company shall pay all U.S. federal, state and local stamp and other similar transfer and other taxes (other than income taxes) and duties levied in connection with issuance of the Shares pursuant hereto. All of the Structuring Fee shall be fully earned and non-refundable as of the Effective Date of the Initial Registration Statement.

- (ii) **Commitment Fee.** In consideration for the Investor's execution and delivery of this Agreement, the Company shall pay to the Investor the Commitment Fee pursuant to the terms hereof.

Section 10.2. Specific Enforcement, Consent to Jurisdiction, Waiver of Jury Trial.

(i) The Company and the Investor acknowledge and agree that irreparable damage would 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 either party shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement by the other party and to enforce specifically the terms and provisions hereof (without the necessity of showing economic loss and without any bond or other security being required), this being in addition to any other remedy to which either party may be entitled by law or equity.

(ii) Each of the Company and the Investor (a) hereby irrevocably submits to the jurisdiction of the U.S. District Court and other courts of the United States sitting in the State of New York for the purposes of any suit, action or proceeding arising out of or relating to this Agreement, and (b) hereby waives, and agrees not to assert in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such court, that the suit, action or proceeding is brought in an inconvenient forum or that the venue of the suit, action or proceeding is improper. Each of the Company and the Investor consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing in this Section 10.2 shall affect or limit any right to serve process in any other manner permitted by law.

(iii) **EACH OF THE COMPANY AND THE INVESTOR HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR DISPUTES RELATING HERETO. EACH OF THE COMPANY AND THE INVESTOR (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE ENTERED INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.2.**

Section 10.3. Entire Agreement. The Transaction Documents set forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, negotiations and understandings between the parties, both oral and written, with respect to such matters. There are no promises, undertakings, representations or warranties by either party relative to subject matter hereof not expressly set forth in the Transaction Documents. All exhibits to this Agreement are hereby incorporated by reference in, and made a part of, this Agreement as if set forth in full herein.

Section 10.4. Notices. Any notice, demand, request, waiver or other communication required or permitted to be given hereunder shall be in writing and shall be effective (a) upon hand delivery or electronic mail delivery at the address or number designated in Exhibit E (if delivered on a business day during normal business hours where such notice is to be received), or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received) or (b) on the second business day following the date of mailing by express courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur.

Either party hereto may from time to time change its address for notices by giving at least five (5) days' advance written notice of such changed address to the other party hereto.

Section 10.5. Waivers. No provision of this Agreement may be waived other than in a written instrument signed by the party against whom enforcement of such waiver is sought. No failure or delay in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercises thereof or of any other right, power or privilege.

Section 10.6. Amendments. No provision of this Agreement may be amended by the parties from and after the date that is one (1) Trading Day immediately preceding the filing of the Initial Registration Statement with the Commission. Subject to the immediately preceding sentence, no provision of this Agreement may be amended other than by a written instrument signed by both parties hereto.

Section 10.7. Headings. The article, section and subsection headings in this Agreement are for convenience only and shall not constitute a part of this Agreement for any other purpose and shall not be deemed to limit or affect any of the provisions hereof. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Agreement instead of just the provision in which they are found.

Section 10.8. Construction. The parties agree that each of them and their respective counsel has reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents. In addition, each and every reference to share prices and number of shares of Common Stock in any Transaction Document shall, in all cases, be subject to adjustment for any stock splits, stock combinations, stock dividends, recapitalizations, reorganizations and other similar transactions that occur on or after the date of this Agreement. Any reference in this Agreement to "**Dollars**" or "\$" shall mean the lawful currency of the United States of America. Any references to "Section" or "Article" in this Agreement shall, unless otherwise expressly stated herein, refer to the applicable Section or Article of this Agreement.

Section 10.9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors. Neither the Company nor the Investor may assign this Agreement or any of their respective rights or obligations hereunder to any Person.

Section 10.10. No Third Party Beneficiaries. Except as expressly provided in Article IX, this Agreement is intended only for the benefit of the parties hereto and their respective successors, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

Section 10.11. Governing Law. This Agreement shall be governed by and construed in accordance with the internal procedural and substantive laws of the State of New York, without giving effect to the choice of law provisions of such state that would cause the application of the laws of any other jurisdiction.

Section 10.12. Survival. The representations, warranties, covenants and agreements of the Company and the Investor contained in this Agreement shall survive the execution and delivery hereof until the termination of this Agreement; provided, however, that (i) the provisions of Article VIII (Termination), Article IX (Indemnification) and this Article X (Miscellaneous) shall remain in full force and effect indefinitely notwithstanding such termination, and, (ii) so long as the Investor owns any Shares, the covenants and agreements of the Company and the Investor contained in Article VI (Additional Covenants), shall remain in full force and effect notwithstanding such termination for a period of thirty (30) days following such termination.

Section 10.13. Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile signature or signature delivered by e-mail in a “.pdf” format data file, including any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docuSign.com, www.echosign.adobe.com, etc., shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original signature.

Section 10.14. Publicity. The Company shall afford the Investor and its counsel with a reasonable opportunity to review and comment upon, shall consult with the Investor and its counsel on the form and substance of, and shall give due consideration to all such comments from the Investor or its counsel on, any press release, Commission filing or any other public disclosure made by or on behalf of the Company relating to the Investor, its purchases hereunder or any aspect of the Transaction Documents or the transactions contemplated hereby and thereby, prior to the issuance, filing or public disclosure thereof. For the avoidance of doubt, the Company shall not be required to submit for review any such disclosure (i) contained in periodic reports filed with the Commission under the Exchange Act if it shall have previously provided the same disclosure to the Investor or its counsel for review in connection with a previous filing or (ii) any Prospectus Supplement if it contains disclosure that does not reference the Investor, its purchases hereunder or any aspect of the Transaction Documents or the transactions contemplated hereby and thereby.

Section 10.15. Severability. The provisions of this Agreement are severable and, in the event that any court of competent jurisdiction shall determine that any one or more of the provisions or part of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement, and this Agreement shall be reformed and construed as if such invalid or illegal or unenforceable provision, or part of such provision, had never been contained herein, so that such provisions would be valid, legal and enforceable to the maximum extent possible.

Section 10.16. Further Assurances. From and after the Closing Date, upon the request of the Investor or the Company, each of the Company and the Investor shall execute and deliver such instrument, documents and other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

[Signature Pages Follow]

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

DRAGONFLY ENERGY HOLDINGS CORP.

By: /s/ Denis Phares

Name: Denis Phares

Title: Chief Executive Officer

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

CHARDAN CAPITAL MARKETS LLC

By: /s/ Jonas Grossman
Name: Jonas Grossman
Title: President

**ANNEX I TO THE
ChEF PURCHASE AGREEMENT
DEFINITIONS**

“**Affiliate**” shall mean any Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a Person, as such terms are used in and construed under Rule 144.

“**Affiliated Director**” shall mean a member of the Company’s Board of Directors who is nominated or appointed to the Company’s Board of Directors by the Investor or one of the Investor’s Affiliates.

“**Average Price**” means a price per Share (rounded to the nearest tenth of a cent) equal to the quotient obtained by dividing (i) the aggregate gross purchase price paid by the Investor for all Shares purchased pursuant to this Agreement, by (ii) the aggregate number of Shares issued pursuant to this Agreement.

“**Bankruptcy Law**” shall mean Title 11, U.S. Code, or any similar U.S. federal or state law for the relief of debtors.

“**Base Price**” means a price per Share equal to the sum of (i) the Minimum Price and (ii) \$0.00 (subject to adjustment for any reorganization, recapitalization, non-cash dividend, stock split, reverse stock split or other similar transaction that occurs on or after the date of this Agreement).

“**Block**” shall mean any trade on a single Trading Day to a single purchaser exceeding 20,000 shares of Common Stock.

“**Bloomberg**” shall mean Bloomberg, L.P.

“**Business Combination**” shall mean the transactions contemplated by that certain Agreement and Plan of Merger, dated May 15, 2022 (the “**Merger Agreement**”), by and among Chardan NexTech Acquisition 2 Corp., Bronco Merger Sub, Inc. and Dragonfly Energy Corp.

“**Closing Date**” shall mean the date of this Agreement.

“**Closing Sale Price**” shall mean, for the Common Stock as of any date, the last closing trade price for the Common Stock on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price for the Common Stock, then the last trade price for the Common Stock prior to 4:00 p.m., New York City time, as reported by Bloomberg. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

“**Commission**” shall mean the U.S. Securities and Exchange Commission or any successor entity.

“**Commission Documents**” shall mean (1) all reports, schedules, registrations, forms, statements, information and other documents filed with or furnished to the Commission by the Company pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act on or after June 17, 2022, and (2) the Company’s registration statement on Form S-4 (File No. 333-265713) initially filed with the Commission on June 17, 2022, including any related prospectus or prospectuses, for the registration of the Common Stock to be issued pursuant to the Agreement and Plan of Merger, dated as of May 15, 2022, by and among Chardan NexTech Acquisition 2 Corp., Bronco Merger Sub, Inc. and Dragonfly Energy Corp. (as amended) on file with the Commission at the time such registration statement became effective, including the financial statements, schedules, exhibits and all other documents filed as a part thereof or incorporated therein and all information deemed to be a part thereof as of the effective date of such registration statement under the Securities Act (the “**Company Form S-4 Registration Statement**”), (3) the Company’s proxy statement/prospectus, dated September 16, 2022, including the Annexes thereto and accompanying financial statements, and all documents incorporated therein by reference, filed with the Commission on September 16, 2022, pursuant to Rule 424(b) under the Securities Act; (4) each Registration Statement, as the same may be amended from time to time, the Prospectus contained therein and each Prospectus Supplement thereto and (5) all information contained in such filings and all documents and disclosures that have been and heretofore shall be incorporated by reference therein.

“**Commitment Fee**” shall mean \$1,000,000, payable by the Company to the Investor pursuant to the reduction of the VWAP Purchase Price described in “VWAP Purchase Price” below.

“**Common Stock Equivalents**” shall mean any securities of the Company or its Subsidiaries which entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“**Contract**” shall mean any written or oral legally binding contract, agreement, understanding, arrangement, subcontract, loan or credit agreement, note, bond, indenture, mortgage, purchase order, deed of trust, lease, sublease, instrument, or other legally binding commitment, obligation or undertaking.

“**Custodian**” shall mean any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

“**Disclosure Documents**” shall mean (i) the Commission Documents, if any, incorporated by reference in each Registration Statement, (ii) each Registration Statement, as the same may be amended from time to time, and the Prospectus contained therein and (iii) each Prospectus Supplement.

“**DTC**” shall mean The Depository Trust Company, a subsidiary of The Depository Trust & Clearing Corporation, or any successor thereto.

“**DWAC Shares**” shall mean Common Stock issued pursuant to this Agreement that are (i) issued in electronic form, (ii) freely tradable and transferable and without restriction on resale and without stop transfer instructions maintained against the transfer thereof and (iii) timely credited by the Company to the Investor’s or its designated Broker-Dealer at which the account or accounts to be credited with the Shares being purchased by Investor are maintained specified DWAC account with DTC under its Fast Automated Securities Transfer (FAST) Program, or any similar program hereafter adopted by DTC performing substantially the same function.

“**EDGAR**” shall mean the Commission’s Electronic Data Gathering, Analysis and Retrieval System.

“**Effective Date**” shall mean, with respect to the Initial Registration Statement filed pursuant to Section 2(a) of the Registration Rights Agreement (or any post-effective amendment thereto) or any New Registration Statement filed pursuant to Section 2(c) of the Registration Rights Agreement (or any post-effective amendment thereto), as applicable, the date on which the Initial Registration Statement (or any post-effective amendment thereto) or any New Registration Statement (or any post-effective amendment thereto) is declared effective by the Commission.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder.

“**Exempt Issuance**” shall mean the issuance of (a) Common Stock, options or other equity incentive awards to employees, officers, directors or vendors of the Company pursuant to any equity incentive plan duly adopted for such purpose, by the Company’s Board of Directors or a majority of the members of a committee of the Board of Directors established for such purpose, (b) (1) any Shares issued to the Investor, CCM Investments 5 LLC, Chardan NexTech Investments 2 LLC (the “**Sponsor**”), Chardan NexTech 2 Warrant Holdings LLC (“**Chardan NexTech 2 Warrant Holdings**”) and together with the Sponsor and the Investor, the “**Chardan Entities**”) or any of their respective affiliates or members pursuant to this Agreement, (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 May 15, 2022, provided that such securities referred to in this clause (3) have not been amended since such date to increase the number of such securities or to decrease the conversion price, exercise price, exchange rate or other price or rate or (c) securities issued pursuant to acquisitions, divestitures, licenses, partnerships, collaborations or strategic transactions approved by the Board or a majority of the members of a committee of the 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 Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.

“**FINRA**” shall mean the Financial Industry Regulatory Authority.

“**Fundamental Transaction**” shall mean that (i) the Company shall, directly or indirectly, in one or more related transactions, (1) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Person, with the result that the holders of the Company’s capital stock immediately prior to such consolidation or merger together beneficially own less than 50% of the outstanding voting power of the surviving or resulting corporation, or (2) sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company to another Person, or (3) take action to facilitate a purchase, tender or exchange offer by another Person that is accepted by the holders of more than 50% of the outstanding shares of Common Stock (excluding any shares of Common Stock held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (4) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination), or (5) reorganize, recapitalize or reclassify its Common Stock, or (ii) any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock.

“**Governmental Authority**” shall mean (i) any federal, provincial, state, local, municipal, national or international government or governmental authority, regulatory or administrative agency, governmental commission, department, board, bureau, agency or instrumentality, court, tribunal, arbitrator or arbitral body (public or private); (ii) any self-regulatory organization; or (iii) any political subdivision of any of the foregoing.

“**Hazardous Material**” shall mean 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.

“**Initial Registration Statement**” shall have the meaning assigned to such term in the Registration Rights Agreement.

“**Investment Period**” shall mean the period commencing on the Effective Date of the Initial Registration Statement and expiring on the date this Agreement terminates pursuant to [Article VIII](#).

“**Knowledge**” shall mean the actual knowledge of the Company’s Chief Executive Officer, the Company’s President, the Company’s Chief Financial Officer, the Company’s Chief Accounting Officer and the Company’s General Counsel, in each case after reasonable inquiry of all officers, directors, employees, consultants, agents, representatives and other advisors of the Company and its Subsidiaries who would reasonably be expected to have knowledge or information with respect to the matter in question.

“**Material Contracts**” means any other Contract that is expressly referred to in or filed or incorporated by reference as an exhibit to a Commission Document or that, individually or in the aggregate, if terminated, suspended or subject to default by a party thereto, would have a Material Adverse Effect.

“**Minimum Price**” means \$13.60, representing the average Nasdaq official closing price of the Common Stock on the Trading Market (as reflected on Nasdaq.com) for the five (5) consecutive Trading Days immediately preceding the date of this Agreement (subject to adjustment for any reorganization, recapitalization, non-cash dividend, stock split, reverse stock split or other similar transaction that occurs on or after the date of this Agreement).

“**New Registration Statement**” shall have the meaning assigned to such term in the Registration Rights Agreement.

“**Person**” shall mean any person or entity, whether a natural person, trustee, corporation, partnership, limited partnership, limited liability company, trust, unincorporated organization, business association, firm, joint venture, governmental agency or authority.

“**Post-Effective Amendment Period**” shall mean the period commencing at 9:30 a.m., New York City time, on the fifth (5th) Trading Day immediately prior to the filing of any post-effective amendment to the Initial Registration Statement or any New Registration Statement, and ending at 9:30 a.m., New York City time, on the Trading Day immediately following, the Effective Date of such post-effective amendment.

“**Principal Market**” shall mean the Nasdaq Global Market; provided, however, that in the event the Company’s Common Stock is ever listed or traded on the New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market, or the Nasdaq Capital Market, then the “Principal Market” shall mean such other market or exchange on which the Company’s Common Stock is then listed or traded.

“**Prospectus**” shall mean the prospectus in the form included in a Registration Statement, as supplemented from time to time by any Prospectus Supplement, including the documents incorporated by reference therein.

“**Prospectus Supplement**” shall mean any prospectus supplement to the Prospectus filed with the Commission from time to time pursuant to Rule 424(b) under the Securities Act, including the documents incorporated by reference therein.

“**Registrable Securities**” shall have the meaning assigned to such term in the Registration Rights Agreement.

“**Registration Period**” shall have the meaning assigned to such term in the Registration Rights Agreement.

“**Registration Statement**” shall have the meaning assigned to such term in the Registration Rights Agreement.

“**Rule 144**” shall mean Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect.

“**Securities Act**” shall mean the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder.

“**Shares**” shall mean the shares of Common Stock that are and/or may be purchased by the Investor under this Agreement pursuant to one or more VWAP Purchase Notices.

“**Short Sales**” shall mean “short sales” as defined in Rule 200 promulgated under Regulation SHO under the Exchange Act.

“**Specified Transaction**” shall mean a transaction in which the Company or any of its subsidiaries (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 Company or the payment of cash by the Company or (iv) effects or enters into any agreement to effect any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents (or a combination of units thereof) in connection with any “equity line of credit” or “at-the-market” or other continuous offering or similar offering of shares of Common Stock or Common Stock Equivalents, other than with the Investor or its affiliates. For the avoidance of doubt, Specified Transaction shall not include a follow-on offering or a follow-on public offering, in each case where the Company issues or sells any securities with a fixed price.

“**Subsidiary**” shall mean any corporation or other entity of which at least a majority of the securities or other ownership interest having ordinary voting power for the election of directors or other persons performing similar functions are at the time owned directly or indirectly by the Company and/or any of its other Subsidiaries.

“**Trading Day**” shall mean any day on which the Principal Market or, if the Common Stock is then listed on a successor Principal Market, such Principal Market is open for trading (regular way), including any day on which the Principal Market (or successor Principal Market, as applicable) is open for trading (regular way) for a period of time less than the customary time.

“**Transaction Documents**” shall mean, collectively, this Agreement and the exhibits hereto, the Registration Rights Agreement and the exhibits thereto, the Indemnity Agreement, and each of the other agreements, documents, certificates and instruments (including the VWAP Purchase Notices) entered into or furnished by the parties hereto in connection with the transactions contemplated hereby and thereby.

“**Transfer Agent**” shall mean Continental Stock Transfer & Trust Company, LLC, the sole transfer agent and branch registrar of the Company or any successor thereto.

“**VWAP**” shall mean, for the Common Stock for a specified period, the dollar volume-weighted average price for the Common Stock on the Principal Market, for such period, as reported by Bloomberg through its “VWAP” function. All such determinations shall be appropriately adjusted for any sales of shares of Common Stock through Block transactions, any reorganization, non-cash dividend, stock split, reverse stock split, stock combination, recapitalization or other similar transaction during such period.

“**VWAP Purchase Commencement Time**” shall mean, with respect to a VWAP Purchase made pursuant to Section 3.1, 9:30:01 a.m., New York City time, on the applicable VWAP Purchase Date, or such later time on such VWAP Purchase Date publicly announced by the Principal Market (or successor Principal Market) as the official open (or commencement) of trading (regular way) on the Principal Market (or successor Principal Market, as applicable) on such VWAP Purchase Date; provided, however, that if a VWAP Purchase Notice is delivered after 9:00 a.m., New York City time, on a VWAP Purchase Date, then the VWAP Purchase Commencement Time shall start only at the time specified in the Acknowledgement Receipt or, if not specified therein, the time at which the Company receives the Acknowledgement Receipt.

“**VWAP Purchase Commitment Amount**” means, with respect to a VWAP Purchase made pursuant to Section 3.1, a number of shares of Common Stock equal to the least of (i) a number of shares of Common Stock which, when aggregated with all other shares of Common Stock then beneficially owned by the Investor and its affiliates (as calculated pursuant to Section 13(d) of the Exchange Act and Rule 13d-3 promulgated thereunder), would result in the beneficial ownership by the Investor of more than the Beneficial Ownership Limitation, (ii) a number of shares of Common Stock which would result in the total aggregate VWAP Purchase Price to be paid by the Investor for the total VWAP Purchase Share Amount purchased by the Investor in such VWAP Purchase made on one VWAP Purchase Date exceed \$3,000,000, (iii) a number of Shares equal to (A) the VWAP Purchase Share Percentage multiplied by (B) the total number (or volume) of shares of Common Stock traded on the Principal Market (or successor Principal Market) during the applicable VWAP Purchase Period on the applicable VWAP Purchase Date for such VWAP Purchase and (iv) the VWAP Purchase Share Amount.

“**VWAP Purchase Date**” shall mean, with respect to a VWAP Purchase made pursuant to Section 3.1, the Trading Day on which the Investor receives, after 6:00 a.m., New York City time, but prior to 9:00 a.m. New York City time (unless Investor accepts a later delivered VWAP Purchase Notice), on such Trading Day, a valid VWAP Purchase Notice for such VWAP Purchase in accordance with this Agreement.

“**VWAP Purchase Notice**” shall mean, with respect to a VWAP Purchase made pursuant to Section 3.1, an irrevocable written notice delivered by the Company to the Investor offering the Investor the VWAP Purchase Share Amount and directing the Investor to purchase such portion of that amount as is necessary to give effect to the VWAP Purchase Commitment Amount (as set forth further in Section 3.1), at the applicable VWAP Purchase Price therefor on the applicable VWAP Purchase Date for such VWAP Purchase in accordance with this Agreement.

“**VWAP Purchase Period**” shall mean, with respect to a VWAP Purchase made pursuant to Section 3.1, the period on the applicable VWAP Purchase Date for such VWAP Purchase beginning at the applicable VWAP Purchase Commencement Time and ending at the applicable VWAP Purchase Termination Time.

“**VWAP Purchase Price**” shall mean the purchase price per Share to be purchased by the Investor in such VWAP Purchase on such VWAP Purchase Date equal to the product of the VWAP Purchase Price Percentage *multiplied* by the VWAP over the applicable VWAP Purchase Period on such VWAP Purchase Date for such VWAP Purchase, to be appropriately adjusted for any sales of shares of Common Stock through Block transactions, any reorganization, non-cash dividend, stock split, reverse stock split, stock combination, recapitalization or other similar transaction.

“**VWAP Purchase Price Percentage**” shall mean ninety-six and a half percent (96.5%); *provided* that, to account for the payment of the Commitment Fee by the Company to the Investor, the VWAP Purchase Price Percentage shall equal to ninety-three and a half percent (93.5%) until the VWAP Purchase Price Reduction Aggregate Amount is equal to \$1,000,000. For the avoidance of doubt, once the VWAP Purchase Price Aggregate Reduction Amount is equal to \$1,000,000, the VWAP Purchase Price Percentage shall be ninety-six and a half percent (96.5%).

“**VWAP Purchase Price Reduction Amount**” means, for each relevant Share of each relevant VWAP Purchase purchased by the Investor pursuant to this Agreement, the product of three percent (3.0%) *multiplied* by the VWAP over the applicable VWAP Purchase Period on the VWAP Purchase Date for such VWAP Purchase.

“**VWAP Purchase Price Reduction Aggregate Amount**” means, the aggregate sum of all VWAP Purchase Price Reduction Amounts.

“**VWAP Purchase Price Reset Date**” means the date on which the VWAP Purchase Price Aggregate Reduction Amount is equal to \$1,000,000 and the VWAP Purchase Price Percentage is ninety-six and a half percent (96.5%) in accordance with the definition of “VWAP Purchase Price Percentage” in this Annex I.

“**VWAP Purchase Share Amount**” shall mean, with respect to a VWAP Purchase made pursuant to Section 3.1, the number of Shares being irrevocably offered by the Company to the Investor for purchase by the Investor in such VWAP Purchase as specified by the Company in the applicable VWAP Purchase Notice during the VWAP Purchase Period on any VWAP Purchase Date.

“**VWAP Purchase Share Percentage**” shall mean, with respect to a VWAP Purchase made pursuant to Section 3.1, twenty percent (20%).

“**VWAP Purchase Termination Time**” shall mean, with respect to a VWAP Purchase made pursuant to Section 3.1, 4:00 p.m., New York City time, on the applicable VWAP Purchase Date, or such earlier time publicly announced by the Principal Market (or successor Principal Market) as the official close of trading (regular way) on the Principal Market on such applicable VWAP Purchase Date.

EXHIBIT A

FORM OF REGISTRATION RIGHTS AGREEMENT

EXHIBIT B
OFFICER'S CERTIFICATE

EXHIBIT C
SECRETARY'S CERTIFICATE

EXHIBIT D

FORM OF VWAP PURCHASE NOTICE

From: DRAGONFLY ENERGY HOLDINGS CORP.
To: Scott Blakeman
Attention: sblakeman@chardan.com
Copy to: Sean McGann SMcGann@chardan.com
Subject: VWAP Purchase Notice
Date: [•], 202[•]
VWAP Purchase Commencement Time: [•]

Ladies and Gentlemen:

Pursuant to the terms and subject to the conditions contained in the Common Stock Purchase Agreement (the “**Agreement**”) between Dragonfly Energy Holdings Corp., a Delaware corporation (the “**Company**”), and Chardan Capital Markets LLC (the “**Investor**”), dated [•], 2022, the Company hereby requests the Investor to purchase a VWAP Purchase Share Amount equal to [•] shares of the Company’s common stock, par value \$0.0001 per share, which the Company represents exceeds an estimate of the VWAP Purchase Commitment Amount (as defined in the Agreement) by [•], calculated based on the VWAP Purchase Price (as defined in the Agreement) of the Trading Day prior to the date of this VWAP Purchase Notice. The Company represents that all conditions set forth in Section 7.3 of the Agreement have been satisfied.

DRAGONFLY ENERGY HOLDINGS CORP.

By: _____
Name: _____
Title: _____

CHARDAN CAPITAL MARKETS LLC

By: _____
Name: _____
Title: _____

EXHIBIT E

NOTICES

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”), dated as of October 7, 2022, is by and between Chardan Capital Markets LLC, a New York limited liability company (the “**Investor**”), and Dragonfly Energy Holdings Corp., a Delaware corporation (the “**Company**”).

RECITALS

The Company and the Investor have entered into that certain Common Stock Purchase Agreement, dated as of the date hereof (the “**Purchase Agreement**”), pursuant to which the Company may issue, from time to time, to the Investor up to the lesser of (i) \$150,000,000 in aggregate gross purchase price of newly issued shares of the Company’s common stock, par value \$0.0001 per share (“**Common Stock**”), and (ii) the Exchange Cap (to the extent applicable under Section 3.3 of the Purchase Agreement), as provided for therein.

Pursuant to the terms of, and in consideration for the Investor entering into, the Purchase Agreement, the Company agrees to pay to the Investor the Commitment Fee in accordance with the terms of the Purchase Agreement (as defined therein).

Pursuant to the terms of, and in consideration for the Investor entering into, the Purchase Agreement, and to induce the Investor to execute and deliver the Purchase Agreement, the Company has agreed to provide the Investor with certain registration rights with respect to the Registrable Securities (as defined herein) as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained herein and in the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound hereby, the Company and the Investor hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

“**Adverse Disclosure**” shall mean any public disclosure of material non-public information, which disclosure, in the good faith judgment of the Chief Executive Officer of the Company or the Board of Directors of the Company, after consultation with counsel to the Company, (i) would be required to be made in any Registration Statement or Prospectus in order for the applicable Registration Statement or Prospectus not to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein (in the case of any Prospectus, in the light of the circumstances under which they were made) not misleading, (ii) would not be required to be made at such time if the Registration Statement were not being filed, declared effective or used, as the case may be, and (iii) the Company has a bona fide business purpose for not making such information public.

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

“**Closing Date**” shall mean the date of this Agreement.

“**Commission**” means the U.S. Securities and Exchange Commission or any successor entity.

“**Effective Date**” means the date that the applicable Registration Statement has been declared effective by the Commission.

“Effectiveness Deadline” means (i) with respect to the Initial Registration Statement required to be filed pursuant to Section 2(a), the earlier of (A) the 90th calendar day following the filing date thereof if the Commission notifies the Company that it will “review” such Registration Statement, and (B) the 10th calendar day after the date the Company is notified (orally or in writing, whichever is earlier) by the Commission that such Registration Statement will not be “reviewed” or will not be subject to further review and (ii) with respect to any New Registration Statements that may be required to be filed by the Company pursuant to this Agreement, the earlier of (A) the 90th calendar day following the filing date of the additional Registration Statement if the Commission notifies the Company that it will “review” the Registration Statement, and (B) the 10th calendar day after the date the Company is notified (orally or in writing, whichever is earlier) by the Commission that the New Registration Statement will not be “reviewed” or will not be subject to further review.

“Eligible Market” means The New York Stock Exchange, Inc., NYSE AMEX Equities, the NASDAQ Global Select Market, the NASDAQ Global Market or the NASDAQ Capital Market.

“Filing Deadline” means (i) with respect to the Initial Registration Statement required to be filed pursuant to Section 2(a), the 30th calendar day immediately following the Business Combination Closing Date (or if such day is not a Business Day, the next following Business Day), and (ii) with respect to any New Registration Statements that may be required to be filed by the Company pursuant to this Agreement, the 15th Business Day following the sale of substantially all of the Registrable Securities included in the Initial Registration Statement or the most recent prior New Registration Statement, as applicable.

“Person” means any person or entity, whether a natural person, trustee, corporation, partnership, limited partnership, limited liability company, trust, unincorporated organization, business association, firm, joint venture, governmental agency or authority.

“Prospectus” means the prospectus in the form included in the Registration Statement at the applicable Effective Date of the Registration Statement, as supplemented from time to time by any Prospectus Supplement, including the documents incorporated by reference therein.

“Prospectus Supplement” means any prospectus supplement to the Prospectus filed with the Commission from time to time pursuant to Rule 424(b) under the Securities Act, including the documents incorporated by reference therein.

“register,” “registered,” and “registration” refer to a registration effected by preparing and filing one or more Registration Statements in compliance with the Securities Act and pursuant to Rule 415 and the declaration of effectiveness of such Registration Statement(s) by the Commission.

“Registrable Securities” means all of the Shares and any capital stock of the Company issued or issuable with respect to such Shares, including, without limitation, (1) as a result of any stock split, stock dividend, recapitalization, merger, exchange, consolidation, spin-off, reorganization or similar event or otherwise and (2) shares of capital stock of the Company into which the shares of Common Stock are converted or exchanged and shares of capital stock of a successor entity into which the shares of Common Stock are converted or exchanged, in each case until such time as such securities cease to be Registrable Securities pursuant to Section 2(f).

“Registration Statement” means a registration statement or registration statements of the Company filed under the Securities Act covering the resale by the Investor of Registrable Securities, as such registration statement or registration statements may be amended and supplemented from time to time, including all documents filed as part thereof or incorporated by reference therein.

“Rule 144” means Rule 144 promulgated by the Commission under the Securities Act, as such rule may be amended from time to time, or any other similar or successor rule or regulation of the Commission that may at any time permit the Investor to sell securities of the Company to the public without registration.

“Rule 415” means Rule 415 promulgated by the Commission under the Securities Act, as such rule may be amended from time to time, or any other similar or successor rule or regulation of the Commission providing for offering securities on a delayed or continuous basis.

“Trading Market” means the NASDAQ Global Market.

ARTICLE II

REGISTRATIONS

Section 2. Registration.

(a) Mandatory Registration. The Company shall promptly prepare and, in no event later than the Filing Deadline, file with the Commission the Initial Registration Statement on Form S-1 (or any successor form) covering the resale by the Investor of the maximum number of additional Registrable Securities as shall be permitted to be included thereon in accordance with applicable Commission rules, regulations and interpretations so as to permit the resale of such Registrable Securities by the Investor under Rule 415 under the Securities Act at then prevailing market prices (and not fixed prices) (the “**Initial Registration Statement**”). The Initial Registration Statement shall contain the “Selling Stockholder” and “Plan of Distribution (Conflicts of Interest)” sections in the form reasonably agreed to by the Investor. The Company shall use its commercially reasonable efforts to have the Initial Registration Statement declared effective by the Commission as promptly as practicable, but in no event later than the applicable Effectiveness Deadline following the filing thereof with the Commission.

(b) Legal Counsel. Subject to Section 5 hereof, the Investor shall have the right to select one legal counsel to review and oversee, solely on its behalf, any registration pursuant to this Section 2 (“**Legal Counsel**”), which shall be Skadden, Arps, Slate, Meagher & Flom LLP, or such other counsel as thereafter designated by the Investor. Other than as set forth in the Purchase Agreement, the Company shall not be required to reimburse the Investor for any and all legal fees and expenses of the Legal Counsel incurred in connection with each registration contemplated hereby.

(c) Sufficient Number of Shares Registered. If at any time all Registrable Securities are not covered by the Initial Registration Statement filed pursuant to Section 2(a) as a result of Section 2(e) or otherwise, the Company shall use its commercially reasonable efforts to file with the Commission one or more additional Registration Statements so as to cover all of the Registrable Securities not covered by such Initial Registration Statement, in each case, as soon as practicable (taking into account any position of the staff of the Commission (“**Staff**”) with respect to the date on which the Staff will permit such additional Registration Statement(s) to be filed with the Commission and the rules and regulations of the Commission) (each such additional Registration Statement, a “**New Registration Statement**”) but in no event later than the applicable Filing Deadline for such New Registration Statement. The Company shall use its commercially reasonable efforts to cause each such New Registration Statement to become effective as promptly as practicable following the filing thereof with the Commission, but in no event later than the applicable Effectiveness Deadline for such New Registration Statement.

(d) No Inclusion of Other Securities. The Company may not include any securities other than Registrable Securities on any Registration Statement pursuant to Section 2(a) or Section 2(c) without consulting the Investor and Legal Counsel and obtaining the Investor’s written approval (email being sufficient) prior to filing such Registration Statement with the Commission.

(e) Offering. If the Staff or the Commission seeks to characterize any offering pursuant to a Registration Statement filed pursuant to this Agreement as constituting an offering of securities that does not permit such Registration Statement to become effective and be used for resales by the Investor on a delayed or continuous basis under Rule 415 at then-prevailing market prices (and not fixed prices), or if after the filing of any Registration Statement pursuant to Section 2(a) or Section 2(c), the Company is otherwise required by the Staff or the Commission to reduce the number of Registrable Securities included in such Registration Statement, then the Company shall reduce the number of Registrable Securities to be included in such Registration Statement (after consultation with the Investor and Legal Counsel as to the specific Registrable Securities to be removed therefrom) until such time as the Staff and the Commission shall so permit such Registration Statement to become effective and be used as aforesaid. Notwithstanding anything in this Agreement to the contrary, if after giving effect to the actions referred to in the immediately preceding sentence, the Staff or the Commission does not permit such Registration Statement to become effective and be used for resales by the Investor on a delayed or continuous basis under Rule 415 at then-prevailing market prices (and not fixed prices), the Company shall not request acceleration of the Effective Date of such Registration Statement, the Company shall promptly (but in no event later than 48 hours) request the withdrawal of such Registration Statement pursuant to Rule 477 under the Securities Act, and the Effectiveness Deadline shall automatically be deemed to have elapsed with respect to such Registration Statement at such time as the Staff or the Commission has made a final and non-appealable determination that the Commission will not permit such Registration Statement to be so utilized (unless prior to such time the Company has received assurances from the Staff or the Commission that a New Registration Statement filed by the Company with the Commission promptly thereafter may be so utilized). In the event of any reduction in Registrable Securities or if the Commission does not permit such Registration Statement to become effective and used for resales by the Investor on a delayed or continuous basis under Rule 415 at then-prevailing market prices pursuant to this paragraph, the Company shall use its commercially reasonable efforts to file one or more New Registration Statements with the Commission in accordance with Section 2(c) until such time as all Registrable Securities have been included in Registration Statements that have been declared effective and the Prospectuses contained therein are available for use by the Investor.

(f) Any Registrable Security shall cease to be a “**Registrable Security**” at the earliest of the following: (i) when a Registration Statement covering such Registrable Security becomes or has been declared effective by the Commission and such Registrable Security has been sold or disposed of pursuant to such effective Registration Statement; (ii) when such Registrable Security is acquired by the Company or one of its Subsidiaries; and (iii) such securities may be sold without registration pursuant to Rule 144 or any successor rule promulgated under the Securities Act.

ARTICLE III

RELATED OBLIGATIONS

Section 3. Related Obligations. The Company shall use its commercially reasonable efforts to effect the registration of the Registrable Securities in accordance with the terms of this Agreement and the intended method of disposition thereof, and, pursuant thereto, during the term of this Agreement, the Company shall have the following obligations:

(a) The Company shall promptly prepare and file with the Commission the Initial Registration Statement pursuant to Section 2(a) hereof and, as applicable, one or more New Registration Statements pursuant to Section 2(c) hereof with respect to the Registrable Securities, but in no event later than the applicable Filing Deadline therefor, and the Company shall use its commercially reasonable efforts to cause each such Registration Statement to become effective as soon as practicable after such filing, but in no event later than the applicable Effectiveness Deadline therefor. Subject to Allowable Grace Periods (as defined below), the Company shall keep each Registration Statement effective (and the Prospectus contained therein available for use) pursuant to Rule 415 for resales by the Investor on a continuous basis at then-prevailing market prices (and not fixed prices) at all times until the earlier of (i) the date on which the Investor shall have sold all of the Registrable Securities covered by such Registration Statement and (ii) the third month anniversary of the date of termination of the Purchase Agreement if as of such date the Investor holds no Registrable Securities (or, if applicable, the date on which such securities cease to be Registrable Securities after the date of termination of the Purchase Agreement) (the “**Registration Period**”). Notwithstanding anything to the contrary contained in this Agreement (but subject to the provisions of Section 3(p) hereof), the Company shall ensure that, when filed and at all times while effective, each Registration Statement (including, without limitation, all amendments and supplements thereto) and the Prospectus (including, without limitation, all amendments and supplements thereto) used in connection with such Registration Statement shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of Prospectuses, in the light of the circumstances in which they were made) not misleading. The Company shall submit to the Commission, as soon as reasonably practicable after the date that the Company learns that no review of a particular Registration Statement will be made by the Staff or that the Staff has no further comments on a particular Registration Statement (as the case may be), a request for acceleration of effectiveness of such Registration Statement to a time and date as soon as reasonably practicable in accordance with Rule 461 under the Securities Act.

(b) Subject to Section 3(p) of this Agreement, the Company shall, as soon as reasonably practicable, use its commercially reasonable efforts to prepare and file with the Commission such amendments (including, without limitation, post-effective amendments) and supplements to each Registration Statement and the Prospectus used in connection with each such Registration Statement, which Prospectus is to be filed pursuant to Rule 424 promulgated under the Securities Act, as may be necessary to keep each such Registration Statement effective (and the Prospectus contained therein current and available for use) at all times during the Registration Period for such Registration Statement, and, during such period, comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities of the Company required to be covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the Investor. Without limiting the generality of the foregoing, the Company covenants and agrees that (i) at or before 8:30 a.m. (New York City time) on the second (2nd) Trading Day immediately following the Effective Date of the Initial Registration Statement and any New Registration Statement (or any post-effective amendment thereto), the Company shall file with the Commission in accordance with Rule 424(b) under the Securities Act the final Prospectus to be used in connection with sales pursuant to such Registration Statement (or post-effective amendment thereto), and (ii) if the transactions contemplated by any VWAP Purchase are material to the Company (individually or collectively with all other prior VWAP Purchases, the consummation of which have not previously been reported in any Prospectus Supplement filed with the Commission under Rule 424(b) under the Securities Act or in any report, statement or other document filed by the Company with the Commission under the Exchange Act and incorporated by reference in the Registration Statement and the Prospectus), or if otherwise required under the Securities Act (or the interpretations of the Commission thereof), in each case as reasonably determined by the Company and the Investor, then, at or before 8:30 a.m., New York City time, on the first (1st) Trading Day immediately following the VWAP Purchase Date, if a VWAP Purchase Notice was properly delivered to the Investor hereunder in connection with such VWAP Purchase, the Company shall file with the Commission a Prospectus Supplement pursuant to Rule 424(b) under the Securities Act with respect to the VWAP Purchase(s), the total VWAP Purchase Price for the Shares subject to such VWAP Purchase(s) (as applicable), the applicable VWAP Purchase Price(s) for such Shares and the net proceeds that are to be (and, if applicable, have been) received by the Company from the sale of such Shares. To the extent not previously disclosed in the Prospectus or a Prospectus Supplement, the Company shall disclose in its Quarterly Reports on Form 10-Q and in its Annual Reports on Form 10-K the information described in the immediately preceding sentence relating to all VWAP Purchase(s) consummated during the relevant fiscal quarter and shall file such Quarterly Reports and Annual Reports with the Commission within the applicable time period prescribed for such report under the Exchange Act. In the case of amendments and supplements to any Registration Statement on Form S-1 or Prospectus related thereto which are required to be filed pursuant to this Agreement (including, without limitation, pursuant to this Section 3(b)) by reason of the Company filing a report on Form 8-K, Form 10-Q or Form 10-K or any analogous report under the Exchange Act, the Company shall have such report incorporated by reference into such Registration Statement and Prospectus, if applicable, or shall file such amendments or supplements to the Registration Statement or Prospectus with the Commission on the same day on which the Exchange Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement or Prospectus, for the purpose of including or incorporating such report into such Registration Statement and Prospectus. The Company consents to the use of the Prospectus (including, without limitation, any supplement thereto) included in each Registration Statement in accordance with the provisions of the Securities Act and with the securities or "Blue Sky" laws of the jurisdictions in which the Registrable Securities may be sold by the Investor, in connection with the resale of the Registrable Securities and for such period of time thereafter as such Prospectus (including, without limitation, any supplement thereto) (or in lieu thereof, the notice referred to in Rule 173(a) under the Securities Act) is required by the Securities Act to be delivered in connection with resales of Registrable Securities.

(c) The Company shall (A) permit Investor and Legal Counsel an opportunity to review and comment upon (i) each Registration Statement at least five (5) Trading Days prior to its filing with the Commission and (ii) all amendments and supplements to each Registration Statement (including, without limitation, the Prospectus contained therein) (except for Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and any similar or successor reports or Prospectus Supplements the content of which is limited to that set forth in such reports) at least five (5) Trading Days prior to their filing with the Commission, and (B) shall reasonably consider any comments of the Investor and Legal Counsel on any such Registration Statement or amendment or supplement thereto or to any Prospectus contained therein. The Company shall promptly furnish to Legal Counsel, without charge, (i) electronic copies of any correspondence from the Commission or the Staff to the Company or its representatives relating to each Registration Statement (which correspondence shall be redacted to exclude any material, non-public information regarding the Company or any of its Subsidiaries), (ii) after the same is prepared and filed with the Commission, one (1) electronic copy of each Registration Statement and any amendment(s) and supplement(s) thereto, including, without limitation, financial statements and schedules, all documents incorporated therein by reference, if requested by the Investor, and all exhibits and (iii) upon the effectiveness of each Registration Statement, one (1) electronic copy of the Prospectus included in such Registration Statement and all amendments and supplements thereto; provided, however, the Company shall not be required to furnish any document (other than the Prospectus, which may be provided in .PDF format) to Legal Counsel to the extent such document is available on EDGAR at the time of Legal Counsel's request).

(d) Without limiting any obligation of the Company under the Purchase Agreement, the Company shall promptly furnish to the Investor, without charge, (i) after the same is prepared and filed with the Commission, at least one (1) electronic copy of each Registration Statement and any amendment(s) and supplement(s) thereto, including, without limitation, financial statements and schedules, all documents incorporated therein by reference, if requested by the Investor, all exhibits thereto, (ii) upon the effectiveness of each Registration Statement, one (1) electronic copy of the Prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as the Investor may reasonably request from time to time) and (iii) such other documents, including, without limitation, copies of any final Prospectus and any Prospectus Supplement thereto, as the Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by the Investor; provided, however, the Company shall not be required to furnish any document (other than the Prospectus, which may be provided in .PDF format) to the Investor to the extent such document is available on EDGAR).

(e) The Company shall take such action as is reasonably necessary to (i) register and qualify, unless an exemption from registration and qualification applies, the resale by the Investor of the Registrable Securities covered by a Registration Statement under such other securities or "Blue Sky" laws of all applicable jurisdictions in the United States, (ii) prepare and file in those jurisdictions, such amendments (including, without limitation, post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be reasonably necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(e), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify Legal Counsel and the Investor of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or "Blue Sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

(f) The Company shall notify Legal Counsel and the Investor in writing of the happening of any event, as promptly as reasonably practicable after becoming aware of such event, as a result of which the Prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein (in the case of Prospectuses, in the light of the circumstances under which they were made), not misleading (provided that in no event shall such notice contain any material, non-public information regarding the Company or any of its Subsidiaries), and, subject to Section 3(p), promptly prepare a supplement or amendment to such Registration Statement and such Prospectus contained therein to correct such untrue statement or omission and deliver one (1) electronic copy of such supplement or amendment to Legal Counsel and the Investor (or such other number of copies as Legal Counsel or the Investor may reasonably request). The Company shall also promptly notify Legal Counsel and the Investor in writing (i) when a Prospectus or any Prospectus Supplement or post-effective amendment has been filed, when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to Legal Counsel and the Investor by facsimile or e-mail on the same day of such effectiveness), and when the Company receives written notice from the Commission that a Registration Statement or any post-effective amendment will be reviewed by the Commission, (ii) of any request by the Commission for amendments or supplements to a Registration Statement or related Prospectus or related information, (iii) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be appropriate and (iv) of the receipt of any request by the Commission or any other federal or state governmental authority for any additional information relating to the Registration Statement or any amendment or supplement thereto or any related Prospectus. The Company shall, as promptly as reasonably practicable (x) respond to any comments received from the Commission with respect to a Registration Statement or any amendment thereto and (y) prepare and file any such supplement or amendment to such Registration Statement and such Prospectus with the Commission as required pursuant to the determination or requests set forth under subsections (ii) to (iv) above. Nothing in this Section 3(f) shall limit any obligation of the Company under the Purchase Agreement.

(g) The Company shall (i) use its commercially reasonable efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement or the use of any Prospectus contained therein, or the suspension of the qualification, or the loss of an exemption from qualification, of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible time and (ii) notify Legal Counsel and the Investor of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding.

(h) The Company shall hold in confidence and not make any disclosure of information concerning the Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required to be disclosed in such Registration Statement pursuant to the Securities Act, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other Transaction Document. The Company agrees that it shall, upon learning that disclosure of such information concerning the Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to the Investor and allow the Investor, at the Investor's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

(i) Without limiting any obligation of the Company under the Purchase Agreement, the Company shall use its commercially reasonable efforts either to (i) cause all of the Registrable Securities covered by each Registration Statement to be listed on the Trading Market, or (ii) secure designation and quotation of all of the Registrable Securities covered by each Registration Statement on another Eligible Market. The Company shall pay all fees and expenses in connection with satisfying its obligation under the preceding sentence. In addition, the Company shall reasonably cooperate with the Investor and any Broker-Dealer through which the Investor proposes to sell its Registrable Securities in effecting a filing with FINRA pursuant to FINRA Rule 5110 as reasonably requested by the Investor.

(j) The Company shall cooperate with the Investor and, to the extent applicable, facilitate the timely preparation and delivery of Registrable Securities, as DWAC Shares, to be offered pursuant to a Registration Statement and enable such DWAC Shares to be in such denominations or amounts (as the case may be) as the Investor may reasonably request from time to time and registered in such names as the Investor may request. Investor hereby agrees that it shall cooperate with the Company, its counsel and Transfer Agent in connection with any issuances of DWAC Shares, and hereby represents, warrants and covenants to the Company that that it will resell such DWAC Shares only pursuant to the Registration Statement in which such DWAC Shares are included, in a manner described under the caption "Plan of Distribution" in such Registration Statement, and in a manner in compliance with all applicable U.S. federal and state securities laws, rules and regulations, including, without limitation, any applicable prospectus delivery requirements of the Securities Act. Such DWAC Shares shall be free from all restrictive legends and may be transmitted by the Transfer Agent to the Investor by crediting an account at DTC as directed in writing by the Investor.

(k) Upon the written request of the Investor, the Company shall as soon as reasonably practicable after receipt of notice from the Investor and subject to Section 3(p) hereof, (i) incorporate in a Prospectus Supplement or post-effective amendment such information as the Investor reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) make all required filings of such Prospectus Supplement or post-effective amendment after being notified of the matters to be incorporated in such Prospectus Supplement or post-effective amendment; and (iii) supplement or make amendments to any Registration Statement or Prospectus contained therein if reasonably requested by the Investor.

(l) The Company shall use its commercially reasonable efforts to cause the Registrable Securities covered by a Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

(m) The Company shall make generally available to its security holders (which may be satisfied by making such information available on EDGAR) as soon as practical, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in form complying with, and in the manner provided by, the provisions of Rule 158 under the Securities Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the applicable Effective Date of each Registration Statement.

(n) The Company shall use its commercially reasonable efforts to comply with all applicable securities laws, and all other applicable rules and regulations of the Commission in connection with any registration hereunder.

(o) Within one (1) Business Day after each Registration Statement which covers Registrable Securities is declared effective by the Commission, the Company shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investor) confirmation that such Registration Statement has been declared effective by the Commission in the form attached hereto as Exhibit A.

(p) Notwithstanding anything to the contrary contained herein (but subject to the last sentence of this Section 3(p)), at any time after the Effective Date of a particular Registration Statement, the Company may, upon written notice to the Investor, suspend the Investor's use of any prospectus that is a part of any Registration Statement (in which event the Investor shall discontinue sales of the Registrable Securities pursuant to such Registration Statement contemplated by this Agreement, but may, in its sole discretion, settle any previously made sales of Registrable Securities) if the Company (x) is pursuing an acquisition, merger, tender offer, reorganization, disposition or other similar transaction and the majority of the Board determines in good faith that (A) the Company's ability to pursue or consummate such a transaction would be materially adversely affected by any required disclosure of such transaction in such Registration Statement or other registration statement or (B) such transaction renders the Company unable to comply with Commission requirements, in each case under circumstances that would make it impractical or inadvisable to cause any Registration Statement (or such filings) to be used by Investor or to promptly amend or supplement any Registration Statement contemplated by this Agreement on a post effective basis, as applicable, or (y) is required to make an Adverse Disclosure (each, an "**Allowable Grace Period**"); *provided, however*, that in no event shall the Investor be suspended from selling Registrable Securities pursuant to any Registration Statement for a period that exceeds twenty (20) consecutive Trading Days or an aggregate of sixty (60) days in any three hundred and sixty-five (365)-day period; and *provided, further*, the Company shall not effect any such suspension (A) during the first 10 consecutive Trading Days after the Effective Date of the particular Registration Statement or (B) if a VWAP Purchase Notice has been delivered to the Investor, before the fifth (5th) Trading Day following the date on which the Company has issued all Shares issuable pursuant to the VWAP Purchase to which such VWAP Purchase Notice relates. The Company agrees that it shall not send any VWAP Purchase Notice to the Investor during an Allowable Grace Period. Upon disclosure of such information or the termination of the condition described above, the Company shall provide prompt notice, but in any event within one Business Day of such disclosure or termination, to the Investor and shall promptly terminate any suspension of sales it has put into effect and shall take such other reasonable actions to permit registered sales of Registrable Securities as contemplated in this Agreement (including as set forth in the first sentence of Section 3(f) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable). Notwithstanding anything to the contrary contained in this Section 3(p), the Company shall cause its transfer agent to deliver DWAC Shares, free from all restrictive legends, to a transferee of the Investor in accordance with the terms of the Purchase Agreement in connection with any sale of Registrable Securities with respect to which (i) the Company has made a sale to Investor and (ii) the Investor has entered into a contract for sale, and delivered a copy of the Prospectus included as part of the particular Registration Statement to the extent applicable, in each case prior to the Investor's receipt of the notice of an Allowable Grace Period and for which the Investor has not yet settled.

ARTICLE IV

OBLIGATIONS OF THE INVESTOR

Section 4. Obligations of the Investor.

(a) At least five (5) Business Days prior to the first anticipated filing date of each Registration Statement (or such shorter period to which the parties agree), the Company shall notify the Investor in writing of the information the Company requires from the Investor with respect to such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of the Investor that the Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, as shall be reasonably required to effect and maintain the effectiveness of the registration of such Registrable Securities. The Investor shall execute such documents in connection with such registration as the Company may reasonably request.

(b) The Investor agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of each Registration Statement hereunder, unless the Investor has notified the Company in writing of the Investor's election to exclude all of the Investor's Registrable Securities from such Registration Statement.

(c) The Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(p) or the first sentence of 3(f), the Investor shall as soon as is reasonably practicable discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until the Investor's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 3(p) or the first sentence of Section 3(f) or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary in this Section 4(c), the Company shall cause its Transfer Agent to deliver DWAC Shares, free from all restrictive legends, to a transferee of the Investor in accordance with the terms of the Purchase Agreement in connection with any sale of Registrable Securities with respect to which the Investor has entered into a contract for sale prior to the Investor's receipt of a notice from the Company of the happening of any event of the kind described in Section 3(p) or the first sentence of Section 3(f) and for which the Investor has not yet settled.

(d) The Investor covenants and agrees that it shall use commercially reasonable efforts to comply with the prospectus delivery and other requirements of the Securities Act as applicable to it in connection with sales of Registrable Securities pursuant to a Registration Statement.

ARTICLE V

EXPENSES OF REGISTRATION

Section 5. Expenses of Registration.

Except as otherwise provided in Section 10.1(i) of the Purchase Agreement, all reasonable expenses of the Company and of the Investor (other than sales or brokerage commissions and legal counsel fees and expenses) incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, and fees and disbursements of counsel for the Company, shall be paid by the Company.

ARTICLE VI

INDEMNIFICATION

Section 6. Indemnification.

(a) To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend the Investor, its affiliates, each of their respective directors, officers, shareholders, members, partners, employees, agents, representatives (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding the lack of such title or any other title) and each Person, if any, who controls the Investor within the meaning of the Securities Act or the Exchange Act and each of the directors, officers, shareholders, members, partners, employees, agents, representatives (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding the lack of such title or any other title) of such controlling Persons (each, an “**Investor Party**” and collectively, the “**Investor Parties**”), from and against all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses (including all judgments, amounts paid in settlement, court costs, all legal or other expenses reasonably incurred in investigating, preparing or defending any litigation, commenced or threatened, or any claim whatsoever), amounts paid in settlement or expenses, joint or several, (collectively, “**Claims**”) reasonably incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the Commission, whether pending or threatened, whether or not an Investor Party is or may be a party thereto (“**Indemnified Damages**”), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon (a) (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other “Blue Sky” laws of any jurisdiction in which Registrable Securities are offered (“**Blue Sky Filing**”), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) any untrue statement or alleged untrue statement of a material fact contained in any Prospectus (as amended or supplemented) or in any Prospectus Supplement or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading (the matters in the foregoing clauses (i) and (ii) being, collectively, “**Violations**”) or (b) any breach by the Company of its representations, warranties, covenants or agreements under this Agreement. The Company agrees to promptly notify the Investor of the commencement of any litigation or proceedings against the Company or any of its officers, directors or controlling person in connection with the issue and sale of the Registrable Shares or in connection with the Registration Statement or the Prospectus. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim by an Investor Party arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by the Investor for the Investor expressly for use in connection with the preparation of the Registration Statement, Prospectus or Prospectus Supplement or any such amendment thereof or supplement thereto (it being hereby acknowledged and agreed that the written information set forth on Exhibit B is the only written information furnished to the Company by or on behalf of the Investor expressly for use in any Registration Statement, Prospectus or Prospectus Supplement); (ii) shall not be available to the Investor to the extent such Claim is based on a failure of the Investor to deliver or to cause to be delivered the Prospectus (as amended or supplemented) made available by the Company (to the extent applicable), including, without limitation, a corrected Prospectus, if such Prospectus (as amended or supplemented) or corrected Prospectus was timely made available by the Company pursuant to Section 3(d) and then only if, and to the extent that, following the receipt of the corrected Prospectus no grounds for such Claim would have existed; and (iii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company if required by Section 6(c) of this agreement, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Investor Party and shall survive the transfer of any of the Registrable Securities by the Investor pursuant to Section 9.

(b) In connection with any Registration Statement in which the Investor is participating, the Investor agrees to severally and not jointly indemnify, hold harmless and defend, the Company, each of its directors, each of its officers who signs the Registration Statement and each Person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act (each, an “**Company Party**”), against any Claim or Indemnified Damages to which any of them may become subject, under the Securities Act, the Exchange Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case, to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with information furnished in writing to the Company by the Investor for the Investor expressly for use in connection with the preparation of the Registration Statement, Prospectus or Prospectus Supplement or any such amendment thereof or supplement thereto (it being hereby acknowledged and agreed that the written information set forth on Exhibit B is the only written information furnished to the Company by or on behalf of the Investor expressly for use in any Registration Statement, Prospectus or Prospectus Supplement); and, subject to Section 6(c) and the below provisos in this Section 6(b), the Investor shall reimburse a Company Party any legal or other expenses reasonably incurred by such Company Party in connection with investigating or defending any such Claim; provided, however, the indemnity agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Investor, which consent shall not be unreasonably withheld or delayed; and provided, further that the Investor shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to the Investor as a result of the applicable sale of Registrable Securities pursuant to such Registration Statement, Prospectus or Prospectus Supplement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Company Party and shall survive the transfer of any of the Registrable Securities by the Investor pursuant to Section 9.

(c) Promptly after receipt by an Investor Party or Company Party (as the case may be) under this Section 6 of notice of the commencement of any action or proceeding (including, without limitation, any governmental action or proceeding) involving a Claim, such Investor Party or Company Party (as the case may be) shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof. The indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Investor Party or the Company Party (as the case may be); provided, however, an Investor Party or Company Party (as the case may be) shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the indemnifying party if (i) the indemnifying party has agreed in writing to pay such fees and expenses; (ii) the indemnifying party shall have failed promptly to assume the defense of such Claim and to employ counsel reasonably satisfactory to such Investor Party or Company Party (as the case may be) in any such Claim; (iii) the named parties to any such Claim (including, without limitation, any impleaded parties) include both such Investor Party or Company Party (as the case may be) and the indemnifying party, and such Investor Party or such Company Party (as the case may be) shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Investor Party or such Company Party and the indemnifying party (in which case, if such Investor Party or such Company Party (as the case may be) notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, then the indemnifying party shall not have the right to assume the defense thereof on behalf of the indemnified party and such counsel shall be at the expense of the indemnifying party); or (iv) the indemnified party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or another indemnified party that are different from or in addition to those available to the indemnifying party, provided further that in the case of clause (iii) above the indemnifying party shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for all Investor Parties or Company Parties (as the case may be). The Company Party or Investor Party (as the case may be) shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Company Party or Investor Party (as the case may be) which relates to such action or Claim. The indemnifying party shall keep the Company Party or Investor Party (as the case may be) reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent; provided, however, the indemnifying party shall not unreasonably withhold, delay or condition its consent. Notwithstanding anything in this Agreement, if at any time an Investor Party shall have requested the Company to reimburse the Investor Party for fees and expenses of counsel as contemplated by Section 6(a), the Company agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 15 days after receipt by the Company of the aforesaid request and (ii) the Company shall not have reimbursed the Investor Party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the Company Party or Investor Party (as the case may be), consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Company Party or Investor Party (as the case may be) of a release from all liability in respect to such Claim or litigation, and such settlement shall not include any admission as to fault on the part of the Company Party. For the avoidance of doubt, the immediately preceding sentence shall apply to Sections 6(a) and 6(b) hereof. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Company Party or Investor Party (as the case may be) with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Investor Party or Company Party (as the case may be) under this Section 6, unless and solely to the extent that the indemnifying party is materially and adversely prejudiced by the failure to receive such notice in its ability to defend such action.

(d) No Person involved in the sale of Registrable Securities who is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) in connection with such sale shall be entitled to indemnification from any Person involved in such sale of Registrable Securities who is not guilty of fraudulent misrepresentation.

(e) The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, promptly upon the receipt of bills or as the Indemnified Damages are incurred; provided that any Person receiving any payment pursuant to this Section 6 shall promptly reimburse the Person making such payment for the amount of such payment to the extent a court of competent jurisdiction makes a final determination that such Person receiving such payment was not entitled to such payment.

(f) The indemnity and contribution agreements contained herein in Section 6 and Section 7 shall be in addition to (i) any cause of action or similar right of the Company Party or Investor Party against the indemnifying party or others, including any rights under the Purchase Agreement, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

ARTICLE VII

CONTRIBUTION

Section 7. Contribution.

In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in Section 6 for any reason is held to be unavailable or insufficient to hold an indemnified party harmless, the indemnifying party will make maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however: (i) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under Section 6 of this Agreement, (ii) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (iii) any contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the applicable sale of such Registrable Securities pursuant to such Registration Statement. Notwithstanding the provisions of this Section 7, the Investor shall not be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by the Investor from the applicable sale of the Registrable Securities subject to the Claim exceeds the amount of any damages that the Investor has otherwise been required to pay, or would otherwise be required to pay under Section 6(b), by reason of such untrue or alleged untrue statement or omission or alleged omission. For purposes of this Section 7, any person who controls a party to this Agreement within the meaning of the Securities Act, any affiliates of the Investor Party and any officers, directors, partners, employees or agents of the Investor Party or any of its affiliates, will have the same rights to contribution as that party, and each director of the Company and each officer of the Company who signed the Registration Statement will have the same rights to contribution as the Company, subject in each case to the provisions hereof. Any party entitled to contribution, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made under this Section 7, will notify any such party or parties from whom contribution may be sought, but the omission to so notify will not relieve that party or parties from whom contribution may be sought from any other obligation it or they may have under this Section 7 except to the extent that the failure to so notify such other party materially prejudiced the substantive rights or defenses of the party from whom contribution is sought. No party will be liable for contribution with respect to any action or claim settled without its written consent if such consent is required pursuant to Section 6(c) hereof.

ARTICLE VIII

REPORTS UNDER THE EXCHANGE ACT

Section 8. Reports Under the Exchange Act. With a view to making available to the Investor the benefits of Rule 144, the Company agrees to:

- (a) use its commercially reasonable efforts to make and keep public information available, as those terms are understood and defined in Rule 144;

- (b) use its commercially reasonable efforts to file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act so long as the Company remains subject to such requirements (it being understood that nothing herein shall limit any of the Company's obligations under the Purchase Agreement) and the filing of such reports and other documents is required for the applicable provisions of Rule 144;
- (c) furnish to the Investor, promptly upon request, (i) a written statement by the Company, if true, that it has complied with the reporting, submission and posting requirements of Rule 144 and the Exchange Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company with the Commission if such reports are not publicly available via EDGAR, and (iii) such other information as may be reasonably requested to permit the Investor to sell such securities pursuant to Rule 144 without registration;
- (d) take such additional action as is reasonably requested by the Investor to enable the Investor to sell the Registrable Securities pursuant to Rule 144, including, without limitation, delivering all such legal opinions, consents, certificates, resolutions and instructions to the Company's Transfer Agent without unreasonable delay as may be reasonably requested from time to time by the Investor and otherwise fully cooperate with Investor and Investor's broker in their efforts to effect such sale of securities pursuant to Rule 144; and
- (e) promptly inform the Investor once the securities may be sold without registration pursuant to Rule 144 or any successor rule promulgated under the Securities Act.

ARTICLE IX

ASSIGNMENT OF REGISTRATION RIGHTS

Section 9. Assignment of Registration Rights.

- (a) The Company shall not assign this Agreement or any of its rights or obligations hereunder.
- (b) The Investor may, with the written permission of the Company (email being sufficient), which shall not be unreasonably withheld or delayed, assign or delegate its rights, duties or obligations under this Agreement, in whole or in part, to any of its affiliates ("*Permitted Transferee*") to whom it transfers Registrable Securities; provided that such Registrable Securities remain Registrable Securities following such transfer; and provided further that the Investor shall not require the written permission of the Company, if (A) the Investor guarantees such affiliate's obligations hereunder or (B) such affiliate agrees to be bound by the Investor's duties and obligations hereunder and such affiliate has a long-term credit rating that is equal to or better than the Investor's credit rating at the time of such assignment or transfer.

ARTICLE X

AMENDMENT OR WAIVER

Section 10. Amendment or Waiver.

No provision of this Agreement may be (i) amended other than by a written instrument signed by both parties hereto or (ii) waived other than in a written instrument signed by the party against whom enforcement of such waiver is sought. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

ARTICLE XI

MISCELLANEOUS

Section 11. Miscellaneous.

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

(b) Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement shall be given in accordance with Section 10.4 of the Purchase Agreement.

(c) The Company and the Investor acknowledge and agree that irreparable damage would 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 either party shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement by the other party and to enforce specifically the terms and provisions hereof (without the necessity of showing economic loss and without any bond or other security being required), this being in addition to any other remedy to which either party may be entitled by law or equity.

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

(e) The Transaction Documents set forth the entire agreement and understanding of the parties solely with respect to the subject matter thereof and supersedes all prior and contemporaneous agreements, negotiations and understandings between the parties, both oral and written, solely with respect to such matters. There are no promises, undertakings, representations or warranties by either party relative to subject matter hereof not expressly set forth in the Transaction Documents. Notwithstanding anything in this Agreement to the contrary and without implication that the contrary would otherwise be true, nothing contained in this Agreement shall limit, modify or affect in any manner whatsoever (i) the conditions precedent to a VWAP Purchase contained in Article VII of the Purchase Agreement or (ii) any of the Company's obligations under the Purchase Agreement.

(f) The parties agree that each of them and their respective counsel has reviewed and had an opportunity to revise this Agreement. Any reference in this Agreement to “**Dollars**” or “\$” shall mean the lawful currency of the United States of America. Any references to “Section” or “Article” in this Agreement shall, unless otherwise expressly stated herein, refer to the applicable Section or Article of this Agreement.

(g) This Agreement shall inure to the benefit of and be binding upon the parties hereto, the Permitted Transferees and their respective successors. This Agreement is not for the benefit of, nor may any provision hereof be enforced by, any Person, other than the parties hereto, any Permitted Transferee, their respective successors and the Persons referred to in Sections 6 and 7 hereof.

- (h) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms “including,” “includes,” “include” and words of like import shall be construed broadly as if followed by the words “without limitation.” The terms “herein,” “hereunder,” “hereof” and words of like import refer to this entire Agreement instead of just the provision in which they are found.
- (i) This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile signature or signature delivered by e-mail in a “.pdf” format data file, including any electronic signature complying with the U.S. federal E-SIGN Act of 2000, e.g., www.docusign.com, www.echosign.adobe.com, etc., shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original signature.
- (j) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.
- (k) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.
- (l) The provisions of Article V (Expenses of Registration), Article VI (Indemnification), Article VII (Contributions) and this Article XI (Miscellaneous) shall remain in full force and effect indefinitely notwithstanding termination of this Agreement.

[Signature Pages Follow]

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

COMPANY:
DRAGONFLY ENERGY HOLDINGS CORP., a Delaware corporation
By: /s/ Denis Phares
Name: Denis Phares
Title: Chief Executive Officer

INVESTOR:
CHARDAN CAPITAL MARKETS LLC, a New York limited liability company
By: /s/ Jonas Grossman
Name: Jonas Grossman
Title: President

FORM OF NOTICE OF EFFECTIVENESS
OF REGISTRATION STATEMENT[●]
[●]
[●]Re: Dragonfly Energy Holdings Corp.
Ladies and Gentlemen:

We are counsel to Dragonfly Energy Holdings Corp, a Delaware corporation (the “**Company**”), and have represented the Company in connection with that certain ChEF Purchase Agreement, dated as of October 7, 2022 (the “**Purchase Agreement**”), entered into by and among the Company and the Investor named therein (the “**Holder**”) pursuant to which the Company has issued and may issue to the Holder from time to time shares of the Company’s common stock, par value \$0.0001 per share (the “**Common Stock**”). Pursuant to the Purchase Agreement, the Company also has entered into a Registration Rights Agreement, dated as of October 7, 2022, with the Holder (the “**Registration Rights Agreement**”), pursuant to which the Company agreed, among other things, to register the offer and sale by the Holder of the Registrable Securities (as defined in the Registration Rights Agreement) under the Securities Act of 1933, as amended (the “**Securities Act**”). In connection with the Company’s obligations under the Registration Rights Agreement, on [●], the Company filed a Registration Statement on Form S-1 (File No. 333-[●]) (the “**Registration Statement**”) with the Securities and Exchange Commission (the “**Commission**”) relating to the resale by the Holder of Registrable Securities and which names the Holder as an underwriter and a selling stockholder thereunder.

In connection with the foregoing, based solely on our review of the Commission’s EDGAR website, we advise you that the Registration Statement became effective under the Securities Act on [●]. In addition, based solely on our review of the information made available by the Commission at <http://www.sec.gov/litigation/stoporders.shtml>, we confirm that the Commission has not issued any stop order suspending the effectiveness of the Registration Statement. To our knowledge, based solely on our participation in the conferences mentioned above regarding the Registration Statement and our review of the information made available by the Commission at <http://www.sec.gov/litigation/stoporders.shtml>, no proceedings for that purpose are pending or have been instituted or threatened by the Commission.

We assume no obligation to update or supplement this letter to reflect any facts or circumstances which may hereafter come to our attention with respect to the matters herein and statements expressed above, including any changes in applicable law that may hereafter occur.

This letter is being delivered solely for the benefit of the person to whom it is addressed; accordingly, it may not be quoted, filed with any governmental authority or other regulatory agency or otherwise circulated or utilized for any purposes without our prior written consent.

[Signature Pages Follow]

Very truly yours,

By:

Name:

Title:

WRITTEN INFORMATION

The business address of Chardan is 17 State Street, Suite 2130, New York, NY 10004.

TERM LOAN, GUARANTEE AND SECURITY AGREEMENT

DATED AS OF OCTOBER 7, 2022

AMONG

ALTER DOMUS (US) LLC,

AS AGENT FOR THE LENDERS SIGNATORY HERETO,

DRAGONFLY ENERGY CORP.,

AS BORROWER

EICF AGENT LLC,

AS LEAD ARRANGER

AND

THE OTHER CREDIT PARTIES SIGNATORY HERETO

CHAPMAN AND CUTLER LLP
1270 Avenue of the Americas, 30th Floor
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TERM LOAN, GUARANTEE AND SECURITY AGREEMENT

This TERM LOAN, GUARANTEE AND SECURITY AGREEMENT is dated as of October 7, 2022, and agreed to by and among Dragonfly Energy Corp., a Nevada corporation (“**Borrower**”), Dragonfly Energy Holdings Corp. (f/k/a Chardan NexTech Acquisition 2 Corp.), a Delaware corporation (“**Holdings**”), the other Credit Parties from time to time party hereto, and ALTER DOMUS (US) LLC, a Delaware limited liability company, as agent (in such capacity, together with its successors and assigns, “**Agent**”) for the lenders set forth on Schedule B attached hereto and party hereto (each herein referred to as a “**Lender**” and collectively, the “**Lenders**”).

RECITALS

A. The Credit Parties desire that Borrower obtain the Term Loans described herein from the Lenders and the Lenders are willing to provide the Term Loans all in accordance with and subject to the terms and conditions of this Agreement.

B. Capitalized terms used herein shall have the meanings assigned to them in Schedule A and, for purposes of this Agreement and the other Loan Documents, the rules of construction set forth in Schedule A shall govern. All schedules, attachments, addenda and exhibits hereto, or expressly identified to this Agreement, are incorporated herein by reference, and taken together with this Agreement, constitute but a single agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. AMOUNT AND TERMS OF CREDIT

1.1 Term Loan.

(a) Each Lender agrees severally, but not jointly, upon the terms and subject to the conditions of this Agreement, to make to the Borrower an advance (each, a “**Term Loan**”; collectively, the “**Term Loans**”, the “**Loans**” or the “**Loan**”) on the Closing Date in the principal amount equal to such Lender’s Term Loan Commitment. If requested by a Lender, such Lender’s Term Loan shall be evidenced by a promissory note (each a “**Term Note**”) duly executed and delivered by the Borrower prior to the funding of such Term Loan in the form attached hereto as Exhibit B, and be repayable in accordance with the terms of such Term Note and this Agreement. Borrower shall repay the outstanding principal balance of the Loan to the Agent for the pro rata benefit of the Lenders in consecutive quarterly installments in the amounts set forth on Schedule B, due and payable on the first Business Day of each calendar quarter beginning with the first quarter indicated on Schedule B (each such date, a “**Payment Date**”), and a payment of the entire outstanding balance of the Loan on the Stated Maturity Date. Once repaid, any amount borrowed under the Term Loan Commitment of each Lender may not be re-borrowed. Subject to Section 1.2, all amounts owed hereunder with respect to the Term Loans shall be paid in full no later than the Maturity Date.

(b) The Borrower shall deliver to Agent at least one (1) Business Day prior to the Closing Date (or such later date as Administrative Agent may agree in its sole discretion), an executed Notice of Borrowing substantially in the form of Exhibit L (a "Notice of Borrowing"), executed by a Responsible Officer of Borrower and including such certifications as may be required under Section 2 hereof, the requested date of the borrowing (which shall be the Closing Date), the amount of the borrowing (which shall not exceed the aggregate Term Loan Commitments of all Lenders), and wire instructions for the account of the Borrower to which proceeds of the Loans should be sent. Following receipt of a Notice of Borrowing, the Agent shall promptly notify each Lender of the amount of its pro rata share of the borrowing. Each Lender shall make the amount of its Loan available to Agent in immediately available funds by wire transfer to Agent's account (as provided in writing by Agent) not later than 1:00 p.m., New York City time, on the Business Day specified in the applicable Notice of Borrowing. Upon receipt of all request funds, Agent shall make all funds so received available to the Borrower by wire transfer in like funds as received by Agent in accordance with the instructions provided by (and reasonably acceptable to) Agent by the Borrower. In the event that the Loans are advanced directly from any Lender to the Borrower, unless the Borrower has notified Agent in writing (which notification may be by email) by not later than 5:00 p.m., New York City time, on the Closing Date that it has not received the funds equal to the Term Loan Commitment of such Lender pursuant to the Notice of Borrowing, Agent shall deem such Term Loan(s) funded and make the appropriate recordations in the Register.

1.2 Term and Prepayment.

(a) Upon the Maturity Date of the Loan, Borrower shall pay to Agent (i) for the pro rata benefit of the Lenders, all outstanding principal and accrued but unpaid interest on the Loan and (ii) all other Obligations relating to the Loan then due to or incurred by Agent or the Lenders.

(b) Borrower shall have the right upon fifteen (15) calendar days' prior written notice to Agent (or such shorter period as the Agent may agree in its sole discretion), to make a voluntary prepayment (a "**Voluntary Prepayment**") of the principal amount of the Term Loans then outstanding, in whole or in part. If the Borrower elects to prepay the Term Loans pursuant to this Section 1.2(b) or otherwise, or if the Term Loans are mandatorily prepaid in whole or in part pursuant to any other clause of this Section 1.2 (each, a "**Mandatory Prepayment**") and together with any Voluntary Prepayment, the "**Prepayments**"), the Borrower shall pay to the Agent for the benefit of the Lenders a prepayment fee as follows: (i) in the case of any Prepayment (other than (x) under Section 1.2(c) in respect of a Casualty Event only, (y) under Section 1.2(f) or (z) under Section 1.2(e)) made prior to the first anniversary of the Closing Date, 5% of the principal Loan amount being prepaid on the date of such Prepayment; (ii) in the case of any Prepayment (other than (x) under Section 1.2(c) in respect of a Casualty Event only, (y) under Section 1.2(f) or (z) under Section 1.2(e)), made on or after the first anniversary of the Closing Date and prior to the second anniversary of the Closing Date, 3% of the principal Loan amount being prepaid on the date of such Prepayment; (iii) in the case of any Prepayment (other than (x) under Section 1.2(c) in respect of a Casualty Event only, (y) under Section 1.2(f) or (z) under Section 1.2(e)), made on or after the second anniversary of the Closing Date and prior to the third anniversary of the Closing Date, 1% of the principal Loan amount being prepaid on the date of such Prepayment; and (iv) in the case of any Prepayment made on or after the third anniversary of the Closing Date, 0% of the principal Loan amount being prepaid on the date of such Prepayment. Each Lender shall have the right in its sole discretion to decline any Mandatory Prepayment in accordance with Section 1.2(h) below.

(c) Asset Sales and Casualty Events. If the aggregate amount of Net Cash Proceeds received by the Credit Parties and their Subsidiaries (not including Excluded Subsidiaries) that is in connection with any Asset Sale or Casualty Event and all other Asset Sales and Casualty Events occurring during any Fiscal Year (other than Asset Sales permitted under Section 5.4(a), (b), (d), (e), (g), or (h)) exceeds \$750,000, then not later than five (5) Business Days following the receipt of such excess Net Cash Proceeds, Credit Parties shall make Mandatory Prepayments of the Obligations to be applied thereto in accordance with Section 1.8 in an aggregate amount equal to 100% of such Net Cash Proceeds; provided, that such Net Cash Proceeds shall not be required to be applied as a mandatory prepayment on such date to the extent that (x) no Default or Event of Default has occurred and is continuing or would result therefrom and (y) Credit Parties have delivered an Officers' Certificate to the Agent on or prior to such date stating that such Net Cash Proceeds are expected to be reinvested in capital assets useful in the business of the Credit Parties within twelve (12) months following the date of such Asset Sale or Casualty Event (which Officers' Certificate shall set forth the estimates of the proceeds to be so expended); provided, that if all or any portion of such Net Cash Proceeds is not so reinvested within such twelve (12)-month period (or such longer period as the Agent may agree in its sole discretion), such unused portion shall be applied on the last day of such period as a Mandatory Prepayment as provided in this Section 1.2(c); provided, further, that if the property subject to such Asset Sale or such Casualty Event constituted Collateral, then all property purchased with the Net Cash Proceeds thereof pursuant to this subsection shall be made subject to the Lien created pursuant to this Agreement in favor of the Agent for its benefit and the benefit of the Lenders in accordance with Sections 3.20 and 3.27. Nothing contained in this Section 1.2(c) shall permit any Credit Party or any of its Subsidiaries to effect any Asset Sale other than in accordance with Section 5.4.

(d) Debt Issuance. Not later than one (1) Business Day following the receipt of any Net Cash Proceeds of any Debt Issuance by the Credit Parties or any of their Subsidiaries, at the election of Agent (acting at the direction of the Required Lenders), Borrower shall make Mandatory Prepayments of the Obligations to be applied thereto in accordance with Section 1.8 in an aggregate amount equal to 100% of such Net Cash Proceeds. The provisions of this Section 1.2(d) shall not be an implied consent to any such issuance otherwise prohibited by the terms of this Agreement. Borrower shall provide written notice to Agent of any Debt Issuance no less than five (5) Business Days prior to the date of such Debt Issuance with a reference to this clause (d) and a calculation of the amount of such Net Cash Proceeds, and upon receipt thereof Agent shall promptly notify the Lenders of the contents of such notice.

(e) **Equity Issuance.** Not later than three (3) Business Days following the receipt of any Net Cash Proceeds of any Equity Issuance, Borrower shall make Mandatory Prepayments of the Obligations to be applied thereto in accordance with Section 1.8 in an aggregate amount equal to 25% of such Net Cash Proceeds. The provisions of this Section 1.2(e) shall not be an implied consent to any such issuance otherwise prohibited by the terms of this Agreement.

(f) **Prepayments from Excess Cash Flow.** On the date that the Borrower's financial statements are required to be delivered to Agent under Section 4.1 for the periods ending December 31 of each calendar year, beginning with the financial statements for the period ending December 31, 2023, the Borrower shall deliver a certificate (the "**Excess Cash Flow Certificate**"), executed by a Responsible Officer of Borrower, to Agent which shall set forth the calculation of Excess Cash Flow for such period and irrevocably offer to prepay the Obligations in an amount equal to (x) (A) if the Senior Leverage Ratio is greater than 3.00:1.00, fifty percent (50%) of Excess Cash Flow and (B) if the Senior Leverage Ratio is equal to or less than 3.00:1.00, twenty-five percent (25%) of Excess Cash Flow, less (y) all Voluntary Prepayments made during such calendar year on the Term Loans. The Borrower shall make any Prepayment under this clause (f) on the date that is ten (10) Business Days after the date that Borrower's financial statements are required to be delivered to Agent under Section 4.1 for the period ending December 31 of each calendar year. Excess Cash Flow for calendar year shall be calculated on the basis of the financial statements delivered to Agent pursuant to the Section 4.1 for period ending on the last day of such calendar year. Each Lender may accept or reject the offer to prepay the Obligations made pursuant to this Section 1.2(f) by causing a written notice of such acceptance or rejection to be delivered to Agent on or before 11:00 a.m. New York City time two Business Days prior to the date the Prepayment is due. A failure by a Lender to respond to an offer to prepay made pursuant to this Section 1.2(f) on or before such date shall be deemed to constitute an acceptance of such offer. All such prepayments from Excess Cash Flow shall be applied to the Obligations in accordance with Section 1.8.

(g) [Reserved.]

(h) **Lender Option to Decline Prepayment.** With respect to any Mandatory Prepayment required pursuant to this Section 1.2, any Lender, at its option, may elect not to accept such prepayment as provided below. The Borrower shall use commercially reasonable efforts to notify the Agent of any event giving rise to a prepayment under Section 1.2 no later than 1:00 p.m. New York City time five (5) Business Days prior to the date of such prepayment. Each such notice shall specify the expected date of such prepayment and provide a reasonably detailed estimated calculation of the amount of such prepayment that is required to be made under this Section 1.2 (the "**Prepayment Amount**"). The Agent will promptly notify each Lender of the contents of any such prepayment notice so received from the Borrower, including the date on which such prepayment is expected to be made by the Borrower (the "**Prepayment Date**"). Any Lender may decline to accept all or any portion of its share of any such prepayment (any such Lender, a "**Declining Lender**") by providing written notice to the Agent no later than 11:00 a.m. New York City time two (2) Business Days prior to the scheduled Prepayment Date. If any Lender does not give a notice to the Agent on or prior to such time that it declines to accept the applicable prepayment, then such Lender will be deemed to have accepted such prepayment. On any Prepayment Date, an amount equal to the Prepayment Amount including the portion thereof allocable to Declining Lenders, in each case for such Prepayment Date, shall be paid to the Agent by the Borrower and applied by the Agent ratably to prepay the applicable Loan owing to Lenders (other than Declining Lenders) in the manner described in Section 1.8 for such prepayment. The portion of such Prepayment Amount that was allocated to any Declining Lender shall be applied pro rata to the Lenders who have not declined their share of such Prepayment Amount.

- 1.3 Use of Proceeds. Borrower shall use the proceeds of the Loan (i) to refinance on the Closing Date, prior Indebtedness, (ii) to support the Combination, (iii) for working capital purposes and other corporate purposes, and (iv) to pay any fees associated with transactions contemplated under this Agreement and the other Loan Documents, including the transactions described in the foregoing clauses (i) and (ii).
- 1.4 Single Loan. The Loan and all of the other Obligations shall constitute one general obligation of Borrower secured by all of the Collateral.
- 1.5 Interest.
- (a) The outstanding balance of the Loan shall accrue interest at a per annum rate equal to Adjusted Term SOFR plus the Applicable Margin. All computations of interest on the Loan shall be made by Agent on the basis of a three hundred and sixty (360) day year, in each case for the actual number of days occurring in the period for which such interest is payable. In no event will Agent charge interest at a rate that exceeds the Maximum Lawful Rate. For the avoidance of doubt, no date of payment shall be included in any interest computation provided such payment is received on or before 1:00 p.m. New York city time.
- (b) Borrower shall pay interest to Agent for the pro rata benefit of the Lenders on the outstanding balance of the Loan on a quarterly basis. Interest shall be payable on the balance of the Loan (i) quarterly in arrears and shall be due on the first Business Day of each Fiscal Quarter, (ii) on the Maturity Date of the Loan, and (iii) if any interest accrues or remains payable after the Maturity Date of the Loan, upon demand by Agent. For each Payment Date from the Closing Date until and including October 1, 2024, interest shall be payable partly in cash and payable partly in-kind at a rate per annum equal to Adjusted Term SOFR *plus the Applicable Margin*, with the portion payable in kind at the Applicable PIK Rate which shall be capitalized, compounded and thereby increase the outstanding principal amount of the Loan on a quarterly basis on each such Payment Date . For each Payment Date occurring on and after January 1, 2025 (for the avoidance of doubt, including all interest accruing for the period beginning October 1, 2024 and ending December 31, 2024) , all interest shall be payable in cash at a rate per annum equal to Adjusted Term SOFR *plus the Applicable Margin*.

(c) Effective upon the occurrence of any Event of Default and for so long as any Event of Default shall be continuing, the interest rate applicable to the Loan shall automatically be increased by two percent (2.0%) per annum (such increased rate, the “**Default Rate**”), and all outstanding Obligations, including accrued but unpaid interest (to the extent permitted under applicable law), shall continue to accrue interest from the date of such Event of Default until the earlier of (x) the date on which such Obligations are paid in full and (y) the date on which such Event of Default ceases to be continuing, at the Default Rate applicable to such Obligations.

(d) If any payment to the Agent or any Lender under this Agreement becomes due and payable on a day other than a Business Day, such Payment Date shall be extended to the next succeeding Business Day and interest thereon shall be payable at the then applicable rate during such extension.

(e) Notwithstanding anything to the contrary set forth in this Section 1.5, if a court of competent jurisdiction determines in a final order that the rate of interest payable hereunder exceeds the highest rate of interest permissible under law (the “**Maximum Lawful Rate**”), then so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable hereunder shall be equal to the Maximum Lawful Rate; provided, however, that if at any time thereafter the rate of interest payable hereunder is less than the Maximum Lawful Rate, Borrower shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by Agent for the pro rata benefit of the Lenders is equal to the total interest that would have been received had the interest rate payable hereunder been (but for the operation of this paragraph) the interest rate payable since the Closing Date as otherwise provided in this Agreement. In no event shall the total interest received by Agent for the pro rata benefit of the Lenders pursuant to the terms hereof exceed the amount that Agent could lawfully have received had the interest due hereunder been calculated for the full term hereof at the Maximum Lawful Rate.

1.6 Fees.

Borrower agrees to pay to Agent:

- (a) for the pro rata benefit of the Lenders, the fees set forth in that certain Fee Letter, dated as of May 15, 2022, by and among the Lenders and the Borrower (the “**Lender Fee Letter**”);
- (b) for the benefit of the Agent, the fees set forth in that certain fee letter dated as of the Closing Date by and between Agent and the Borrower (as it may be amended, modified or amended and restated from time to time, the “**Agent Fee Letter**”), in each case at the times and in the manner set for in the Agent Fee Letter; and

(c) for the benefit of the Person to whom such fees, costs, and expenses are owed, all fees, costs and expenses of closing due and owing and presented as of the Closing Date, including without limitation, those relating to (i) Agent's and Initial Commitment Parties' due diligence review and evaluation of the transaction, (ii) the preparation, negotiation, execution and delivery of the Loan Documents, (iii) the closing of the Transactions, (iv) all appraisal, audit, environmental, title work, travel, inspection, surveys, filing, search and registration fees, (v) any loan, escrow, recording and transfer fees and taxes (as applicable), and (vi) Agent's counsel fees and expenses relating to any of the foregoing, and Initial Commitment Parties' counsel fees and expenses relating to any of the foregoing, together with post-closing fees and expenses; provided that fees of counsel shall be limited to one primary outside counsel for each Initial Commitment Party, one counsel for Agent, one local counsel in each relevant jurisdiction and one specialty intellectual property counsel and, solely in the case of an actual or perceived conflict of interest, on additional counsel to each relevant jurisdiction for all such affected Persons taken as a whole.

The Borrower agrees that any fees due and payable by the Borrower on the Closing Date may be satisfied by the Agent deducting or setting off the amount of such fees from the proceeds of the Term Loan funded to the Borrower on the Closing Date and by Agent paying such fees to the Persons to whom such fees are owed, in each case in accordance with the flow of funds attached to the Notice of Borrowing.

1.7 Receipt of Payments; Taxes.

(a) Borrower shall make each payment under this Agreement (not otherwise made pursuant to Section 1.8) without set-off, counterclaim or deduction and free and clear of all Taxes not later than 1:00 PM New York City time on the day when due in lawful money of the United States of America in immediately available funds by wire transfer to an account specified by the Agent in writing, except as required by applicable law. Any payments received by Agent after 1:00 PM New York City time may, in the Agent's discretion (in consultation with the Required Lenders), be deemed received on the next succeeding Business Day and, in such case, any applicable interest or fee shall continue to accrue; provided, however if Agent receives the payment after 1:00 PM New York City time and does not have sufficient time to wire such funds to the applicable Lenders, then such payment shall be deemed to be received on the next succeeding Business Day. If a Withholding Agent determines in its good faith discretion that it shall be required by applicable law to deduct or withhold any Taxes from any payment to any Recipient under any Loan Document, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased so that, after making all required deductions (including such deductions applicable to additional sums payable under this Section 1.7), the applicable Recipient receives an amount equal to that which it would have received had no such deductions been made. Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Agent timely reimburse it for the payment of, any Other Taxes. As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 1.7, Borrower shall deliver to Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Agent.

(b) The Borrower shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(c) Each Lender shall severally indemnify the Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of this Agreement relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (c).

(d) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to Section 1.7(a) or Section 1.10 (including by the payment of additional amounts pursuant to Section 1.7(a)), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party incurred in order to obtain such refund and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 1.7(b) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 1.7(b), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 1.7(b) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 1.7(b) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(e) Each party's obligations under this Section shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all obligations under any Loan Document.

1.8 Application and Allocation of Payments. Borrower irrevocably agrees that Agent shall have the continuing and exclusive right to apply any and all payments against the then due and payable Obligations in such order as Agent may deem advisable (as directed by the Required Lenders); provided, however, that (i) any and all Mandatory Prepayments shall be applied against the then due and payable Obligations as follows: (a) *first*, against the next 4 scheduled installments of the Term Loan in direct order of maturity until such scheduled installments have been paid in full; (b) *second*, against all other remaining principal installments of the Term Loan (including the final installment on the Maturity Date) in inverse order of maturity until the principal on the Term Loans is paid in full; (b) *third*, to payment of all accrued unpaid cash interest on the Obligations; (c) *fourth*, to payment of costs and expenses, including attorneys' fees, of Agent payable or reimbursable by Credit Parties under the Loan Documents; (d) *fifth*, to payment of any other amounts owing constituting Obligations; and (e) *sixth*, any remainder shall be for the account of and paid to whoever may be lawfully entitled thereto; and (ii) any and all Voluntary Prepayments shall be applied as directed by Borrower (and, in the absence of such direction, payments will be applied in the order of maturity). Each of the Lenders or other Persons entitled to payment shall receive an amount equal to its pro rata share of amounts available to be applied pursuant to the applicable foregoing clauses.

1.9 Accounting. Each Lender is authorized to record on its books and records the date and amount of the Loan and each payment of principal thereof and such recordation shall constitute prima facie evidence of the accuracy of the information so recorded absent manifest error.

1.10 Indemnity. Borrower and each other Credit Party executing this Agreement jointly and severally agree to indemnify and hold Agent, its Affiliates, and each of their respective employees, officers, attorneys, advisors and agents (each, an “**Agent Indemnified Person**”), each Lender and their respective Affiliates, and each of their respective employees, officers, attorneys, advisors and agents (each, a “**Lender Indemnified Person**” and, together with the Agent Indemnified Persons, each an “**Indemnified Person**”) harmless from and against any and all suits, actions, proceedings, claims, damages, demands, losses, liabilities and expenses of any kind or nature whatsoever, whether asserted by a Credit Party or any third party (including reasonable attorneys’ fees and disbursements (provided that fees of counsel shall be limited to one primary outside counsel for each Initial Commitment Party, one counsel for Agent, one local counsel in each relevant jurisdiction and one specialty intellectual property counsel, and, solely in the case of an actual or perceived conflict of interest, one additional counsel in each relevant jurisdiction for all such affected Persons taken as a whole)) and other costs of investigation or defense, including those incurred upon any appeal), that may be instituted or asserted against or incurred by any such Indemnified Person (whether asserted by a Credit Party or any third party) as the result of credit having been extended, suspended or terminated under this Agreement and the other Loan Documents or with respect to the execution, delivery, enforcement, performance and administration of, or in any other way arising out of or relating to, in connection with or resulting from (i) the execution or delivery of this Agreement and the other Loan Documents or any other documents or transactions contemplated by or referred to herein or therein and any actions or failures to act with respect to any of the foregoing or, in the case of the Agent Indemnified Persons, the administration of this Agreement and the other Loan Documents; (ii) any Loan or the use or proposed use of the proceeds therefrom; (iii) any actual or alleged presence or Release of Hazardous Materials at, on, under or emanating from any property owned, leased or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any Credit Party or any subsidiary thereof; or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party or any of the Borrower’s or such Loan Party’s directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, including, in each case and without limitation, any and all product liabilities, and reasonable legal costs and expenses arising out of or incurred in connection therewith (collectively, “**Indemnified Liabilities**”); provided that the foregoing indemnity will not (i) apply to any losses, claims, damages and liabilities that both (x) do not involve an act or omission by a Credit Party or any of its Affiliates and (y) arise from a dispute among the Indemnified Persons (other than in connection with Agent acting in its capacity as such, or any Initial Commitment Party acting in its capacity as Lead Arranger, or any other agent or co-agent (if any) designated by the Lead Arranger, in each case in their respective capacities as such), (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 such Indemnified Person’s controlled Affiliates (as determined by a court of competent jurisdiction in a final and non-appealable judgment) or (iii) apply to Taxes other than Taxes arising from a non-Tax claim. NO INDEMNIFIED PERSON SHALL BE RESPONSIBLE OR LIABLE TO ANY CREDIT PARTY, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR ANY ACT OR FAILURE TO ACT UNDER ANY POWER OF ATTORNEY OR FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES THAT MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER. The Borrower’s and other Credit Parties’ obligations under this Section shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all obligations under any Loan Document.

1.11 Rates. The Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

1.12 Joinder of New Subsidiaries as a Credit Party, Etc. As soon as possible but in any event upon the earlier of (x) twenty (20) days after formation of any new Subsidiary of a Credit Party (other than an Excluded Subsidiary) and (y) the date upon which any material assets are transferred to such new Subsidiary or simultaneously with the consummation of acquisition of any new Subsidiary of a Credit Party (other than an Excluded Subsidiary), Borrower shall take such actions as required by Section 3.27 and cause such new Subsidiary to become a Grantor and either a co-Borrower or Guarantor and under this Agreement by having the following documents delivered to Agent and the Lenders: (i) a Secretarial Certificate, a Power of Attorney and a Joinder Agreement in the forms of Exhibits C, D and H attached hereto, respectively, duly completed, executed and delivered by such new Subsidiary, (ii) security and other collateral documents, filings and instruments with respect to such new Subsidiary of the types described on Schedule D attached hereto, (iii) an opinion of counsel to such new Subsidiary, in form, substance and scope comparable in all material respects to the legal opinion of Grantor's counsel delivered to Agent and Lenders on the Closing Date and (iv) an updated Disclosure Schedule 3.7.

1.13 Non-Funding Lenders. Unless Agent shall have received written notice from any Lender prior to the date such Lender is required to make any payment hereunder with respect to the Loan that such Lender will not make such payment (or any portion thereof) available to Agent, Agent may assume that such Lender has made such payment available to Agent on the date such payment is required to be made in accordance with this Section 1 and Agent may (but shall be under no obligation to), in reliance upon such assumption, make available to Borrower on such date a corresponding amount. Borrower agrees to repay to Agent on demand such amount (until repaid by such Lender) with interest thereon for each day from the date such amount is made available to Borrower until the date such amount is repaid to Agent, at the interest rate applicable to the Obligation that would have been created when Agent made available such amount to Borrower had such Lender made a corresponding payment available; provided, however, that such payment shall not relieve such Lender of any obligation it may have to Borrower. In addition, any Lender that shall not have made available to Agent any portion of any payment described above (any such Lender, a "**Non-Funding Lender**") agrees to pay such amount to Agent on demand together with interest thereon, for each day from the date such amount is made available to Borrower until the date such amount is repaid to Agent, at the interest rate applicable at the time to the Term Loan. Such repayment shall then constitute the funding of the corresponding Loan (including any Loan deemed to have been made hereunder with such payment) or participation. In the event interest is paid by Borrower pursuant to this Section 1.13 and Agent subsequently receives payment of such interest from the Non-Funding Lender, Borrower shall be entitled to be reimbursed for such interest paid by Borrower up to the amount therefor received from the Non-Funding Lender. The existence of any Non-Funding Lender shall not relieve any other Lender of its obligations under any Loan Document, but no other Lender shall be responsible for the failure of any Non-Funding Lender to make any payment required under any Loan Document.

1.14 Substitution of Lenders.

(a) Substitution Right. In the event that any Lender (an “**Affected Lender**”), (i) becomes a Non-Funding Lender with respect to the Loan, (ii) does not consent to any amendment, waiver or consent to any Loan Document for which the consent of the Required Lenders is obtained but that requires the consent of all Lenders, or (iii) requires payment of any Indemnified Taxes or additional amount to such Lender or any Governmental Authority, Borrower may either pay in full such Affected Lender with respect to amounts due on the Term Loan of such Lender with the consent of Agent (at the direction of the Required Lenders) (such consent not to be unreasonably withheld, delayed or conditioned) or substitute for such Affected Lender any Lender or any Affiliate of any Lender or any other Person acceptable (which acceptance shall not be unreasonably withheld or delayed) to Agent (at the direction of the Required Lenders) (in each case, a “**Substitute Lender**”).

(b) Procedure. To substitute such Affected Lender or pay in full the Obligations owed to such Affected Lender under such Lender’s Term Loan, Borrower shall deliver a notice to Agent and such Affected Lender. The effectiveness of such payment or substitution shall be subject to the delivery to Agent by Borrower (or, as may be applicable in the case of a substitution, by the Substitute Lender) of (i) payment for the account of such Affected Lender, of, to the extent accrued through, and outstanding on, the effective date for such payment or substitution, all Obligations owing to such Affected Lender with respect to such Lender’s Term Loan (including those that will be owed because of such payment and all Obligations that would be owed to such Lender as if it was solely a Lender hereunder but excluding inchoate obligations for indemnification or reimbursement for which no claim has been asserted), and (ii) in the case of a substitution, (A) payment of the assignment fee set forth in Section 8(a) and (B) an Assignment Agreement in form and substance satisfactory to Agent whereby the Substitute Lender shall, among other things, agree to be bound by the terms of the Loan Documents and assume the Term Loan Commitment of the Affected Lender, and, if such assignee is not currently a Lender, such assignee shall have delivered to Agent an administrative questionnaire (in a form provided by Agent), a properly completed and duly executed IRS Form W-9 (or other applicable tax form) and all other documentation and other information about such assignee as required under applicable “know your customer” and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act.

(c) Effectiveness. Upon satisfaction of the conditions set forth in clause (b) above, Agent shall record such substitution or payment in the Register, whereupon (i) in the case of any payment in full of all Obligations owing to such Affected Lender, such Affected Lender's Term Loan Commitments shall be terminated and (ii) in the case of any substitution, (A) the Affected Lender shall sell and be relieved of, and the Substitute Lender shall purchase and assume, all rights and claims of such Affected Lender under the Loan Documents with respect to such Lender's Term Loan, except that the Affected Lender shall retain such rights expressly providing that they survive the repayment of the Obligations and the termination of the Term Loan Commitments, (B) the Substitute Lender shall become a "Lender" hereunder having a Term Loan Commitment in the amount of such Affected Lender's Term Loan Commitment and (C) the Affected Lender shall execute and deliver to Agent an Assignment Agreement to evidence such substitution and deliver to Borrower any Note in its possession with respect to its Term Loan; provided, however, that the failure of any Affected Lender to execute any such Assignment Agreement or deliver any such Note shall not render such sale and purchase (or the corresponding assignment) invalid.

1.15 Inability to Determine Rates. Subject to Section 10.17, if, on or prior to the first day of any quarter, either (a) the Agent determines (which determination shall be conclusive and binding absent manifest error) that "Adjusted Term SOFR" cannot be determined pursuant to the definition thereof, or (b) the Required Lenders determine that for any reason in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that Adjusted Term SOFR for any applicable interest period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of making and maintaining such Loan, and the Required Lenders have provided notice of such determination to the Agent, the Agent will promptly so notify the Borrower and each Lender.

Upon notice thereof by the Agent to the Borrower, any obligation of the Lenders to make SOFR Loans, and any right of the Borrower to continue SOFR Loans shall be suspended (to the extent of the affected SOFR Loans or affected interest periods) until the Agent (with respect to the foregoing clause (b), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans or affected interest periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing or continuation of, or conversion to, Base Rate Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable interest period. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted. Subject to Section 10.17, if the Agent determines (which determination shall be conclusive and binding absent manifest error) that "Adjusted Term SOFR" cannot be determined pursuant to the definition thereof on any given day, the interest rate on Base Rate Loans shall be determined by the Agent without reference to the clause of the definition of "Base Rate" that is based on Adjusted Term SOFR until the Agent revokes such determination.

2. CONDITIONS PRECEDENT

2.1 Conditions to the Loan. No Lender shall be obligated to make a Term Loan on the Closing Date, unless and until all of the following conditions have been (or shall be substantially concurrently with the borrowing of the Term Loans on the Closing Date) satisfied in a manner reasonably satisfactory to Agent and the Required Lenders, or waived in writing by Agent and the Required Lenders:

(a) The Combination shall have been consummated (or shall be consummated substantially concurrently with the borrowing of the Term Loans on the Closing Date) 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 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 of the Commitment Letter.

(b) Agent and the Required Lenders (or, in the case of clause (i) below, the Lenders (excluding CCM Lender or any of its Affiliates that holds a Term Loan, but including any assignee of the Term Loans held by CCM Lender on the Closing Date) on a ratable basis based on the principal amount of Term Loans held by each Lender on the Closing Date) 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 and closing certificates, inclusive of an incumbency certificate for the Borrower, (e) good standing certificates (to the extent applicable) in the respective jurisdictions of organization of the Credit Parties, (f) a Notice of Borrowing, (g) a solvency certificate in the form attached as Exhibit G hereto, (h) the SBA Documents, (i) substantially concurrently with the making of the Term Loans on the Closing Date, the Closing Date Warrants, and (j) a completed customary perfection certificate, in each case subject to the Certain Funds Provision.

(c) 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, (i) all fees and expenses due to Initial Commitment Parties and the Lenders under the Commitment Letter and Lender Fee Letter required to be paid on the Closing Date; and (ii) all fees and expenses due to Agent under the Agent Fee Letter, this Agreement and the other Loan Documents which are required to be paid on the Closing Date (including, without limitation, the fees and expenses of counsel to the Administrative Agent).

- (d) 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).
- (e) There shall not have occurred a Company Material Adverse Effect (as defined in the Merger Agreement) after the date of the Merger Agreement.
- (f) The Required Lenders shall have received (i) internal monthly financials for 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 Holdings 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.
- (g) The Refinancing shall have been consummated substantially concurrently with the funding of the Term Loans 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.
- (h) Subject to the Certain Funds Provisions, 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 Required Lenders, and the Agent and the Required Lenders 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 the Required Lenders on or before the date of the Commitment Letter.
- (i) The Agent and each Lender shall have received, at least three Business Days prior to the Closing Date, a properly completed and duly executed IRS Form W-9 (or other applicable tax form) from Borrower and all other 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 USA PATRIOT Act.

- (j) On the Closing Date and after giving effect to funding of the Term Loans on the Closing Date and payment or accrual of all expenses related to the Combination, Borrower shall have minimum unrestricted cash of at least \$22,500,000.
- (k) Sponsor shall have invested \$5,000,000 in Holdings by purchasing shares on the open market and such shares shall not have been redeemed on or prior to the Closing Date. Sponsor shall deliver a trade confirmation or such other evidence reasonably satisfactory to the Agent and Lenders to evidence (i) the purchase of shares of Holdings and (ii) that Sponsor still owns the shares after the applicable redemption date with respect to the Combination
- (l) Entry into definitive documentation to establish a \$150,000,000 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 Holdings, Borrower and CCM Investments 5 LLC.
- (m) Agent and the Required Lenders shall have received any amendments or modifications to the Merger Agreement.
- (n) 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.

Notwithstanding anything in the Loan Documents, or any other letter agreement or other undertaking concerning the financing of the Initial 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 Term Loans 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 Borrower or Holdings (or any of their affiliates) have the right to terminate their obligations under the Merger Agreement or to decline to consummate the Initial 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 Term Loans on the Closing Date if the conditions set forth in this Section 2.1 are satisfied (it being understood that to the extent any security interest in any Collateral (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 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 Term Loans 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 Initial Transactions) of Holdings and its subsidiaries on a consolidated basis (in form and scope consistent with the solvency certificate in the form attached as Exhibit G hereto); status of the Term Loans as senior debt; Federal Reserve margin regulations; the use of loan proceeds not violating the USA PATRIOT Act; the Investment Company Act of 1940; use of loan proceeds not violating OFAC and other anti-terrorism laws; use of loan proceeds not violating FCPA; the SBA representations and warranties and delivery of SBA Documents; assets and holding company only status of Holdings; 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**”.

3. REPRESENTATIONS, WARRANTIES AND AFFIRMATIVE COVENANTS

To induce Agent and the Lenders to enter into this Agreement and to induce the Lenders to make the Loan, Borrower and each other Credit Party executing this Agreement, jointly and severally, represent and warrant to Agent and each Lender (each of which representations and warranties shall survive the execution and delivery of this Agreement), and promise to and agree with Agent and each Lender until the Termination Date as follows:

3.1 Corporate Existence; Compliance with Law. Each Grantor: (a) is, as of the Closing Date, and will continue to be (i) (A) a corporation, limited liability company or limited partnership, as applicable, duly organized, and validly existing and (B) in good standing under the laws of the jurisdiction of its incorporation or organization, subject to the Permitted Redomicile, (ii) duly qualified to do business and in good standing in each other jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect, and (iii) in compliance with all Requirements of Law and Contractual Obligations, except to the extent failure to comply therewith could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (b) has and will continue to have (i) the requisite corporate power, or limited liability company power, as applicable, and authority and the legal right to execute, deliver and perform its obligations under the Loan Documents and to own, pledge, mortgage or otherwise encumber and operate its properties, to lease the property it operates under lease, and to conduct its business as now, heretofore or proposed to be conducted, and (ii) except as could not, individually, or in the aggregate, reasonably be expected to have a Material Adverse Effect, all licenses, permits, franchises, rights, powers, consents or approvals from or by all Persons or Governmental Authorities having jurisdiction over such Grantor that are necessary or appropriate for the conduct of its business.

3.2 Executive Offices; Corporate or Other Names. Except as disclosed in compliance with Section 5.11 after the Closing Date, including pursuant to Permitted Redomicile, (a) each Grantor's name as it appears in official filings in the jurisdiction of its incorporation or organization, (b) the type of entity of each Grantor, (c) the organizational identification number issued by each Grantor's jurisdiction of incorporation or organization or a statement that no such number has been issued, (d) each Grantor's jurisdiction of organization or incorporation, and (e) except as disclosed pursuant to Section 5.11 after the Closing Date, the location of each Grantor's chief executive office and locations of Collateral having a value in excess of \$500,000 (when not in use by a customer of any Grantor and other than temporary locations for repair, maintenance or transit and equipment maintained with employees) are as set forth in Disclosure Schedule (3.2) and, except as set forth in such Disclosure Schedule, such locations have not changed during the twelve (12) months preceding the Closing Date. As of the Closing Date, during the prior five (5) years, except as set forth in Disclosure Schedule (3.2), no Grantor has been known as or conducted business in any other name (including trade names) than the name of such Grantor set forth on the signature page hereto. Borrower has only one jurisdiction of incorporation or organization.

3.3 Corporate Power; Authorization; Enforceable Obligations. The execution, delivery and performance by each Grantor of the Loan Documents to which it is a party, and the creation of all Liens provided for herein and therein: (a) are and will continue to be within such Grantor's power and authority; (b) have been and will continue to be duly authorized by all necessary or proper action; (c) are not and will not be in violation of any material Requirement of Law or material Contractual Obligation of such Grantor; (d) do not and will not result in the creation or imposition of any Lien (other than Permitted Liens) upon any of the Collateral; and (e) do not and will not require the consent or approval of any Governmental Authority or any other Person except for such consents as have been obtained. As of the Closing Date, each Loan Document shall have been duly executed and delivered on behalf of each Grantor party thereto, and each such Loan Document upon such execution and delivery shall be and will continue to be a legal, valid and binding obligation of such Grantor, enforceable against it in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency and other similar laws affecting creditors' rights generally and general principles of equity.

3.4 Financial Statements; Books and Records.

(a) The annual and monthly Financial Statements of the Grantors delivered pursuant to Section 4.1 present fairly in all material respects the financial condition of such Grantors as of the date of each such Financial Statement in accordance with GAAP (subject to normal year-end adjustments and to the absence of footnotes in the case of unaudited statements).

(b) The Grantors shall keep proper Books and Records in which proper entries, reflecting all consolidated and consolidating financial transactions, will be made in accordance with GAAP and all Requirements of Law in all material respects of all financial transactions and the assets and business of each Grantor on a basis consistent with the Financial Statements.

3.5 Material Adverse Change. Between December 31, 2021 and the Closing Date, no events with respect to any Grantor have occurred that alone or in the aggregate has had or could reasonably be expected to have a Material Adverse Effect. No Requirement of Law or Contractual Obligation of any Grantor has or has had or could reasonably be expected to have a Material Adverse Effect. No Grantor is in default, and to such Grantor's knowledge no third party is in default, under or with respect to any of its Contractual Obligations, that alone or in the aggregate has had or could reasonably be expected to have a Material Adverse Effect.

3.6 Reserved.

3.7 Subsidiaries. Except as set forth in Disclosure Schedule (3.7), as of the Closing Date, Borrower does not have any Subsidiaries. The issued and outstanding Stock of Borrower (excluding all rights to purchase, options, warrants or similar rights or agreements pursuant to which Borrower or Holdings may be required to issue, sell, repurchase or redeem any of its Stock) as of the Closing Date is accurately reflected in the organizational chart delivered pursuant to Section 3.28(c) and set forth on Schedule 10(a) to the Perfection Certificate or any Perfection Certificate Supplement (whichever was most recently delivered to Agent). A list of the shareholders of Holdings owning ten percent (10%) or more of the outstanding Stock of Holdings, as of the Closing Date, is set forth on Schedule 10(a) to the Perfection Certificate.

3.8 Government Regulation; Margin Regulations. No Grantor is subject to or regulated under any Federal or state statute, rule or regulation that restricts or limits such Person's ability to incur the Obligations, pledge its assets, or to perform its obligations under the Loan Documents. The making of the Loan, the application of the proceeds and repayment thereof, and the consummation of the transactions contemplated by the Loan Documents do not and will not violate any Requirement of Law. No Grantor is engaged, nor will it engage, in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin security" as such terms are defined in Regulation U of the Federal Reserve Board as now and hereafter in effect (such securities being referred to herein as "**Margin Stock**"). No Grantor owns any Margin Stock, and none of the proceeds of the Loan or other extensions of credit under this Agreement will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock or reducing or retiring any Indebtedness that was originally incurred to purchase or carry any Margin Stock. No Grantor will take or permit to be taken any action that might cause any Loan Document to violate any regulation of the Federal Reserve Board.

3.9 Taxes; Charges. Except as disclosed in Disclosure Schedule (3.9), all federal and other material tax returns, reports and statements required by any Governmental Authority to be filed by Borrower or any other Grantor have, as of the Closing Date, been filed and will, until the Termination Date, be filed with the appropriate Governmental Authority and no tax Lien has been filed against any Grantor or any Grantor's property (other than (i) Liens for Taxes not yet due and payable or that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are being maintained in accordance with GAAP and (ii) tax Liens securing de minimis amounts that are discharged promptly upon such Grantor obtaining knowledge thereof). Borrower and each Grantor has paid all federal, state and other taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (a) Taxes that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are being maintained in accordance with GAAP or (b) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect. Disclosure Schedule (3.9) sets forth as of the Closing Date those taxable years for which any Grantor's tax returns are currently being audited by the IRS or any other applicable Governmental Authority and any assessments or threatened assessments in connection with such audit, or otherwise currently outstanding. As of the Closing Date, no Grantor has agreed or been requested to make any adjustment under Section 481(a) of the IRC, by reason of a change in accounting method or otherwise, which could reasonably be expected to have a Material Adverse Effect.

3.10 **ERISA.**

(a) No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other existing ERISA Events, could reasonably be expected to have a Material Adverse Effect. Except as disclosed in Disclosure Schedule (3.10), the present value of all accumulated benefit obligations of the Grantors under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent Financial Statements reflecting such amounts, exceed the fair market value of the assets of such Plan by more than \$750,000 when aggregated with the potential Withdrawal Liability, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent Financial Statements reflecting such amounts, exceed the fair market value of the assets of such underfunded Plans by more than \$750,000 when aggregated with the potential Withdrawal Liability. No Grantor or ERISA Affiliate has incurred or reasonably expects to incur any Withdrawal Liability in excess of \$750,000.

(b) Each Grantor shall furnish to the Agent (x) as soon as possible after, and in any event within five (5) days after any Responsible Officer of any Credit Party or any of its ERISA Affiliates knows or has reason to know that, any ERISA Event has occurred that, alone or together with any other ERISA Event could reasonably be expected to result in liability of the Credit Parties or any of their ERISA Affiliates in an aggregate amount exceeding \$750,000 or the imposition of a Lien, a statement of a Responsible Officer of such Credit Party or such ERISA Affiliate setting forth details as to such ERISA Event and the action, if any, that such Credit Party or such ERISA Affiliate proposes to take with respect thereto; (y) upon request by the Agent (at the direction of the Required Lenders), copies of (i) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Credit Party or any ERISA Affiliate with the IRS with respect to each Plan; (ii) the most recent actuarial valuation report for each Plan; (iii) all notices received by any Credit Party or any ERISA Affiliate from a Multiemployer Plan sponsor or any governmental agency concerning an ERISA Event; and (iv) such other documents or governmental reports or filings relating to any Plan (or employee benefit plan sponsored or contributed to by any Credit Party) as the Agent or the Required Lenders shall reasonably request and (z) promptly following any request therefor, copies of (i) any documents described in Section 101(k) of ERISA that any Credit Party or its ERISA Affiliate may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(1) of ERISA that any Credit Party or its ERISA Affiliate may request with respect to any Multiemployer Plan; provided, that if any Credit Party or its ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, the applicable Credit Party or ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof.

3.11 Litigation.

(a) Except as specifically disclosed in Disclosure Schedule (3.11) as of the Closing Date, there are no actions, suits, proceedings, claims or disputes pending, or to the knowledge of each Credit Party, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, against any Credit Party or any of their respective Properties which:

(i) purport to affect or pertain to this Agreement, any other Loan Document or Related Agreement, or any of the Transactions contemplated hereby or thereby; or

(ii) would reasonably be expected to result in equitable relief or monetary judgment(s), individually or in the aggregate, in excess of \$750,000.

(b) There are no actions, suits, proceedings, claims or disputes pending, or to the knowledge of each Credit Party, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, against any Credit Party or any of their respective Properties which could reasonably be expected to cause a Material Adverse Effect.

(c) No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement, any other Loan Document or any Related Agreement, or directing that the transactions provided for herein or therein not be consummated as herein or therein provided. As of the Closing Date, except with respect to matters set forth on Disclosure Schedule (3.11), no Credit Party or any Subsidiary of any Credit Party is the subject of an audit or, to each Credit Party's knowledge, any review or investigation by any Governmental Authority (excluding the IRS and other taxing authorities) concerning the violation or possible violation of any Requirement of Law. Each Grantor shall notify Agent promptly in writing upon learning of the existence, threat or commencement of any such Litigation or any such order, investigation or audit that, if adversely determined, would reasonably be expected to result in a liability in excess of \$750,000.

3.12 Intellectual Property. Each Grantor owns, or is licensed to use, all Intellectual Property material to its business as currently conducted, except for such Intellectual Property the failure of which to so own or be so licensed could not reasonably be expected to have a Material Adverse Effect. Each Grantor will take all commercially reasonable steps to maintain the registrations and Patents existing as of the Closing Date, except for such registrations and Patents for which the failure to maintain would not reasonably be expected to have a Material Adverse Effect. Each Grantor will take all commercially reasonable steps to preserve its licenses to any Intellectual Property material to its business, and to protect and preserve its rights in any Intellectual Property owned by such Grantor and material to its business, so as to permit Agent (or its designee) to sell, transfer, rent, or use the Collateral upon the occurrence and during the continuation of an Event of Default. As of the Closing Date, the Grantors own or are licensed to use the Intellectual Property material to its business as currently conducted as set forth in Disclosure Schedule (3.12) (excluding off-the-shelf software and click-through licenses). As of the Closing Date, the Intellectual Property set forth in Disclosure Schedule (3.12) and owned by a Grantor, is, to the knowledge of such Grantor, valid, in full force and effect, subsisting, unexpired and enforceable. In the event that any Grantor becomes aware that any Intellectual Property owned by such Grantor and that is material to the conduct of its business has been or is about to be infringed, misappropriated or diluted by a third party in a manner that would reasonably be expected to result in a Material Adverse Effect, such Grantor promptly shall take such commercially reasonable actions as are appropriate under the circumstances to protect such Intellectual Property, including, if consistent with good business judgment, promptly suing for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution. Each Grantor shall not knowingly do any act to infringe, misappropriate, dilute, or otherwise violate the Intellectual Property rights of any other Person in any material respect.

3.13 Full Disclosure. No information contained in any Loan Document, the Financial Statements or any written statement furnished by or on behalf of any Grantor under any Loan Document, or to induce Agent and the Lenders to execute the Loan Documents (as such information has been amended, supplemented or superseded by any other information later delivered to the same parties receiving such information, provided that the delivery of such amended, supplemented or superseding information shall not cure any Event of Default arising under Section 7.1(h) other than with respect to this Section 3.13), taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not materially misleading in light of the circumstances under which they were made, it being recognized by Agent and the Lenders that the projections and forecasts provided by the Grantors in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results.

3.14 Environmental Liabilities. Except as set forth in Disclosure Schedule (3.14), as of the Closing Date, (a) no Grantor is subject to any Environmental Liabilities or, to any Grantor's knowledge, potential Environmental Liabilities, that could reasonably be expected to result in Environmental Liabilities in excess of \$750,000 in the aggregate and (b) no notice has been received by any Grantor identifying it as a "potentially responsible party" or requesting information under CERCLA or analogous state statutes, and to the knowledge of any Grantor, there are no facts, circumstances or conditions that may result in any Grantor being identified as a "potentially responsible party" under CERCLA or analogous state statutes, in each such case if such circumstance could reasonably be expected to result in Environmental Liabilities in excess of \$750,000 in the aggregate. Each Grantor: (i) shall comply in all material respects with all applicable Environmental Laws and environmental permits, (ii) shall notify Agent in writing within seven (7) days if and when it becomes aware of any Release, on, at, in, under, above, to, from or about any real property owned, leased or occupied by a Grantor if such Release could reasonably be expected to result in Environmental Liabilities in excess of \$750,000 in the aggregate, (iii) shall notify Agent in writing within seven (7) days if and when it becomes aware of any claims that could form the basis for any Environmental Liabilities that could reasonably be expected to result in Environmental Liabilities in excess of \$750,000 in the aggregate, and (iv) shall notify Agent in writing within seven (7) days if and when it becomes aware of any occurrences of non-compliance with Environmental Laws or environmental permits that would reasonably be expected to result in a Material Adverse Effect. Without limiting the foregoing, if an Event of Default is continuing or if Agent or the Required Lenders at any time has a reasonable basis to believe that there exist violations of Environmental Laws by any Grantor or that there exist any Environmental Liabilities, in each case, that would have, in the aggregate, a Material Adverse Effect, then each Grantor shall, promptly upon receipt of request from Agent (at the direction of the Required Lenders), cause the performance of, and allow Agent (or its designee) access to such real property for the purpose of conducting, such environmental audits and assessments, including subsurface sampling of soil and groundwater, and cause the preparation of such reports, in each case as Agent (at the direction of the Required Lenders) may from time to time reasonably request. Such audits, assessments and reports, to the extent not conducted by Agent (or its designee) shall be conducted and prepared by reputable environmental consulting firms reasonably acceptable to Agent and shall be in form and substance reasonably acceptable to Agent and the Required Lenders. Each Credit Party has made available to the Required Lenders copies of all existing environmental reports, reviews and audits and all documents prepared since January 1, 2010 pertaining to actual or potential Environmental Liabilities, in each case to the extent such reports, reviews, audits and documents are in their possession, custody, control or otherwise available to the Credit Parties.

3.15 Insurance. As of the Closing Date, Disclosure Schedule (3.15) lists all insurance of any nature maintained by Borrower with respect to the Collateral as well as all liability insurance maintained by the Grantors, as well as a summary of the terms of such insurance.

(a) Coverage. Without limiting any of the other obligations or liabilities of the Grantors under this Agreement, the Grantors shall, during the term of this Agreement, carry and maintain, at its own expense, at least the minimum insurance coverage set forth in this Section 3.15. All insurance carried pursuant to this Section 3.15 shall be placed with such insurers having a minimum A.M. Best rating of A-:VIII (or as may be otherwise reasonably acceptable to the Agent and the Required Lenders), be in such amounts as are customarily carried or maintained by similarly situated entities engaged in similar businesses, and be in such form, with terms, conditions, limits and deductibles as shall be reasonably acceptable to Agent and the Required Lenders. The insurance required to be carried and maintained by Grantors hereunder shall, in all events, include, without limitation, the following:

(i) All Risk Property Insurance. The Grantors shall maintain, all risk property insurance covering against physical loss or damage, including but not limited to fire and extended coverage, collapse, flood, earth movement and comprehensive boiler and machinery coverage (including electrical malfunction and mechanical breakdown). Coverage shall be written on a replacement cost basis in an amount reasonably acceptable to Agent and the Required Lenders; and,

(ii) Commercial General Liability Insurance. The Grantors shall maintain comprehensive general liability insurance written on an occurrence basis with a limit of not less than \$1,000,000. Such coverage shall include, but not be limited to, premises/operations, broad form contractual liability, products/completed operations, property damage and personal injury liability; and

(iii) Excess/Umbrella Liability Insurance. The Grantors shall maintain excess and/or umbrella liability insurance written on an occurrence basis in an amount not less than \$21,000,000 providing coverage limits excess of the insurance limits required under subsection (a)(ii). Such insurance shall follow the form of the primary insurances and drop down in case of exhaustion of underlying limits and/or aggregates.

(iv) Reserved.

(b) Endorsements. Within the period permitted pursuant to Section 3.35, the Grantors shall cause all insurance policies carried and maintained in accordance with this Section 3.15 to be endorsed as follows:

(i) Agent, on behalf of itself and the Lenders, shall be named as lender's loss payable with respect to property policy described in subsection (a)(i). Agent, on behalf of itself and the Lenders, shall be named as an additional insured with respect to liability policies described in subsections (a)(ii) and, to the extent allowed by law, (a)(iii). It shall be understood that any obligation imposed upon the Grantors, including but not limited to the obligation to pay premiums, shall be the sole obligation of the Grantors and not that of the Agent; and,

(ii) With respect to property policy described in subsection (a)(i), the interests of the Agent shall not be invalidated by any action or inaction of any Grantor or any other Person, and shall insure the Agent regardless of any breach or violation by any Grantor or any other Person, of any warranties, declarations or conditions of such policies; and

(iii) If such insurance is canceled for any reason whatsoever, including nonpayment of premium, or any changes are initiated by the Grantors or the carrier which affect the interests of the Agent, such cancellation or change shall not be effective as to the Agent until thirty (30) days (or 10 days, in the case of a cancellation resulting from the non-payment of any insurance premiums) after receipt by Agent of written notice from such insurer.

(c) Certifications. On the Closing Date, and at each policy renewal, but not less than annually, the Grantors shall provide to the Agent a certification from each insurer or by an authorized representative of each insurer. Such certification shall identify the underwriters, the type of insurance, the limits, deductibles, and term thereof and shall specifically list the special provisions delineated in section (b) above for such insurance required for this Section 3.15.

(d) Reserved.

(e) Notice to Agent. The Grantors shall notify the Agent in writing immediately whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 3.15 is taken out by any Credit Party; and promptly deliver to the Agent a copy of such policy or policies.

(f) Flood Insurance. With respect to each Mortgaged Property (if any), the Grantors shall obtain flood insurance in such total amount as the Agent or the Required Lenders may from time to time require, if at any time the area in which any improvements located on any Mortgaged Property is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973 and all legislation, and rules and regulations thereunder, administered by the relevant local conservation authority with respect to flood plain management and other conservation matters.

(g) Mortgaged Properties. No Credit Party that is an owner of any Mortgaged Property shall take any action that is reasonably likely to be the basis for termination, revocation or denial of any insurance coverage required to be maintained under such Credit Party's respective Mortgage or that could be the basis for a defense to any claim under any insurance policy maintained in respect of the mortgaged properties, and each Credit Party shall otherwise comply in all material respects with all Insurance Requirements in respect of the mortgaged properties; provided, however, that each Credit Party may, at its own expense and after written notice to the Agent, (i) contest the applicability or enforceability of any such Insurance Requirements by appropriate legal proceedings, the prosecution of which does not constitute a basis for cancellation or revocation of any insurance coverage required under this Section 3.15 or (ii) cause the insurance policy containing any such Insurance Requirement to be replaced by a new policy complying with the provisions of this Section 3.15.

Borrower shall direct all present and future insurers under its policies of insurance to pay all proceeds payable thereunder with respect to the Collateral directly to Agent for application pursuant to Section 1.2(c) (subject to the terms thereof). If any insurance proceeds are paid by check, draft or other instrument payable to Borrower and Agent jointly, Agent may endorse Borrower's name thereon and, upon the occurrence of an Event of Default that is continuing, do such other things as Agent may deem advisable to reduce the same to cash.

3.16 Solvency. Both before and after giving effect to (a) the Loan, the issuance of the Guarantees of the Obligations and the pledge of assets as security therefor by all of the Grantors, (b) the disbursement of the proceeds of the Loan pursuant to the instructions of the Borrower, and (c) the payment and accrual of all transaction costs in connection with the foregoing, the Borrower and its Subsidiaries taken as a whole are Solvent.

3.17 Other Financings. Except as disclosed in Disclosure Schedule (3.17) or as otherwise permitted under Section 5.1 none of the Credit Parties has outstanding as of the Closing Date any Indebtedness that exceeds \$25,000 in the aggregate.

3.18 Conduct of Business. Each Grantor (a) shall conduct its business in compliance with Section 5.6 or as otherwise permitted hereunder, and (b) shall, subject to Section 5.4, at all times maintain, preserve and protect all of the Collateral and keep the same in good repair, working order and condition (ordinary wear and tear excepted) and make, or cause to be made, all commercially reasonable repairs, replacements and improvements thereto materially consistent with manufacturer specifications and industry practices.

3.19 Further Assurances. At any time and from time to time, upon the written request of Agent and at the sole expense of the Grantors, the Grantors shall promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Agent or Required Lenders may reasonably deem desirable (other than Excluded Perfection Actions) (a) to obtain the full benefits of this Agreement and the other Loan Documents, (b) to protect, preserve and maintain Agent's rights in any Collateral and security interests, or (c) to enable Agent to exercise all or any of the rights and powers herein granted.

3.20 Collateral/Maintenance of Property.

(a) Subject to Section 5.4, each Grantor holds and will continue to hold good title to the Collateral and any of its property necessary for the ordinary operation of its business as currently conducted and none of such property is or will be subject to any Liens except Permitted Liens.

(b) Each Grantor shall (i) except in connection with the Permitted Redomicile, obtain, maintain and preserve all material rights, permits, licenses, approvals and privileges (including all Permits) necessary, whether because of its ownership, lease, sublease or other operation or occupation of property or other conduct of its business, and shall make all necessary or appropriate filings with, and give all required notices to, Governmental Authorities, in each case, except as would not reasonably be expected to result in a Material Adverse Effect, (ii) maintain the Collateral in compliance with all statutes, laws, ordinances, regulations, standards, directives, orders, judgments and permits (including environmental) issued by any Governmental Authority, except as would not reasonably be expected to result in a Material Adverse Effect, and (iii) in the case of Collateral comprised of motor vehicles located in the United States and subject to motor vehicle registration requirements, to the extent the fair market value of such Collateral in the aggregate exceeds \$500,000 at any time if requested by the Agent (at the direction of the Required Lenders), note, or shall have noted, Agent's Lien on all certificates of title of such Collateral (to the extent Agent's Lien therein cannot be perfected by the filing of a financing statement).

(c) Collateral shall not be located in, in transit to or used by a customer, in any country, state, nation, or territory (i) listed on the Lists or otherwise under United States sanctions for conducting business or (ii) set forth on Schedule E hereto (as such Schedule E may be amended by written notice from time to time by Agent to Borrower on a prospective basis) (each a “**Restricted Location**”). Upon an amendment to Schedule E pursuant to the forgoing sentence such that Collateral is located in a Restricted Location that was not located in a Restricted Location prior to such amendment, no Grantor shall extend or renew any rental agreements or enter into any new rental agreements which would cause the Collateral to be located in, in transit to or in use in a Restricted Location by a customer of such Grantor and such Grantor shall remove such Collateral from such Restricted Location within forty-five (45) days from the delivery of such notice or, if such Collateral is subject to a rental agreement with a customer of such Grantor at such time, fifteen (15) days from the end of the then current term of such rental agreement. Except as permitted pursuant to the immediately preceding sentence, when not in transit to or in use by a customer of any Grantor, or temporarily relocated for maintenance or repair, or equipment in the possession of an employee of Grantor the Collateral having a value in excess of \$500,000 in the aggregate will primarily be located at the Chief Executive Office or a Rental Office.

(d) Real Property. Schedules 8(a) and 8(b) to the Perfection Certificate dated the Closing Date contain a true and complete list of each interest in Real Property (i) owned by any Credit Party as of the Closing Date and describes the type of interest therein held by such Credit Party and whether such owned Real Property is leased and if leased whether the underlying lease contains any option to purchase all or any portion of such Real Property or any interest therein or contains any right of first refusal relating to any sale of such Real Property or any portion thereof or interest therein and (ii) leased, subleased or otherwise occupied or utilized by any Credit Party, as lessee, sublessee, franchisee or licensee, as of the Closing Date and describes the type of interest therein held by such Credit Party and, in each of the cases described in clauses (i) and (ii) of this Section 3.20(d), whether any lease requires the consent of the landlord or tenant thereunder, or other party thereto, to the Transactions.

3.21 Anti-Terrorism and Anti-Money Laundering Compliance.

(a) No Credit Party and, after making due inquiry, no Person who owns a controlling interest in or otherwise controls a Credit Party, and no customer of a Credit Party, is (i) listed on the Specially Designated Nationals and Blocked Persons List (the “**SDN List**”) maintained by the Office of Foreign Assets Control (“**OFAC**”), Department of the Treasury, and/or on any other similar list (“**Other Lists**” and, collectively with the SDN List, the “**Lists**”) maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, “**OFAC Laws and Regulations**”); or (ii) a Person (a “**Designated Person**”) either (A) included within the term “designated national” as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (B) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the “**Executive Orders**”). The OFAC Laws and Regulations and the Executive Orders are collectively referred to in this Agreement as the “**Anti-Terrorism Laws**”. Each of the Credit Parties represents and warrants that it requires, and has taken reasonable measures to ensure compliance with the requirement, that no Person who owns any other direct interest in a Credit Party is or shall be listed on any of the Lists or is or shall be a Designated Person. This Section 3.22 shall not apply to any Person to the extent that such Person’s interest in the Borrower is through a U.S. Publicly-Traded Entity. As used in this Agreement, “**U.S. Publicly-Traded Entity**” means a Person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a Person.

(b) Each Credit Party represents and warrants that it has taken reasonable measures appropriate to the circumstances (and in any event as required by law), with respect to each holder of a direct or indirect interest in such Credit Party, to assure that funds invested by such holders in the Credit Parties are derived from legal sources (“**Anti-Money Laundering Measures**”). The Anti-Money Laundering Measures have been undertaken in accordance with the Bank Secrecy Act, 31 U.S.C. §§ 5311 et seq. (“**BSA**”), and all applicable laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations under 18 U.S.C. §§ 1956 and 1957 (collectively with the BSA, “**Anti-Money Laundering Laws**”).

(c) Each Credit Party represents and warrants to Agent and each Lender, to its actual knowledge after making due inquiry, that no such Credit Party or any holder of a direct or indirect interest in such Credit Party (i) is under investigation by any Governmental Authority for, or has been charged with, or convicted of, money laundering under 18 U.S.C. §§ 1956 and 1957, drug trafficking, terrorist-related activities or other money laundering predicate crimes, or any violation of the BSA, (ii) has been assessed civil penalties under any Anti-Money Laundering Laws, or (iii) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws.

(d) Each Credit Party represents and warrants to Agent and each Lender that it has taken reasonable measures appropriate to the circumstances (in any event as required by law), to ensure that such Credit Party is in compliance with all current and future Anti-Money Laundering Laws and laws, regulations and government guidance for the prevention of terrorism, terrorist financing and drug trafficking.

(e) Each Credit Party and its respective directors, officers and employees and, to the knowledge of the applicable Credit Party, the agents of each Credit Party and their Subsidiaries, are in compliance with the Foreign Corrupt Practices Act of 1977 and the rules and regulations thereunder (the “**FCPA**”) and any other applicable anti-corruption law, including without limitation the UK Bribery Act, in all material respects. The Credit Parties and their Subsidiaries have instituted and maintained, and shall maintain, policies and procedures designed to ensure continued compliance with the FCPA and any other applicable anti-corruption laws.

3.22 Maintenance of Corporate Existence. Each Credit Party shall preserve and maintain (a) its legal existence and good standing under the laws of the jurisdiction of its incorporation or organization and (b) its rights (charter and statutory), privileges franchises and Permits necessary or desirable in the conduct of its business, except, in the case of this clause (b), where the failure to do so would not, in the aggregate, have a Material Adverse Effect.

3.23 Compliance with Laws Etc. Each Credit Party shall comply with all applicable Requirements of Law, Contractual Obligations and Permits, except for such failures to comply that could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

3.24 Landlord and Bailee Agreements. Upon the request of Agent (at the direction of the Required Lenders), each Grantor shall use reasonable best efforts to deliver to Agent a landlord waiver or mortgagee waiver, as applicable, from the lessor of each leased real property of a Credit Party or mortgagee of any owned real property of a Credit Party with respect to each location where the Collateral having a value in excess of \$500,000 and/or Books and Records are stored or located, which agreement shall be reasonably satisfactory in form and substance to Agent and the Required Lenders. Upon the request of Agent (at the direction of the Required Lenders), each Grantor shall deliver to Agent a bailee waiver from a bailee with respect to each warehouse or location where the Collateral having a value in excess of \$500,000, which agreement shall be reasonably satisfactory in form and substance to Agent and the Required Lenders.

3.25 Deposit Accounts; Cash Collateral Accounts.

(a) Borrower and each Guarantor shall maintain a cash management system which is reasonably acceptable to Agent and the Required Lenders (the “**Cash Management System**”), which shall operate as follows:

(b) All cash Proceeds of Collateral held by Borrower or any other Credit Party (other than funds being collected pursuant to the provisions stated below) shall be deposited in one or more bank accounts or securities investment accounts, as set forth on Disclosure Schedule (3.25) or other accounts that comply with the requirements of clause (d) below.

(c) Borrower and Grantors shall promptly deposit and direct their respective Account Debtors to directly remit all payments on Accounts and all payments constituting Proceeds of Collateral in the identical form in which such payments are made, whether by cash, check or other manner into the accounts and related lockboxes maintained by the financial institutions as described on Disclosure Schedule (3.25) hereto or such other accounts established in compliance with clause (d) below (in each case, other than Excluded Accounts, “**Blocked Accounts**”) and segregated from other funds of the Grantors not constituting Collateral, if any. By the date that is forty-five (45) days after the Closing Date (or such later date as may be agreed by Agent in consultation with the Required Lenders), Borrower and Grantors shall deliver, or cause to be delivered, to Agent a Control Agreement duly authorized, executed and delivered by each bank where a Blocked Account for the benefit of Borrower or any Grantors is maintained. Borrower shall further execute and deliver, and shall cause each Grantor to execute and deliver, such agreements and documents as Agent or the Required Lenders may reasonably require in connection with such Blocked Accounts and such Control Agreements.

(d) Borrower and Grantor shall not establish any deposit accounts after the Closing Date into which Proceeds of Collateral are deposited other than Excluded Accounts, unless Borrower or such Grantor has caused to be delivered to Agent a Control Agreement duly authorized, executed and delivered by such Grantor and each bank where a such deposit account is maintained. Borrower and each Grantor agrees that from and after the delivery of an Activation Notice (as such term is defined in Section 3.25(g) below) all payments made to such Blocked Accounts or other funds received and collected by Agent or any Lender, whether in respect of the Accounts or as Proceeds of Collateral shall be treated as payments to Agent and the Lenders in respect of the Obligations and therefore shall constitute the property of Agent and the Lenders to the extent of the then outstanding applicable Obligations.

(e) The applicable bank at which any Blocked Accounts are maintained shall agree from and after the receipt of a notice (an “**Activation Notice**”) from Agent (which Activation Notice may, or upon instruction of the applicable Required Lenders, shall, be given by Agent at any time during an Event of Default) pursuant to and subject to the terms of the applicable Control Agreement, to forward, daily, all amounts in each Blocked Account to the account designated as collection account (the “**Collection Account**”) which shall be under the exclusive dominion and control of Agent.

(f) From and after the delivery of an Activation Notice, Agent shall apply all such funds in the Collection Account on a daily basis to the repayment of the applicable Obligations in accordance with Section 7.4. Notwithstanding the foregoing sentence, after payment in full has been made of the amounts required under Section 7.4, any additional funds deposited in the Collection Account shall be released to such Credit Party or other Person lawfully entitled to the same.

(g) Borrower, Grantors and their directors, employees, agents and other Affiliates shall promptly deposit or cause the same to be deposited, any monies, checks, notes, drafts or any other payment constituting Proceeds of Collateral which come into their possession or under their control on behalf of Borrower or any Grantor in the applicable Blocked Accounts. Borrower agrees to reimburse Agent on demand for any amounts owed or paid to any bank at which a Blocked Account is established or any other bank or person involved in the transfer of funds to or from the Blocked Accounts arising out of Agent's payments to or indemnification of such bank or person other than amounts arising out of Agent's gross negligence, bad faith, or willful misconduct as determined by a final non-appealable judgment by a court of competent jurisdiction.

(h) For the avoidance of doubt, except to the extent required to be applied as a Mandatory Prepayment pursuant to Section 1.2(c), prior to the delivery by Agent of an Activation Notice, Borrower is entitled to access and use the amounts on deposit in any Blocked Account in any manner not otherwise prohibited under the Loan Documents, including maintaining amounts in the Excluded Accounts to the extent permitted under the definition of Excluded Accounts.

3.26 Assets of Holdings. Holdings represents and warrants that as of the Closing Date it has no assets, and after the Closing Date will have no assets, other than its Ownership Interests of its Subsidiaries, which have been pledged to Agent for its benefit and the benefit of the Lenders as Collateral for the Obligations, other assets related thereto, deposit accounts and deposits therein in connection with the conduct of its business that comply with the provisions of Section 3.26, contractual rights and Permits in connection with the operation of its business and the Transactions, and proceeds of Restricted Payments permitted hereunder. Holdings hereby agrees it shall not accept or receive any other assets from any other Credit Party (except as permitted by Section 5.5).

3.27 After-acquired Property; Additional Collateral. Each Grantor shall:

(a) Subject to this Section 3.27, with respect to any property (other than Excluded Property) acquired after the Closing Date by any Credit Party that is intended to be subject to the Lien created by any of the Loan Documents but is not so subject, promptly (and in any event within thirty (30) days after the acquisition thereof (or such later date permitted by Agent in its discretion)) (i) execute and deliver to the Agent such other documents as the Agent and the Required Lenders shall reasonably deem necessary or advisable to grant to the Agent for its benefit and the benefit of the Lenders, a Lien on such property (other than Excluded Property) subject to no Liens other than Permitted Liens, and (ii) take all actions necessary to cause such Lien to be duly perfected to the extent required hereunder in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Agent (acting at the direction of the Required Lenders) (other than Excluded Perfection Actions). The Borrower shall otherwise take such actions and execute and/or deliver to the Agent such documents as the Agent (acting at the direction of the Required Lenders) shall require to confirm the validity, perfection and priority of the Lien hereunder on such after-acquired properties (other than Excluded Perfection Actions and other than with respect to Excluded Property).

(b) As soon as possible but in any event within the earlier of (x) twenty (20) days after formation (or such later date permitted by Agent in its sole discretion) after the formation of any new Subsidiary (including any Foreign Subsidiary) of a Credit Party and (y) the date upon which any material assets are transferred to such new Subsidiary or simultaneously with the consummation of an acquisition of any new Subsidiary: (i) deliver to the Agent the original certificates, if any, representing all of the Equity Interests of such Subsidiary (except to the extent constituting Excluded Property), together with undated stock powers in blank or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, and all intercompany notes owing from such Subsidiary to any Credit Party together with instruments of transfer executed and delivered in blank by a duly authorized officer of such Credit Party and (ii) cause such new Subsidiary (excluding Excluded Subsidiaries) (A) to execute a Joinder Agreement in the form of Exhibit H or such comparable documentation to become a Grantor and Guarantor under this Agreement, and (B) to take all actions reasonably requested by Agent (at the direction of the Required Lenders) to cause the Lien created hereunder to be duly perfected to the extent required hereunder in accordance with all applicable Requirements of Law, including (x) the execution by Borrower or the applicable Credit Party of a Joinder Agreement in the form of Exhibit H or such comparable documentation to the applicable Pledge Agreement, (y) the filing of financing statements in such jurisdictions as may be reasonably requested by the Agent (at the direction of the Required Lenders), and (z) to the extent such new Subsidiary owns Collateral subject to motor vehicle registration requirements which is located in the United States and has a fair market value in the aggregate in excess of \$500,000 and which is not otherwise subject to perfection by the filing of financing statements under clause (y) above, the noting or (having noted) of the Agent's Lien on all certificates of title of such Collateral (except where such notation is not permitted under the laws of the applicable jurisdiction).

(c) Promptly grant to the Agent, within thirty (30) days of the acquisition thereof (or such later date permitted by Agent in its sole discretion), a security interest in and Mortgage on each Real Property owned in fee by such Credit Party as is acquired by such Credit Party after the Closing Date and that, together with any improvements thereon, individually has a fair market value of at least \$1,000,000, as additional security for the Obligations (unless the subject property is already mortgaged to a third party to the extent permitted by Section 5.2). Such Mortgages shall be granted pursuant to documentation reasonably satisfactory in form and substance to the Agent and the Required Lenders and shall constitute valid and enforceable perfected Liens subject only to Permitted Liens or other Liens acceptable to the Agent and the Required Lenders. The Mortgages or instruments related thereto shall be duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect the Liens in favor of the Agent required to be granted pursuant to the Mortgages and all taxes, fees and other charges payable in connection therewith shall be paid in full. Such Credit Party shall otherwise take such actions and execute and/or deliver to the Agent such documents as the Agent (at the direction of the Required Lenders) shall require to confirm the validity, perfection and priority of the Lien of any existing Mortgage or new Mortgage against such after-acquired Real Property (including a title insurance policy, a survey and local counsel opinion (each in form and substance reasonably satisfactory to the Agent and the Required Lenders) in respect of such Mortgage).

3.28 Equity Interests and Subsidiaries.

(a) Equity Interests, Schedules 1(a) and 10(a) to the Perfection Certificate dated the Closing Date set forth a list of (i) all the Subsidiaries of Holdings and the other Credit Parties and their jurisdictions of organization as of the Closing Date and (ii) the number of each class of its Equity Interests authorized, and the number outstanding, on the Closing Date and the number of shares covered by all outstanding options, warrants, rights of conversion or purchase and similar rights at the Closing Date. All Equity Interests of each Credit Party are duly and validly issued and are fully paid and non-assessable, and, other than the Equity Interests of Holdings, are owned by Holdings, directly or indirectly through Wholly Owned Subsidiaries. Each Credit Party is the record and beneficial owner of, and has good and marketable title to, the Equity Interests pledged by it hereunder, free of any and all Liens, rights or claims of other persons, except the security interest created by the Loan Documents, and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any such Equity Interests.

(b) No Consent of Third Parties Required. Other than the approval of the Board of Directors of the issuer of the Equity Interests, no consent of any Person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary or reasonably desirable (from the perspective of a secured party) in connection with the creation, perfection or priority status of the security interest of the Agent in any Equity Interests pledged to the Agent for the benefit of the Lenders hereunder or the exercise by the Agent of the voting or other rights provided for hereunder or the exercise of remedies in respect thereof except for such consents as have been obtained.

(c) Organizational Chart. Schedule 10(a) to the Perfection Certificate or any Perfection Certificate Supplement (whichever was most recently delivered to Agent) sets forth an accurate organizational chart, showing the ownership structure of Holdings, Borrower and each Subsidiary on the Closing Date, and after giving effect to the Transactions, is set forth on Schedule 10(a) to the Perfection Certificate dated the Closing Date.

3.29 Security Documents.

(a) Mortgages. Each Mortgage will upon execution and delivery thereof be effective to create, in favor of the Agent, for its benefit and the benefit of the Lenders, legal, valid and enforceable first priority Liens on, and security interests in, all of the Credit Parties' right, title and interest in and to the mortgaged properties thereunder and the proceeds thereof, subject only to Permitted Liens or other Liens acceptable to the Agent (at the direction of the Required Lenders), and when such Mortgages are filed in the offices specified on Schedule 8(a) to the Perfection Certificate dated the Closing Date (or, in the case of any Mortgage executed and delivered after the date thereof in accordance with the provisions of Sections 3.20 and 3.27, when such Mortgage is filed in the offices specified in the local counsel opinion delivered with respect thereto in accordance with the provisions of Sections 3.20 and 3.27), such Mortgages shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the Credit Parties in the Mortgaged Properties thereunder and the proceeds thereof, in each case prior and superior in right to any other Person, other than Permitted Liens or other Liens acceptable to the Agent and the Required Lenders.

(b) Valid Liens. Each Loan Document, including any such document delivered pursuant to Sections 3.20 and 3.27 will, upon execution and delivery thereof, be effective to create in favor of the Agent, for its benefit and the benefit of the Lenders, legal, valid and enforceable Liens on, and security interests in, all of the Credit Parties' right, title and interest in and to the Collateral thereunder, and (i) when all appropriate filings or recordings are made in the appropriate offices as may be required under applicable law and (ii) upon the taking of possession or control by the Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Agent to the extent required hereunder), such Liens will constitute fully perfected Liens on, and security interests in, all right, title and interest of the Credit Parties in such Collateral to the extent perfection may be obtained by such filings, recordings, possession or control, in each case subject to no Liens other than the applicable Permitted Liens.

3.30 Equity Line Registration Covenant. The Credit Parties shall use best efforts to (a) file with the U.S. Securities and Exchange Commission ("SEC") within thirty (30) days after the Closing Date a registration statement (the "**Registration Statement**") registering the resale of the shares of common stock of Holdings to be issued pursuant to a \$150,000,000 committed equity facility on terms substantially similar to those set forth in the letter agreement, dated May 15, 2022, by and among Holdings, Borrower 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 Holdings shall issue to the Lenders (other than CCM if it is still a Lender on such date) a Warrant (\$10 Per Share) exercisable for 200,000 shares of Common Stock in the aggregate on such date. If such Registration Statement has not become effective by the date that is 30 days after such 121st day, Holdings shall issue to the Lenders (other than CCM if it is still a Lender on such date) an additional Warrant (\$10 Per Share) exercisable for an additional 200,000 shares of Common Stock on the day that is 30 days after such 121st day, and an additional Warrant (\$10 Per Share) exercisable for an additional 200,000 shares of Common Stock 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.

3.31 Government Contracts. Except as set forth in Disclosure Schedule (3.31), as of the Closing Date, no Credit Party is a party to any contract or agreement with any Governmental Authority and no Credit Party's Collateral is subject to the Federal Assignment of Claims Act (31 U.S.C. Section 3727) or any similar state or local law.

3.32 Customer and Trade Relations. As of the Closing Date, there exists no actual or, to the knowledge of any Credit Party, threatened termination or cancellation of, or since the date of the most recent Financial Statements delivered to Agent, any material adverse modification or change in (a) the business relationship of any Credit Party with any customer or group of customers whose purchases during the preceding twelve (12) calendar months caused them to be ranked among the ten (10) largest customers of such Credit Party or (b) the business relationship of any Credit Party with any supplier essential to its operations.

- 3.33 Bonding; Licenses. Except as set forth in Disclosure Schedule (3.33), as of the Closing Date, no Credit Party is a party to or bound by any surety bond agreement, indemnification agreement therefor or bonding requirement with respect to products or services sold by it.
- 3.34 Affiliate Transactions. No Credit Party is party to any transaction with any Affiliate of the Borrower or of any Subsidiary of the Borrower, except those permitted by Section 5.7 hereof and those set forth on Disclosure Schedule (3.34).
- 3.35 Post-Closing Matters. The Credit Parties shall deliver to the Agent and the Required Lenders, in form and substance reasonably satisfactory to the Agent, the items (or undertake the efforts) described on Schedule F on or before the dates specified thereon (or such later date as the Agent may agree in consultation with the Required Lenders).
- 3.36 Investment Company Act. No Credit Party is an “investment company” or a company “controlled” by an “investment company,” as defined in, or subject to regulation under, the Investment Company Act of 1940.
- 3.37 Notice of Change in Investment Company Status. The Borrower shall provide Agent with prompt written notice of any change with respect to its representation in Section 3.37 above, but in no event later than fifteen (15) days following any such change.
- 3.38 Notice of Change in Ownership. The Borrower shall provide Agent with an updated, accurate and complete capitalization table reflecting all of the direct and indirect owners of each Credit Party (other than Holdings) (including the applicable ownership percentages) (a “**Cap Table**”) within seven (7) Business Days following a change in ownership of any Credit Party.
- 3.39 Reserved.
- 3.40 ESG Data. The Credit Parties shall use their reasonable efforts to cooperate with the Agent to assess and incorporate ESG Data collected hereunder into Lead Arranger’s annual ESG impact measurement report (including, following the discharge in full of the Obligations hereunder, with respect to the report for any year during which any Obligations were outstanding), to assess the Borrower’s ESG performance on an annual basis and to consult with Lead Arranger to improve Borrower’s ESG performance.
- 3.41 Merger Agreement. Borrower has heretofore furnished to each Lender a true and correct copy of the Merger Agreement, material Acquisition Documents and any amendments or waivers thereto. Each Loan Party has duly taken all necessary corporate, partnership or other organizational action, and, if applicable, equity holder action, to authorize the execution, delivery and performance of the Merger Agreement, the Acquisition Documents and the consummation of transactions contemplated thereby.

4. FINANCIAL MATTERS; REPORTS

4.1 Reports and Notices.

The Credit Parties shall furnish to the Agent and each Lender:

- (a) Monthly Reports. Within thirty (30) days after the last day of each Fiscal Month of the Credit Parties, the balance sheets of the Credit Parties and their Subsidiaries on a consolidated basis as at the end of such Fiscal Month and as of the end of the preceding Fiscal Year, and the related statements of operations, the related statements of profits and losses and related statements of cash flows of the Credit Parties and their Subsidiaries on a consolidated basis for such Fiscal Month and for the elapsed portion of the Fiscal Year ended with the last day of such Fiscal Month, which shall set forth in comparative form such figures as at the end of and for such Fiscal Month and appropriate prior period and shall be certified by the Chief Financial Officer of the Borrower to have been prepared in accordance with GAAP and to present fairly in all material respects the financial position of the Credit Parties and their Subsidiaries on a consolidated basis as at the end of such period and the results of operations for such period, and for the elapsed portion of the Fiscal Year ended with the last day of such period, subject only to normal year-end and audit adjustments and the absence of footnotes;
- (b) Reserved.
- (c) Annual Reports. Within one hundred twenty (120) days after the end of each Fiscal Year of the Credit Parties, the audited consolidated balance sheet of the Credit Parties and their Subsidiaries as of the end of such Fiscal Year and the related audited consolidated statements of operations for such Fiscal Year and for the previous Fiscal Year, the related audited consolidated statements of profits and losses and the related audited consolidated statements of cash flows and stockholders' equity for such Fiscal Year and for the previous Fiscal Year, which shall be accompanied by an opinion, without a going concern or similar qualification or an exception as to scope (except for any such qualification pertaining to any breach or anticipated breach of any financial covenant), prepared by an independent certified public accountant of recognized national standing reasonably acceptable to Agent and the Required Lenders;
- (d) Financial Officer's Certificate. (i) Within 45 days after the end of each Fiscal Quarter, and (ii) at the time the financial statements are furnished pursuant to Section 4.1(c), a Compliance Certificate in the form attached as Exhibit E executed by a Responsible Officer of the Borrower as to the financial performance of the Credit Parties;
- (e) Bank Statements. Monthly bank statements of the Credit Parties for each Fiscal Month shall be delivered to the Agent within five (5) Business Days after the later of the end of each Fiscal Month and the date on which such statements are made available to the Borrower from the applicable bank.

- (f) Lender Update Meetings. Borrower shall, if requested by Agent (at the direction of the Required Lenders), participate (and cause its officers to participate) in a meeting of, or a conference call with, the Agent (or its designee so long as such designee is bound by a confidentiality agreement) and the Lenders (which, absent the occurrence and continuation of an Event of Default, shall not occur more than once during each Fiscal Quarter) to be held at a location and at a time as may be reasonably agreed to by the Borrower, the Agent and the Lenders; provided that such meetings shall be held in-person no more than once per year.
- (g) Responsible Officer's Certificate Regarding Collateral. Within forty-five (45) days of the end of each Fiscal Quarter, a certificate of a Responsible Officer setting forth the information required pursuant to the Perfection Certificate Supplement or confirming that there has been no change in such information since the date of the Perfection Certificate or latest Perfection Certificate Supplement;
- (h) Public Reports. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by any Credit Party with any provincial securities commission or the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said commissions, or with any national securities exchange, or distributed to shareholders or holders of its Indebtedness pursuant to the terms of the documentation governing such Indebtedness (or any trustee, agent or other representative therefor), as the case may be;
- (i) Management Letters. Promptly after the receipt thereof by any Credit Party, a copy of any "management letter" received by any such Person from its independent chartered accountants and the management's responses thereto;
- (j) Budgets. Within 45 days after the beginning of each Fiscal Year, a consolidated budget for Holdings in form reasonably satisfactory to the Agent and the Required Lenders, but to include balance sheets, statements of income and sources and uses of cash, and projected Liquidity on a consolidated basis, for each month of such Fiscal Year prepared in reasonable detail with appropriate presentation and discussion of the principal assumptions upon which such budgets are based, accompanied by the statement of a Financial Officer of Holdings to the effect that each budget has been prepared in good faith and based on assumptions believed to be reasonable and, promptly when available, any significant revisions of such budget;
- (k) Organization. Within 45 days after the end of each Fiscal Quarter, an accurate Organizational Chart, showing the ownership structure of Holdings, Borrower and each Subsidiary as of the date of delivery, or confirmation that there are no changes to Schedule 10(a) to the Perfection Certificate dated the Closing Date (or the date that an updated organizational chart was most recently provided to Agent);
- (l) Organizational Documents. Concurrently with any delivery of Financial Statements under Section 4.1(a), provide copies of any Organizational Documents that have been amended or modified in accordance with the terms hereof and any notice of default given or received by any Credit Party under any Organizational Document during such Fiscal Month;

(m) Appraisals. At any time after the occurrence of a Default promptly upon the request of the Agent (at the direction of the Required Lenders), an appraisal report performed at the expense of Borrower by a nationally recognized appraiser satisfactory to Agent, setting forth in reasonable detail the orderly liquidation value of the Collateral;

(n) ESG Reporting. (i) As soon as available, but in any event, within forty-five (45) days after the end of each Fiscal Year in which the Obligations remain outstanding (including, following the discharge in full of the Obligations hereunder, with respect to the Fiscal Year that includes the last date on which any Obligations are outstanding), the Credit Parties shall use commercially reasonable efforts to collect and provide Agent with such ESG Data of Borrower and Credit Parties for its most recently ended Fiscal Year as Agent or the Required Lenders may reasonably request, and (ii) promptly upon becoming available, copies of any reports that include ESG Data with respect to the Credit Parties, including in connection with any on-going projects and construction;

(o) Board Observers. Each of the two Lenders holding the two largest Term Loan Commitments (or the two largest aggregate outstanding Term Loans if the Term Loan Commitments are no longer in effect) will each have the right to designate a single non-voting representative to attend all meetings of the Board of Directors of any Credit Party, and will receive all information related to those meetings (including any reports or documents, if any, that are prepared for review by the Board of Directors at the same time as any members of the Board of Directors receive such documents); *provided*, that such observer may be required to leave, or not be allowed to attend, any meetings or portion thereof, and information or reports may be withheld (or parts thereof redacted), if the members of the applicable Board of Directors, by majority vote, reasonably believe (i) a conflict of interest or waiver of a privilege arises or may arise in connection with the issues being discussed at such meetings or contained in such information or reports, (ii) the failure to withhold such information or exclude such representative would reasonably be expected to cause the Board of Directors to breach its fiduciary duties, or (iii) that withholding such information or such exclusion is reasonably necessary to protect trade secrets. The Borrower shall reimburse the Lenders' representatives for the reasonable costs of attending such meetings. For purposes of calculation of the Term Loan holdings of the Lenders under this clause (o), a Lender and any of its Affiliates that are also a Lender, and their respective Term Loan Commitments and/or holdings of the Term Loan, shall be deemed to be a single Lender with a single consolidated Term Loan Commitment and/or holding a single consolidated Term Loan; and

(p) Other Information. Promptly, from time to time, such other reports and information regarding the Collateral, operations, business affairs, financial condition or management of any Credit Party, or compliance with the terms of any Loan Document, as the Agent or any Lender may reasonably request, all in reasonable detail; any such material may be redacted by such Credit Party to (i) exclude information relating to the performance of the Agent or any Lender hereunder or to the Borrower's strategy regarding the Term Loans (including any potential refinancing thereof), or (ii) preserve attorney-client privilege.

Documents required to be delivered pursuant to Section 4.1 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (a) on which Holdings posts such documents, or provides a link thereto on Borrower’s website on the internet at the website address listed on Schedule C, or (b) on which such documents are posted on Holdings’ behalf on an internet or intranet website, if any, to which each Lender and the Agent has access (whether a commercial, third-party website or whether sponsored by the Agent); provided that Borrower shall deliver paper copies of such documents to the Agent or any Lender upon its request to Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Agent or such Lender. The Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

4.2 Financial Covenants.

(a) Maximum Senior Leverage Ratio. If (i) Liquidity (Average) for any Fiscal Quarter ending on December 31, 2022, March 31, 2023, June 30, 2023, or September 30, 2023 is less than \$17,500,000 or (ii) for any Fiscal Quarter thereafter (commencing with the Fiscal Quarter ending December 31, 2023), Credit Parties shall not permit the Senior Leverage Ratio, as of the last day of any Fiscal Quarter ending during any period set forth below, to exceed the ratio set forth opposite such period in the table below:

<u>Test Period Ending</u>	<u>Leverage Ratio</u>
December 31, 2022 – March 31, 2023	6.75 to 1.00
June 30, 2023 – September 30, 2023	6.00 to 1.00
December 31, 2023 – March 31, 2024	5.00 to 1.00
June 30, 2024 – September 30, 2024	4.00 to 1.00
December 31, 2024 – March 31, 2025	3.25 to 1.00
June 30, 2025 and thereafter	3.00 to 1.00

(b) Liquidity. The Credit Parties shall not permit their Liquidity (determined on a consolidated basis) to be less than \$10,000,000 as of the last day of each Fiscal Month (commencing with the Fiscal Month ending December 31, 2022).

(c) Fixed Charge Coverage Ratio. If Liquidity is less than \$15,000,000 as of the last day of any Fiscal Quarter (commencing with the Fiscal Quarter ending December 31, 2022), then the Credit Parties shall not permit the Fixed Charge Coverage Ratio for the trailing four (4) Fiscal Quarter period ending on the last day of any such Fiscal Quarter to be less than 1.15:1.00.

(d) Maximum Capital Expenditure.

(i) Except as provided in clause (ii) immediately below and except for such Capital Expenditures set forth on Schedule 4.2(d) (it being acknowledged that the dates set forth in Schedule 4.2(d) are estimates only and are not binding), if the Consolidated EBITDA for the trailing twelve (12) Fiscal Month period ending on the last day of the most recently completed Fiscal Quarter is less than \$15,000,000, the Credit Parties shall not make and shall not cause or permit their Subsidiaries to make Capital Expenditures in the immediately succeeding Fiscal Quarter in excess of \$500,000.

(ii) In addition to the Capital Expenditures permitted to be made in accordance with clause (i) immediately above, the Credit Parties may use an amount equal to 50% of the Net Cash Proceeds of any Equity Issuances for the purposes of making additional Capital Expenditures during the period commencing on the date of receipt of such Capital Expenditures and ending 365 days thereafter with the remaining 25% of the Net Cash Proceeds (after application of the first 25% of such Net Cash Proceeds being applied to Mandatory Prepayments pursuant to Section 1.2(e)) to be used for working capital purposes (other than Capital Expenditures);

provided, however, the Required Lenders may approve, in their sole discretion, additional Capital Expenditures by providing prior written consent.

4.3 Other Reports and Information. The Grantors shall advise Agent in reasonable detail promptly after becoming aware of: (a) any Lien, other than Permitted Liens, attaching to or asserted against any of the Collateral or any occurrence of any Casualty Event with respect to the Collateral where the loss exceeds \$750,000 and the estimated (or actual, if available) amount of such loss; and (b) the occurrence of any Default or other event that has had or could reasonably be expected to have a Material Adverse Effect.

4.4 Notices under Subordinated Loan Documents. The Credit Parties shall provide to Agent promptly, but no later than three (3) Business Days after receipt thereof (a) any notice from the holder of the Subordinated Debt that a default or event of default has occurred under the Subordinated Loan Documents, and (b) any other material notice received by the Credit Parties under the Subordination Agreement.

5. NEGATIVE COVENANTS

Borrower and each Credit Party executing this Agreement covenants and agrees (for itself and each other Credit Party) that, without Agent's prior written consent, from the Closing Date until the Termination Date, neither Borrower nor any other Credit Party shall, directly or indirectly, by operation of law or otherwise:

5.1 Indebtedness. Create, incur, assume or permit to exist any Indebtedness, except: (a) the Obligations, (b) Indebtedness existing as of the Closing Date set forth in Disclosure Schedule (3.17), (c) by endorsement of instruments or items of payment for deposit to the general account of such Credit Party, (d) for Guaranteed Indebtedness incurred for the benefit of any Credit Party if the primary obligation is permitted by this Agreement, (e) Indebtedness outstanding under Subordinated Debt Documents to the extent subject to a Subordination Agreement acceptable to Agent and the Required Lenders, in an aggregate amount not to exceed \$5,000,000 at any time outstanding, (f) Purchase Money Obligations and Capital Leases incurred after the Closing Date in an aggregate outstanding amount, calculated on an annual basis with respect to Capital Leases, not to exceed an amount outstanding at any time equal to \$2,500,000, (g) Indebtedness incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation or in respect of letters of credit, performance bonds, appeal bonds, bid bonds, customs bonds, or surety bonds and other similar obligations (exclusive of obligations for the payment of borrowed money), (h) Contingent Obligations with respect to (i) Indebtedness permitted under this Section 5.1, (ii) operating leases, or (iii) other contractual obligations (other than Indebtedness) permitted by this Agreement, (i) unsecured Subordinated Debt consisting of indemnification obligations, seller notes and/or earnouts incurred in connection with Permitted Acquisitions, so long as (A) such Indebtedness is subject to a Subordination Agreement acceptable to Agent and the Required Lenders that remains in full force and effect and (B) the aggregate amount outstanding shall not exceed \$2,500,000 at any time, (j) Indebtedness incurred in respect of netting services and ordinary course of business overdraft protection in connection with deposit accounts permitted under the Loan Documents, (k) contingent obligations incurred in the ordinary course of business with respect to letters of credit, surety and appeal bonds, performance bonds, bid bonds, customs bonds and other similar obligations, (l) Indebtedness representing reasonable deferred compensation owed to officers, employees and directors incurred in the ordinary course of business and consistent with past practice, (m) the financing of insurance premiums in the ordinary course of business, (n) Indebtedness with respect to health, disability and other employee benefits incurred in the ordinary course of business and consistent with past practice, (o) Indebtedness of any Credit Party owing to any other Credit Party, (p) to the extent constituting Indebtedness, any Permitted Investment, (q) Indebtedness incurred in the ordinary course of business in connection with corporate credit cards, purchasing cards, payment processing, automatic clearinghouse arrangements, arrangements in respect of pooled deposit or sweep accounts, check endorsement guarantees, and otherwise in connection with deposit accounts or cash management services in an aggregate amount outstanding not to exceed \$2,000,000, (r) unsecured obligations (contingent or otherwise) existing or arising under any Hedging Agreement entered into in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates, foreign exchange rates, or commodity prices and not for speculative purposes, (s) Indebtedness arising from judgments not constituting an Event of Default, (t) Indebtedness with respect to and resulting from customer deposits and advance payments received by them in the ordinary course of business, (u) indemnity obligations under customer contracts that are entered into in the ordinary course of business, (v) unsecured Indebtedness assumed pursuant to any Permitted Acquisition so long as (A) Holdings and its Subsidiaries are in compliance with the financial covenants set forth in Section 4.2 on Pro Forma Basis immediately after giving effect thereto, (B) such Indebtedness was not incurred in connection with or in anticipation of such Permitted Acquisition and (C) the aggregate amount outstanding shall not exceed \$2,500,000 at any time, (w) any other unsecured Indebtedness in an aggregate amount not to exceed \$1,000,000 outstanding at any time, and (y) any refinancing of the foregoing so long as the principal amount thereof is not increased (except by the amount of any accrued interest, expenses fees and original issue discount payable in connection therewith), and to the extent secured by a Permitted Lien on assets of a Credit Party such Lien is not spread to cover any additional assets of any Credit Party.

- 5.2 **Liens.** Incur, maintain or otherwise suffer to exist any Lien upon or with respect to any of its property, whether now owned or hereafter acquired, or assign any right to receive income or profits, except for Permitted Liens.
- 5.3 **Investments; Fundamental Changes.** Except as permitted in Section 5.5 or 5.7 below, merge with, consolidate with, acquire all or substantially all of the assets or Stock of, or otherwise combine with or make any investment in or make any loan or advance to, any Person (any of the foregoing, an “**Investment**”); except for the following (any of the following, a “**Permitted Investment**”):
- (a) Investments by a Credit Party in another Credit Party (other than Holdings);
 - (b) any Credit Party may form or acquire any direct or indirect Subsidiary after the Closing Date so long such Credit Party complies with the requirements of Sections 1.12 and 3.27;
 - (c) (i) any Credit Party (other than Holdings) may merge with or into or liquidate into any other Credit Party (other than Holdings), provided that, if Borrower is involved in any such merger or liquidation, Borrower shall be the surviving entity thereof and (ii) any Subsidiary of a Credit Party that is not itself a Credit Party may merge with or into or liquidate into any Credit Party, provided that such Credit Party shall be the surviving entity thereof;
 - (d) Investments under interest rate protection agreements and other Hedging Agreements entered into in the ordinary course of business for the purpose of minimizing risk and not for speculative purposes;
 - (e) cash and Cash Equivalents;
 - (f) non-cash loans to officers, directors and employees which are simultaneously utilized by such Persons to purchase direct or indirect Stock of Holdings;

- (g) bank deposits in the ordinary course of business;
- (h) Investments in securities or other obligations of account debtors received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such account debtors or in settlement of delinquent obligations of, and other disputes with, customers or suppliers in the ordinary course of business;
- (i) Investments listed on Schedule 5.3 as of the Closing Date;
- (j) loans and advances by the Credit Parties to their officers and employees in the ordinary course of business in an aggregate outstanding amount not to exceed \$500,000 at any time (determined without regard to any write-downs or write-offs of such loans and advances);
- (k) any Credit Party may make a loan to another Credit party that could otherwise be made as a distribution or dividend to such Credit Party permitted under Section 5.5;
- (l) Permitted Acquisitions;
- (m) Investments by a Credit Party in a Subsidiary that is not a Credit Party in an amount not to exceed \$250,000 per Fiscal Year;
- (n) to the extent constituting Investments, guarantees permitted under Section 5.1;
- (o) the repurchase of stock of Holdings permitted under Section 5.5;
- (p) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions to, customers and suppliers who are not Affiliates in the ordinary course of business;
- (q) Investments consisting of advances made in connection with purchases of goods or services in the ordinary course of business;
- (r) Investments accepted in connection with dispositions permitted under Section 5.4;
- (s) Investments consisting of deposits permitted by clause (vii) or (xi) of the definition of Permitted Liens;
- (t) Investments of any Person at the time such Person becomes a Subsidiary so long as Investment was not made in connection with or in anticipation of such Person becoming a Subsidiary ;
- (u) earnest money deposits in connection with Permitted Acquisitions, potential Permitted Acquisitions and Investments acquired as a result of a Permitted Acquisition to the extent that such Investments were not made in contemplation of or in connection with such Permitted Acquisition and were in existence prior to the date of such Permitted Acquisition;

(v) the Combination;

(w) [reserved];

(x) Investments made with the proceeds of Equity Issuances after the Closing Date or any Investment made solely in exchange for the substantially contemporaneous issuance of Equity Interests of Holdings;

(y) Investments made with the proceeds of grants from any Governmental Authority; provided such proceeds are used for the purpose to which they are earmarked pursuant to such grants;

(z) so long as no Default or Event of Default then exists or would be caused thereby, in addition to Investments permitted by the foregoing clauses of this Section 5.3, the Credit Parties may make additional Investments to or in a Person in an aggregate amount for all such other Investments not to exceed \$500,000 per Fiscal Year; and

(aa) guarantees and other Contingent Obligations of the Borrower and its Subsidiaries of leases (other than Capital Lease Obligations) or of other obligations not constituting Indebtedness, in each case, entered into in the ordinary course of business.

For purposes of compliance with this Section 5.3, the amount of any Investment shall be the amount actually invested (measured at the time made), without adjustment for subsequent increases or decreases in the value of such Investment but giving effect to any returns or distributions of capital or repayment of principal actually received in cash by such other Person with respect thereto (but only to the extent that the aggregate amount of all such returns, distributions and repayments with respect to such Investment does not exceed the original amount of such Investment).

5.4 **Asset Sales.** Sell, transfer, convey, assign, issue or otherwise dispose any of its assets or properties (including its accounts or any shares of its Stock) or engage in any sale-leaseback, synthetic lease or similar transaction, including without limitation the Collateral or Loan proceeds; provided, however, that any Grantor may (a) transfer any of its Collateral to any other Grantor provided such Collateral remains subject to the Liens of Agent under this Agreement to secure the Obligations; (b) sell inventory to its customers in the ordinary course of business; (c) sell, transfer or otherwise dispose of equipment and machinery which is obsolete, damaged, worn-out, surplus, or no longer used or useful in the business of the Credit Parties and trade-ins and exchanges of equipment in the ordinary course of business; (d) dispose of cash and Cash Equivalents in the ordinary course of business; (e) lease and sublease, license and sublicense real or personal property in the ordinary course of business; (f) abandon Intellectual Property rights in the ordinary course of business which, in the reasonable good faith determination of the Credit Parties, are no longer used or useful to the business; (g) sell, transfer or otherwise dispose delinquent account receivables in the ordinary course of business in connection with the collection thereof; (h) make Restricted Payments permitted under Section 5.5; (i) sell or issue Capital Stock which does not lead to a Change of Control (unless the Termination Date occurs concurrently with the consummation thereof); (j) allow for the involuntary condemnation of property or other involuntary dispositions covered by insurance (or not covered by insurance in an amount not to exceed \$500,000 in the aggregate from the Closing Date to the Termination Date, and in any event not taking into consideration any deductible applicable thereto); (k) grant Permitted Liens; (l) transfer assets pursuant to a Permitted Investment; (m) sell equipment or real property for fair market value to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property so long as: (A) the value of the replacement property is equal to or greater than the property being disposed of and (B) such replacement property is purchased contemporaneously with the disposition or (ii) the proceeds of such disposition are promptly applied to the purchase price of such replacement property so long as: (A) the value of the replacement property is equal to or greater than the property being disposed of and (B) such replacement property is purchased contemporaneously with the disposition; provided, that, to the extent the property being transferred constitutes Collateral, such replacement property shall constitute Collateral; provided, further, that, in each case the disposition contemplated under this clause (m) must occur in the ordinary course of business; (n) the unwinding of any Hedging Agreement permitted hereunder; and (o) dispose of property or assets of any Credit Party not otherwise permitted hereunder, so long as (x) such property or assets are sold at fair market value, (y) the fair market value of the property or assets sold or otherwise disposed of does not exceed \$1,500,000 for all such asset dispositions during any Fiscal Year, and (z) no Event of Default then exists or would result from any such asset disposition. The Net Cash Proceeds of Asset Sales remain subject to prepayment in accordance with Section 1.2(c) hereof.

5.5 **Restricted Payments.** Make or permit any Restricted Payment other than (a) the Credit Parties may pay board of managers' fees, board of directors' fees, and reimbursement of actual out-of-pocket expenses of managers, directors, for the members of the boards of directors or managers of the Credit Parties incurred in connection with organizing or attending Credit Party board of manager and board of director meetings in an aggregate amount per Fiscal Year not to exceed \$350,000 (any such amounts, "**Permitted Board Fees**"); (b) the Credit Parties may indemnify, and enter into other employment arrangements with, directors, officers, and employees of any Credit Party in the ordinary course of business; (c) Restricted Payments may be declared and paid by direct or indirect wholly-owned Subsidiaries of a Credit Party to another Credit Party (other than Holdings); (d) so long as no Event of Default has occurred and is continuing or would result therefrom, repurchases of shares of direct or indirect Equity Interests of Holdings, provided that the aggregate amount of such repurchases and payments of cash dividends shall not exceed \$250,000 during any Fiscal Year, and the Credit Parties may make Restricted Payments to its direct parent to facilitate the foregoing repurchase by Holdings; (e) the Credit Parties may make Restricted Payments to Holdings for the payment by Holdings of (i) reasonable audit fees and expenses for audits involving the Credit Parties or any of their Subsidiaries; (ii) any Tax liability of Holdings or its Subsidiaries based on the operations and revenues of the Borrower and its Subsidiaries and any reasonable Tax preparation fees and expenses for preparing consolidated Tax returns involving the Credit Parties or any of their Subsidiaries; (iii) premiums and expenses for insurance covering Credit Parties or any of their Subsidiaries; and (iv) corporate, administrative and operating expenses in the ordinary course of business incurred by Holdings; (f) any Credit Party may declare and pay dividends with respect to its Equity Interests payable solely in additional shares of its common stock so long as no Change of Control would result therefrom; (g) any Credit Party may make exchanges, redemptions or conversions in whole or in part, not resulting in a Change of Control, of any of its Equity Interests for or into another class of its Equity Interests; (h) Holdings may make cashless repurchases of Equity Interests deemed to occur upon exercises of options and warrants or the settlement or vesting of other equity awards if such Equity Interests represent a portion of the exercise price of such options or warrants or similar equity incentive awards; (i) the Credit Parties may make cash payments to redeem, purchase, repurchase or retire obligations under options, warrants and other convertible securities issued by it in the nature of customary cash payments in lieu of fractional shares in accordance with the terms thereof; and (j) the Credit Parties may acquire (or withhold) its Equity Interests pursuant to any employee stock option or similar plan to pay withholding taxes for which the Borrower is liable in respect of a current or former officer, director, employee, member of management or consultant upon such grant or award (or upon vesting or exercise thereof) and such Credit Party may make deemed repurchases in connection with the cashless exercise of stock options.

5.6 Changes in Nature of Business. Make any changes in any of its business objectives, purposes, or operations that could reasonably be expected to adversely affect repayment of the Obligations or could reasonably be expected to have a Material Adverse Effect, or engage in any business other than that presently engaged in and other businesses reasonably related or ancillary thereto.

5.7 Transactions with Affiliates. Enter into any lending, borrowing or other commercial transaction with any of its employees, officers, directors, Affiliates or any other Credit Party (including upstreaming and downstreaming of cash and intercompany advances and payments by a Credit Party on behalf of another Credit Party) other than (a) loans or advances to employees in the ordinary course of business in an aggregate outstanding amount not exceeding \$500,000, (b) those transactions set forth on Disclosure Schedule (3.34), (c) transactions which are on arms-length terms as would be obtained in a transaction between parties that are not Affiliates of, or otherwise related to, each other, (d) intercompany loans permitted under Section 5.1, (e) Permitted Investments of the type set forth in Sections 5.3(a), (b), (c), (f), (k), and (aa), (f) any customary directors' or officers' liability insurance coverage provided in the ordinary course of business or any customary indemnity provided in the ordinary course of business provided for the benefit of directors or officers (or comparable managers) of Holdings or one of its Subsidiaries so long as it has been approved by such Person's board of directors (or comparable governing body) in accordance with applicable law, (g) the payment of compensation, severance, acceleration of vesting, employee benefit arrangements, issuances of securities or other payments, awards, or grants in cash, securities or the funding of employment agreements, any waiver of restrictions on transfers of equity or any waivers or assignments of any rights of first refusal or similar rights that belongs to Holdings, stock options, restricted stock units and stock ownership to employees, to officers, and directors of Holdings or one of its Subsidiaries (in each case, to the extent not otherwise prohibited hereunder and not resulting in a Change of Control) in the ordinary course of business so long as it has been approved by Holdings' or such Subsidiary's board of directors (or comparable governing body) in accordance with Requirements of Law, (h) Restricted Payments permitted under Section 5.5 above, and (i) the Combination and the Acquisition Documents and the consummation of the transactions contemplated therein.

5.8 Third-Party Restrictions on Indebtedness, Liens, Investments or Restricted Payments. Incur or otherwise suffer to exist or become effective or remain liable on or responsible for any Contractual Obligation limiting or restricting the ability of (a) any Credit Party to make Restricted Payments to, or investments in, or repay the Obligations of, or otherwise sell property to, any Credit Party or (b) any Credit Party to incur or suffer to exist any Lien upon any property of any Credit Party, whether now owned or hereafter acquired, securing any of its Obligations (including any such limitation or restriction in the form of any “equal and ratable” clause and any similar Contractual Obligation requiring, when a Lien is granted on any property, another Lien to be granted on such property or any other property), except, for each of clauses (a) and (b) above, (i) pursuant to the Loan Documents, (ii) limitations on Liens (other than those securing any Obligation) on any property whose acquisition, repair, improvement or construction is financed by Purchase Money Indebtedness in reliance upon Section 5.1(h) or (e) set forth in the Contractual Obligations governing such Indebtedness with respect thereto, (iii) restrictions and conditions imposed by Requirements of Law, (iv) restrictions in agreements listed on Disclosure Schedule 5.8, (v) [reserved], (vi) customary provisions in leases, subleases, licenses and other Contractual Obligations restricting the assignment thereof or restricting the assignment, pledge, transfer or sublease or sublicense of the property leased, licensed or otherwise the subject thereof, (vii) any restrictions or conditions set forth in any agreement in effect at any time any Person becomes a Subsidiary (but not any modification or amendment expanding the scope of any such restriction or condition), provided that such agreement was not entered into in connection with or contemplation of such Person becoming a Subsidiary and such restricted does not restrict the ability of Agent to have a duly perfected first priority security interest in all assets of the Subsidiary, (viii) [reserved], (ix) [reserved], and (x) customary provisions in contracts for the disposition of any assets, provided that the restrictions in any such contract shall apply only to the assets or Subsidiary that is to be disposed of and such disposition is permitted hereunder.

5.9 Modification of Certain Documents.

(a) Amend, waive, or otherwise modify its charter or by-laws or other Organizational Documents in a manner adverse to the Agent or Lenders; provided that Borrower may amend its Organizational Documents to effectuate the Permitted Redomicile.

(b) Amend, waive, or otherwise modify the Employee Confidentiality and Assignment of Inventions Agreements made by Denis Phares and Sean Nichols in favor of the Borrower, dated May 15, 2022, delivered to Agent on such date, in a manner materially adverse to the Agent or Lenders.

5.10 Accounting Changes: Fiscal Year. Change its (a) accounting treatment or reporting practices, except as required by GAAP or any Requirement of Law or (b) its Fiscal Year or its method for determining Fiscal Quarters.

- 5.11 Changes to Name, Locations, Etc. (a) Change (i) its name, Chief Executive Office, corporate offices from those set forth on Disclosure Schedule (3.2), (ii) its warehouses or other locations with Collateral having a value in excess of \$500,000 located on-site (other than temporary locations for repair, maintenance or transit and equipment maintained with employees) or location of its records concerning the Collateral from those locations set forth on Disclosure Schedule (3.2), provided that Borrower shall comply with Section 3.24 in connection with movement of the Collateral, (iii) the type of legal entity that it is, (iv) its organization identification number, if any, issued by its state of incorporation or organization or (v) its state of incorporation or organization from that set forth on Disclosure Schedule (3.2) or (b) acquire, lease or use any real estate after the Closing Date without such Person, in each instance, giving thirty (30) days' prior written notice thereof to Agent (or such shorter period as Agent may agree in its sole discretion) and taking all actions reasonably requested by Agent (at the direction of the Required Lenders) to continuously protect and perfect Agent's Liens upon the Collateral; provided that Borrower may consummate the Permitted Redomicile upon three (3) Business Days' prior written notice to Agent.
- 5.12 Bank Accounts. (a) Establish any depository or other bank account of any kind (other than Excluded Accounts) with any financial institution (other than the accounts set forth on Disclosure Schedule (3.25)) except in compliance with Section 3.25 or (b) close or permit to be closed any of the accounts listed on Disclosure Schedule (3.25) (other than Excluded Accounts) in each case, without Agent's prior written consent.
- 5.13 Margin Regulations. Use all or any portion of the proceeds of any credit extended hereunder to purchase or carry Margin Stock in contravention of Regulation U of the Federal Reserve Board.
- 5.14 Compliance with ERISA. No ERISA Affiliate shall cause or suffer to exist (a) any event that could result in the imposition of a Lien with respect to any Title IV Plan or Multiemployer Plan or (b) any other ERISA Event, that would, in the aggregate, reasonably be expected to result in liabilities in excess of \$500,000. No Credit Party shall cause or suffer to exist any event that could result in the imposition of a Lien with respect to any Plan.
- 5.15 Hazardous Materials. Cause or suffer to exist any Release of any Hazardous Material at, to or from any Real Property owned, leased, subleased or otherwise operated or occupied by any Credit Party that would violate any Environmental Law, form the basis for any Environmental Liabilities or otherwise adversely affect the value or marketability of any real property (whether or not owned by any Credit Party), other than such violations, Environmental Liabilities and effects that would not, in the aggregate, have a Material Adverse Effect.
- 5.16 Modifications to Subordinated Debt. Without the prior written consent of the Agent, permit any changes, amendments or modifications to any Subordinated Debt that are prohibited by any Subordination Agreement.
- 5.17 Reserved.

5.18 Compliance with Anti-Terrorism Laws.

- (a) Directly or indirectly, in connection with the Loans, knowingly (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Embargoed Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to any Anti-Terrorism Law or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.
- (b) Directly or indirectly, in connection with the Loans, knowingly cause or permit any of the funds of such Credit Party that are used to repay the Loans to be derived from any unlawful activity with the result that the making of the Loans would be in violation of any Anti-Terrorism Law.
- (c) Knowingly cause or permit (i) an Embargoed Person to have any direct or indirect interest in or benefit of any nature whatsoever in the Credit Parties or (ii) any of the funds or properties of the Credit Parties that are used to repay the Loans to constitute property of, or be beneficially owned directly or indirectly by, an Embargoed Person.
- (d) Deliver to the Lenders any certification or other evidence requested from time to time by any Lender in its reasonable discretion, confirming the Credit Parties' compliance with this Section 5.18.

5.19 Sale-Leasebacks. Permit any of its Subsidiaries to, engage in a sale leaseback, synthetic lease or similar transaction involving any of its assets without the prior written consent of Required Lenders.

6. SECURITY INTEREST

6.1 Grant of Security Interest.

- (a) As collateral security for the prompt and complete payment and performance of the Obligations, each of Borrower and each other Credit Party executing this Agreement hereby grants to Agent for its benefit and for the benefit of the Lenders a security interest in and Lien upon all of its property and assets, 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, including all of the following property in which it now has or at any time in the future may acquire any right, title or interest:
- (i) all Accounts;
 - (ii) all deposit accounts;

- (iii) all other bank accounts and all funds on deposit therein; all money, cash and Cash Equivalents;
- (iv) all investment property;
- (v) all Stock and all Distributions in respect thereof;
- (vi) all goods (including, without limitation, inventory, equipment, and fixtures);
- (vii) all chattel paper, documents and instruments;
- (viii) all Books and Records;
- (ix) all general intangibles (including, without limitation, all Intellectual Property, Intellectual Property applications, IP Licenses, contract rights, choses in action, payment intangibles, licenses, Permits, and software, and all rights and interests under any key man life insurance policies);
- (x) all letter-of-credit rights;
- (xi) all commercial tort claims;
- (xii) 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;
- (xiii) all other goods (including but not limited to fixtures) and personal property, whether tangible or intangible and wherever located;
- (xiv) 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;
- (xv) all Real Property of every kind and nature, including leases; and
- (xvi) 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 (all of the foregoing, collectively, the “**Collateral**”).

Notwithstanding the foregoing, in no event shall the Collateral subject to this Agreement include or the security interest granted herein attach to:

- (i) any fee owned real property with a fair market value less than \$750,000, 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 \$500,000 in the aggregate (except to the extent perfection of a security interest therein may be accomplished by filing of a Code financing statement) and (B) commercial tort claims with a value of less than \$500,000 in the aggregate;
- (iii) letter of credit rights (other than to the extent consisting of supporting obligations that can be perfected solely by the filing of a Code financing statement) with a value of less than \$500,000 in the aggregate;
- (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 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 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 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 Code or any other applicable law, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Code notwithstanding such prohibition;

- (viii) only to the extent a Requirement of Law would create an adverse tax consequence to the Credit Parties as reasonably determined by the Borrower, the Agent and the Required Lenders, (x) more than 65% of the voting Equity Interests in a first-tier Foreign Subsidiary or Foreign Subsidiary Holdco, and (y) any Equity Interest in any Domestic Subsidiary of a Foreign Subsidiary;
- (ix) 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 by the Borrower, the Agent and the Required Lenders;
- (x) any intent-to-use 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 (or any resulting registration) under applicable law;
- (xi) 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, the Agent and the Required Lenders;

(the items in clauses (i) through (xi) of this paragraph shall be referred to herein collectively as, the "**Excluded Property**").

(b) Borrower, Agent, each Lender and each other Grantor agrees that this Agreement creates, and is intended to create, valid and continuing Liens upon the Collateral in favor of Agent for its benefit and the benefit of the Lenders. Each Grantor represents, warrants and promises to Agent and each Lender that: (i) such Grantor has rights in and the power to transfer each item of the Collateral upon which it purports to grant a Lien pursuant to this Agreement, free and clear of any and all Liens or claims of others, other than Permitted Liens; (ii) the security interests granted pursuant to this Agreement, upon completion of the filings and other actions listed on Disclosure Schedule (6.1) (which, in the case of all filings and other documents referred to in said Schedule, have been delivered to the Agent in duly executed form) and the filing of UCC-1 financing statements with respect to the Collateral, will constitute valid perfected security interests in all of the Collateral (other than Collateral subject to Excluded Perfection Actions) in favor of Agent for its benefit and the benefit of the Lenders as security for the prompt and complete payment and performance of the Obligations, enforceable in accordance with the terms hereof against any and all creditors of and purchasers from any Grantor and such security interests are prior to all other Liens on the Collateral in existence on the date hereof except for Permitted Liens that have priority by operation of law; and (iii) no effective security agreement, mortgage, deed of trust, financing statement, equivalent security or Lien instrument or continuation statement covering all or any part of the Collateral is or will be on file or of record in any public office, except those relating to Permitted Liens. Each Grantor promises to take such actions as Agent (at the direction of the Required Lenders) reasonably requests to defend the right, title and interest of Agent in and to the Collateral against the claims and demands of all Persons, subject to Permitted Liens.

(c) Each Credit Party confirms that value has been given by the Agent and the Lenders to each such Credit Party, that each Credit Party has rights in the Collateral (other than after-acquired property) and that each Credit Party and the Agent have not agreed to postpone the time for attachment of the security interests created by this Agreement to any of the Collateral. The security interests created by this Agreement are intended to attach to: (i) existing Collateral when each Credit Party executes this Agreement, and (ii) Collateral subsequently acquired by each Credit Party immediately upon each such Credit Party acquiring any rights in such Collateral.

6.2 Agent's Rights. Each Grantor, with respect to each property where any Collateral is located that is owned, leased or controlled by any Grantor, during normal business hours and upon reasonable advance notice (unless an Event of Default shall have occurred and be continuing, in which event no notice shall be required and Agent shall have access at any and all times): (i) provide access to such property to Agent (or its designee so long as such designee is bound by a confidentiality agreement) and any of its officers, employees and agents, as frequently as Agent reasonably determines to be appropriate, (ii) permit Agent (or its designee so long as such designee is bound by a confidentiality agreement) to inspect, review, evaluate and make physical verifications and appraisals of the Collateral in any manner and through any medium that Agent or the Required Lenders considers advisable, and each Grantor agrees to render to Agent, at such Grantor's cost and expense, such clerical and other assistance as may be reasonably requested with regard thereto, and (iii) permit Agent (or its designee so long as such designee is bound by a confidentiality agreement) to inspect, audit and make extracts and copies (or take originals if reasonably necessary) from all of such Grantor's Books and Records; provided, however, that no Credit Party shall be obligated to reimburse Agent for any fees or expenses incurred in connection with more than one such inspection or audit per Fiscal Year absent an Event of Default that has occurred and is continuing.

6.3 Agent's Appointment as Attorney-in-fact. On the Closing Date, each Grantor shall execute and deliver a Power of Attorney in the form attached as Exhibit D. The power of attorney granted pursuant to the Power of Attorney and all powers granted under any Loan Document are powers coupled with an interest and shall be irrevocable until the Termination Date, at which time such Power of Attorney shall automatically terminate. The powers conferred on Agent under each Power of Attorney are solely to protect Agent's interests in the Collateral and shall not impose any duty upon it to exercise any such powers. Agent agrees not to exercise any power or authority granted under the Power of Attorney unless an Event of Default has occurred and is continuing. Each Grantor also hereby (i) authorizes Agent (or its designee so long as such designee is bound by a confidentiality agreement) to file any financing statements, continuation statements or amendments thereto that (x) cover the Collateral, and (y) contain any other information required by Part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment and (ii) ratifies its authorization for Agent (or its designee so long as such designee is bound by a confidentiality agreement) to have filed any such financing statements, if filed prior to the date hereof. Each Grantor acknowledges that, until the Obligations (other than inchoate obligations for indemnification or reimbursement for which no claim has been made) have been repaid in full, it is not authorized to file any financing statement or amendment or termination statement with respect to any such financing statement without the prior written consent of Agent and agrees that, until such time, it will not do so without the prior written consent of Agent, subject to such Grantor's rights under Section 9-509(d)(2) of the Code.

6.4 Grant of License to Use Intellectual Property Collateral. Solely for the purpose of enabling Agent to exercise rights and remedies under Section 7.2 hereof for the benefit of the Lenders (including, without limiting the terms of Section 7.2 hereof, in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell or otherwise dispose of Collateral) upon the occurrence and during the continuance of an Event of Default, each Grantor hereby grants to Agent an irrevocable, non-exclusive, worldwide license (exercisable upon the occurrence and during the continuance of an Event of Default and without payment of royalty or other compensation to such Grantor) to use, practice, transfer, license or sublicense any Intellectual Property that constitutes or relates to any of the Collateral and that is licensed to, owned by or hereafter acquired by such Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof, and represents, promises and agrees that any such license or sublicense is not and will not be in conflict with the contractual or commercial rights of any third Person; provided, that such license will terminate on the Termination Date and; provided, further, that such license with respect to Trademarks shall be subject to, with respect to the goods and/or services on which such Trademarks are used, maintenance of quality standards that are sufficient to preserve the validity of such Trademarks and are consistent with past practices in all material respects.

6.5 Commercial Tort Claims. As of the Closing Date, each Credit Party hereby represents and warrants that it holds no commercial tort claims other than those listed in Schedule 13 to the Perfection Certificate. If any Credit Party shall at any time hold or acquire a commercial tort claim, such Credit Party shall promptly after obtaining knowledge thereof notify Agent in writing signed by such Credit Party of the brief details thereof and take such actions as Agent (at the direction of the Required Lenders) may reasonably request to grant to Agent in such writing a security interest therein and in the Proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Agent and the Required Lenders. The requirement in the preceding sentence shall not apply to the extent that the amount of such commercial tort claim, together with the amount of all other commercial tort claims held by any Credit Party in which Agent does not have a security interest, does not exceed \$500,000 in the aggregate for all Credit Parties.

6.6 Duties of Agent. Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Agent deals with similar property for its own account. The powers conferred on Agent hereunder are solely to protect Agent's interest in the Collateral and shall not impose any duty upon Agent to exercise any such powers. Agent shall be accountable only for amounts that it receives as a result of the exercise of such powers, and neither it nor any of its Related Persons shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct as determined by a final non-appealable judgment by a court of competent jurisdiction. In addition, Agent shall not be liable or responsible for any loss or damage to any Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehousemen, carrier, forwarding agency, consignee or other bailee except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence, bad faith or willful misconduct in the selection of such Person.

6.7 Release; Termination.

(a) Upon any sale, lease, transfer or other disposition by any Grantor of any Collateral that is permitted under this Agreement to any Person that is not another Grantor, the security interest in such Collateral shall be automatically released, and the Agent shall promptly execute and deliver to and authorize the filing by each Grantor such documents and instruments reasonably requested by such Grantor as shall be necessary to evidence the termination of the security interests in such Collateral.

(b) The security interests created by this Agreement shall automatically terminate on the Termination Date and the Agent shall promptly execute and deliver to and authorize the filing by each Grantor such documents and instruments reasonably requested by such Grantor as shall be necessary to evidence the termination of all security interests given by such Grantor to the Agent hereunder and deliver to the Borrower, at the expense of the Borrower, any portion of the Collateral that is in possession of the Agent.

(c) Any execution and delivery of such documents pursuant to this Section 6.7 shall be without recourse to or representation or warranty by the Agent or any Lender. The Borrower shall reimburse the Agent upon demand for all reasonable and documented costs and out of pocket expenses, including the reasonable fees, charges and expenses of counsel, incurred by it in connection with any action contemplated by this Section 6.7.

7. **EVENTS OF DEFAULT; RIGHTS AND REMEDIES**

7.1 Events of Default. The occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an “**Event of Default**” hereunder which shall be deemed to be continuing until waived in writing by Agent (at the direction of the Required Lenders) in accordance with Section 9.3 or cured in accordance with the terms and conditions of this Agreement:

(a) Borrower shall fail to pay the principal in respect of the Loan when due and payable or declared due and payable in accordance with the terms hereof; or the Borrower shall fail to pay interest or any other Obligations within three (3) days after any such other Obligation becomes due and payable in accordance with the terms hereof or any other Loan Document; or

(b) any representation or warranty in this Agreement or any other Loan Document, or in any written statement pursuant hereto or thereto, or in any report, financial statement or certificate made or delivered to Agent by Borrower or any other Credit Party shall be untrue or incorrect in any material respect as of the date when made or deemed made, regardless of whether such breach involves a representation or warranty with respect to a Credit Party that has not signed this Agreement; or

(c) Borrower or any other Credit Party shall fail or neglect to perform, keep or observe: (A) any of the covenants, promises, agreements, requirements, or other terms or provisions contained in Section 3.1(a)(i)(A), Section 3.15, Section 3.20, Section 3.21, Section 3.22, Section 3.26, Section 3.30, Section 3.35, Section 4.1, Section 4.2, Section 4.3, each subsection of Section 5 and Section 6.5 of this Agreement or (B) any provision of the SBA Side Letter; or

(d) Borrower or any other Credit Party shall fail or neglect to perform, keep or observe any of the covenants, promises, agreements, requirements, or other terms or provisions contained in Section 3.27 of this Agreement, and such failure or neglect shall continue unremedied for a period of five (5) Business Days; or

(e) Borrower or any other Credit Party shall fail or neglect to perform, keep or observe any of the covenants, promises, agreements, requirements, or other terms or provisions contained in this Agreement or any of the other Loan Documents (other than as specified in paragraphs (a) through (d) above), and such failure or neglect shall continue unremedied for a period of thirty (30) days; or

(f) an event of default shall occur under any Indebtedness of the Borrower or any other Credit Party (other than this Agreement and the other Loan Documents), and such event of default (i) involves the failure to make any payment (whether or not such payment is blocked pursuant to the terms of an intercreditor agreement or otherwise), whether of principal, interest or otherwise, and whether due by scheduled maturity, required prepayment, acceleration, demand or otherwise and such failure continues after the applicable grace or notice period, if any, specified in the document relating thereto, in respect of any Indebtedness (other than the Obligations) of such Person in an aggregate original principal amount exceeding \$750,000, or (ii) causes (or permits any holder of such Indebtedness or a trustee to cause) such Indebtedness, or a portion thereof, in an aggregate original principal amount exceeding \$7500,000 to become due prior to its stated maturity or prior to its regularly scheduled date of payment; or

(g) there shall be commenced against the Borrower or any other Credit Party any Litigation seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that remains unstayed, undismissed or unbonded for sixty (60) consecutive days; or Borrower or any other Credit Party shall have concealed, removed or permitted to be concealed or removed, any part of its property with intent to hinder, delay or defraud any of its creditors or made or suffered a transfer of any of its property or the incurring of an obligation that may be fraudulent under any bankruptcy, fraudulent transfer or other similar law; or

(h) a case or proceeding shall have been commenced involuntarily against Borrower or any other Credit Party in a court having competent jurisdiction seeking a decree or order: (i) under the United States Bankruptcy Code or any other applicable Federal, state or foreign bankruptcy or other similar law, and seeking either (x) the appointment of a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) for such Person or of any substantial part of its properties, or (y) the reorganization or winding up or liquidation of the affairs of any such Person, and such case or proceeding shall remain undismissed, unstayed or unbonded for sixty (60) consecutive days or such court shall enter a decree or order granting the relief sought in such case or proceeding; or (ii) invalidating or denying any Person's right, power, or competence to enter into or perform any of its obligations under any Loan Document or invalidating or denying the validity or enforceability of this Agreement or any other Loan Document or any action taken hereunder or thereunder; or

(i) Borrower or any other Credit Party shall (i) commence any case, proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it or seeking appointment of a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) for it or any substantial part of its properties, (ii) make a general assignment for the benefit of creditors, (iii) consent to or take any action in furtherance of, or, indicating its consent to, approval of, or acquiescence in, any of the acts set forth in paragraph (h) of this Section 7.1 or clauses (i) and (ii) of this paragraph (i), or (iv) shall admit in writing its inability to, or shall be generally unable to, pay its debts as such debts become due; or

(j) a final judgment or judgments for the payment of money in excess of \$500,000 in the aggregate (in excess of the amount thereof covered by insurance) shall be rendered against Borrower or any other Credit Party, to the extent not vacated, stayed, bonded, paid or discharged for a period of thirty (30) consecutive days after the date of entry such judgment; or

(k) any provision of any Loan Document shall for any reason cease to be valid, binding and enforceable in accordance with its terms in any material respect, or any Lien granted, or intended by the Loan Documents to be granted, to Agent for its benefit and the benefit of the Lenders shall cease to be a valid and perfected Lien having the first priority (or a lesser priority if expressly permitted in the Loan Documents and subject to the Excluded Perfection Actions) in any of the Collateral having a value in excess of \$500,000 (or any Credit Party shall so assert any of the foregoing); or

(l) a Change of Control shall have occurred with respect to any Credit Party unless the Termination Date occurs substantially concurrently with the consummation of such Change of Control; or

(m) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred and are then continuing, could reasonably be expected to have Material Adverse Effect; or

(n) if the obligation of any Guarantor under its Guarantee or under any of the Loan Documents is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement).

(a) If any Event of Default shall have occurred and be continuing, then each Lender may suspend its commitment hereunder to make the Term Loan. In addition, if any Event of Default shall have occurred and be continuing, Agent may and, at the direction of the Required Lenders, shall, take any one or more of the following actions: (i) by notice to Borrower declare all or any portion of the Obligations to be forthwith due and payable, whereupon such Obligations shall become and be due and payable; or (ii) exercise any rights and remedies provided to Agent for its benefit and the benefit of the Lenders under the Loan Documents or at law or equity, including all remedies provided under the Code; provided, that upon the occurrence of any Event of Default specified in clause (i) of either Sections 7.1(h) or (i), the Obligations shall become immediately due and payable (and any obligation of the Lenders to make the Loan, if not previously terminated, shall immediately be terminated) without declaration, notice or demand by Agent.

(b) Without limiting the generality of the foregoing, each Grantor expressly agrees that upon the occurrence and during the continuance of any Event of Default, Agent may collect, receive, assemble, appropriate and realize upon the Collateral, or any part thereof, and may forthwith sell, lease, assign, give an option or options to purchase or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any exchange at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Agent shall have the right upon any such public sale, to the extent permitted by law, to purchase for the benefit of the Lenders the whole or any part of said Collateral so sold, free of any right of equity of redemption, which right each Grantor hereby releases. Such sales may be adjourned, or continued from time to time with or without notice. Agent shall have the right to conduct such sales on any Grantor's premises or elsewhere and shall have the right to use any Grantor's premises without rent or other charge for such sales or other action with respect to the Collateral for such time as Agent deems necessary or advisable.

(c) Upon the occurrence and during the continuance of an Event of Default and at Agent's request, Borrower and each other Grantor further agrees, to assemble the Collateral and make it available to Agent at places that Agent shall reasonably select, whether at its premises or elsewhere. During the continuance of an Event of Default, until Agent is able to effect a sale, lease, or other disposition of the Collateral, Agent shall have the right to complete, assemble, use or operate the Collateral or any part thereof, to the extent that Agent deems appropriate, for the purpose of preserving such Collateral or its value or for any other purpose. Agent shall have no obligation to any Grantor to maintain or preserve the rights of any Grantor as against third parties with respect to any Collateral while such Collateral is in the possession of Agent. During the continuance of an Event of Default, Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of any Collateral and to enforce any of Agent's or the Lenders' remedies with respect thereto without prior notice or hearing. To the maximum extent permitted by applicable law, Borrower and each other Grantor waives all claims, damages, and demands against Agent, each Lender, their Affiliates, agents, and the officers and employees of any of them arising out of the repossession, retention or sale of any Collateral except such as are determined in a final judgment by a court of competent jurisdiction to have arisen solely out of the gross negligence or willful misconduct of such Person. Borrower and each other Grantor agrees that ten (10) days' prior notice by Agent to such Grantor of the time and place of any public sale or of the time after which a private sale may take place is reasonable notification of such matters. Borrower and each other Grantor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which Agent and each Lender are entitled.

(d) Agent's and each Lender's rights and remedies under this Agreement shall be cumulative and nonexclusive of any other rights and remedies that Agent and each Lender may have under any Loan Document or at law or in equity. Recourse to the Collateral shall not be required. All provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited, to the extent necessary, so that they do not render this Agreement invalid or unenforceable, in whole or in part.

7.3 Waivers by Credit Parties. Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, Borrower and each other Credit Party executing this Agreement waives: (a) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Loan Documents; (b) all rights to notice and a hearing prior to Agent's taking possession or control of, or to Agent's replevy, attachment or levy upon, any Collateral or any bond or security that might be required by any court prior to allowing Agent or any Lender to exercise any of their remedies; and (c) the benefit of all valuation, appraisal and exemption laws. Borrower and each other Credit Party executing this Agreement acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Loan Documents and the transactions evidenced hereby and thereby.

7.4 Proceeds. The Proceeds of any sale, disposition or other realization upon any Collateral during the continuance of an Event of Default shall be applied by Agent in the following order of priority: *first*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees and disbursements and other charges of counsel and amounts payable under the Agent Fee Letter) payable to Agent in its capacity as such; *second* against the next 4 scheduled installments of the Term Loan in direct order of maturity until such scheduled installments have been paid in full; *third*, against all other remaining principal installments of the Term Loan (including the final installment on the Maturity Date) in inverse order of maturity until the principal on the Term Loans is paid in full; *fourth*, to payment of all accrued unpaid cash interest on the Obligations; *fifth*, to payment of any other amounts owing constituting Obligations; and *sixth*, after the payment by Agent of any other amount required by any provision of law, including Sections 9-608(a)(1) and 9-615(a)(3) of the Code (but only after Agent has received what Agent considers reasonable proof of a subordinate party's security interest), the surplus, if any, shall be paid to the applicable Grantor or its representatives or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct. In the event that any such Proceeds are insufficient to pay the Obligations in full, the Credit Parties shall remain liable, jointly and severally, for any deficiency.

8. SUCCESSORS AND ASSIGNS; TAX DOCUMENTATION

(a) Each Loan Document shall be binding on and shall inure to the benefit of Borrower and each other Credit Party executing such Loan Document, Agent, each Lender, and their respective successors and assigns, except as otherwise provided herein or therein. If more than one party signs this instrument as Borrower, then the term "Borrower" as used herein shall mean all of such parties, jointly and severally. Neither Borrower nor any other Credit Party may assign, transfer, hypothecate, delegate or otherwise convey its rights, benefits, obligations or duties under any Loan Document without the prior express written consent of Agent. Any such purported conveyance by Borrower or such Credit Party without the prior express written consent of Agent shall be void. There shall be no third party beneficiaries of any of the terms and provisions of any of the Loan Documents. Each Lender reserves the right at any time to create and sell participations in the Loan and the Loan Documents to any other Person (a "**Participant**") and to sell, transfer or assign any or all of its rights in the Loan and under the Loan Documents to any Eligible Assignee (an "**Assignee**") acknowledged by Agent; provided, however, that so long as no Event of Default has occurred and is continuing, an assignment to a Disqualified Lender shall require Borrower's prior written consent. Any such sale, transfer or assignment shall be effected by a written assignment agreement substantially in the form of Exhibit J attached hereto or any other form approved by Agent (an "**Assignment Agreement**") delivered by such Assignee and Agent, and such Assignee shall pay to Agent an assignment fee in the amount of \$3,500, which shall be paid to the Agent on the effective date of each such Assignment Agreement, and, if such assignee is not currently a Lender, such assignee shall have delivered to Agent an administrative questionnaire (in a form provided by Agent), a properly completed and duly executed IRS Form W-9 (or other applicable tax form) and all other documentation and other information about such assignee as required under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act Subject to acceptance and recording thereof by the Administrative Agent, from and after the effective date specified in such Assignment Agreement, the assignee thereunder shall be party to this Agreement and, to the extent of the interest assigned by such Assignment Agreement, have the rights and obligations of a Lender under this Agreement. For the avoidance of doubt and not withstanding any language to the contrary in any Loan Document, the Borrower and each Lender hereby acknowledge and agree that (a) Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to an Eligible Assignee (including, without limitation, with respect to CCM Lender) and (b) Agent shall have no responsibility or obligation to determine whether any Lender or potential Lender is an Eligible Assignee and that the Agent shall have no liability with respect to any assignment or participation made to any Person which is not an Eligible Assignee (including, without limitation, with respect to CCM Lender). Agent shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain at one of its offices a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender and the principal amount of (and stated interest on) the Term Loan owing to each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and Borrower, Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. In the event of a conflict between the Register and the records of Borrower or any Lender, the Register shall control absent manifest error. Any assignment of the Term Loan, whether or not evidenced by a Note, shall be effective only upon appropriate entries with respect thereto being made in the Register. Any assignment or transfer of all or part of the Term Loan evidenced by a Note shall be registered on the Register only upon surrender for registration of assignment or transfer of such Note evidencing the Loan, accompanied by a duly executed Assignment Agreement or transfer; thereupon a new Note in the same aggregate principal amount shall be issued to the designated Assignee, and the old Note shall be returned to Borrower marked "canceled." The Register shall be available for inspection by Borrower and Lenders at any reasonable time and from time to time upon reasonable prior written notice. The Borrower agrees that each Participant shall be entitled to the benefits of Section 1.7, subject to the requirements and limitations therein, including the requirements under Section 8(b) (it being understood that the documentation required under Section 8(b) shall be delivered to the participating Lender), to the same extent as if it were a Lender and had acquired its interest by assignment; provided that such Participant shall not be entitled to receive any greater payment under Section 1.7 with respect to any participation than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in applicable law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(b) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and Agent, at the time or times reasonably requested by Borrower or Agent, such properly completed and executed documentation reasonably requested by Borrower or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Agent as will enable Borrower or Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (i), (ii) and (iv) of this Section 8(h)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Borrower:

(i) any Lender that is a U.S. Person shall deliver to Borrower and Agent prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(ii) any Lender that is not a U.S. Person (a **"Foreign Lender"**) shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), whichever of the following is applicable:

(A) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(B) executed copies of IRS Form W-8ECI;

- (C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the IRC, (x) a certificate to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the IRC, a “10 percent shareholder” of Borrower within the meaning of Section 871(h)(3)(B) of the IRC, or a “controlled foreign corporation” related to Borrower as described in Section 881(c)(3)(C) of the IRC (a “**U.S. Tax Compliance Certificate**”) and (y) executed copies of IRS Form W-8BEN or IRS Form W 8BEN-E; or
- (D) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W 8BEN-E, a U.S. Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;

(iii) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or Agent to determine the withholding or deduction required to be made; and

(iv) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such Lender shall deliver to Borrower and Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by Borrower or Agent as may be necessary for Borrower and Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (iv).

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Agent in writing of its legal inability to do so.

9. AGENT

9.1 Appointment and Duties.

(a) Appointment of Agent. Each Lender hereby appoints ALTER DOMUS (US) LLC (together with any successor Agent pursuant to Section 9.9) to act on its behalf as Agent hereunder and under the other Loan Documents and authorizes Agent to (i) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Agent under such Loan Documents and (ii) exercise such powers as are reasonably incidental thereto.

(b) Duties as Collateral and Disbursing Agent. Without limiting the generality of clause (a) above and in each case subject to Section 9.5 and any other exculpatory provisions herein or in any other Loan Documents, Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in Section 7.1(h) or (i) or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Lender is hereby authorized to make such payment to Agent, (ii) at the direction of the Required Lenders, file and prove claims and file other documents necessary or desirable to allow the claims of the Lenders with respect to any Obligation in any proceeding described in Section 7.1(h) or (i) or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Lender), (iii) act as “collateral agent” for each Lender for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to Agent and the other Lenders with respect to the Collateral, whether under the Loan Documents, applicable Requirements of Law or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by a Credit Party with, and cash and cash equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) Limited Duties. Under the Loan Documents, Agent (i) is acting solely on behalf of the Lenders, with duties that are entirely administrative in nature, notwithstanding the use of the defined term “Agent”, the terms “agent”, “administrative agent” and “collateral agent” and similar terms in any Loan Document to refer to Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Lender hereby waives and agrees not to assert any claim against Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above.

9.2 Binding Effect. Each Lender agrees that (i) any action taken by Agent or the Required Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by Agent in reliance upon the instructions of Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders.

9.3 Use of Discretion.

(a) No Action without Instructions. Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to instructions from the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) Right Not to Follow Certain Instructions. Notwithstanding clause (a) above, Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, Agent receives an indemnification satisfactory to it from the Lenders against all costs, expenses, claims, actions or liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against Agent or any Related Person thereof or (ii) that is, in the opinion of Agent or its counsel, contrary to any Loan Document or applicable Requirement of Law.

9.4 Delegation of Rights and Duties. Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Lender). The exculpatory provisions of this Article shall apply to any such Person and to the Related Persons of the Agent and any Person. The Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care. Should any instrument in writing from any Credit Party be required by any Person so appointed by Agent for more fully and certainly vesting in and confirming to him, her or it such rights, powers, privileges and duties, such Credit Party shall execute, acknowledge and deliver any and all such instruments promptly upon request by Agent

(a) Agent may, without incurring any liability hereunder, (i) treat the payee of any Note as its holder until such Note has been assigned in accordance with Section 8(a), (ii) rely on the Register to the extent set forth in Section 8(a), (iii) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Credit Party) and (iv) rely and act upon any document, notice, request, certificate, consent, statement, instrument, document, other writing or other and information (including those transmitted by electronic transmission) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(b) None of Agent and its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document (x) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as Agent shall believe in good faith shall be necessary, under the circumstances) or (y) in the absence of its own gross negligence or willful misconduct as determined by a final non-appealable judgement by a court of competent jurisdiction; provided, that, no action taken or not taken with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.1(b)) shall be considered gross negligence or willful misconduct of the Agent. Each Lender, Borrower and each other Credit Party to this Agreement hereby waive and shall not assert any right, claim or cause of action based thereon, except to the extent of liabilities resulting from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Required Lenders or for the actions or omissions of any of its Related Persons except to the extent a court of competent jurisdiction determines in a final and non-appealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such Related Person;

(ii) shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Agent or any of its Affiliates in any capacity other than in its capacity as Agent under the Loan Documents or other than in connection with Agent's duties under this Agreement and the other Loan Documents

(iii) shall not be responsible for or have any duty to ascertain or inquire into (A) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (B) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, or (C) the value or the sufficiency of any Collateral.

(iv) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the creation, attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(v) makes no warranty or representation, and shall not be responsible, to any Lender for any statement, document, information, representation or warranty made or furnished by or on behalf of any Related Person or any Credit Party in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to any Credit Party, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Agent in connection with the Loan Documents; and

(vi) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Credit Party or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from Borrower or any Lender describing such Default or Event of Default clearly labeled "notice of default" (in which case Agent shall promptly give notice of such receipt to all Lenders);

and, for each of the items set forth in clauses (i) through (vi) above, each Lender and Borrower and each other Credit Party to this Agreement hereby waives and agrees not to assert any right, claim or cause of action it might have against Agent based thereon.

9.6 Agent Individually. Agent and its Affiliates may make loans and other extensions of credit to, acquire Stock of, engage in any kind of business with, any Credit Party or Affiliate thereof as though it were not acting as Agent and may receive separate fees and other payments therefor. To the extent Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms “Lender”, “Required Lender” and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Required Lenders.

9.7 [Intentionally Omitted].

9.8 Expenses; Indemnities.

(a) Without limitation of Section 9.8(b) below, each Lender severally agrees to reimburse Agent and each of its Related Persons (to the extent not timely reimbursed by any Credit Party) promptly upon demand for such Lender’s pro rata share with respect to the Loan of any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and taxes paid in the name of, or on behalf of, any Credit Party) that may be incurred by Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document.

(b) Each Lender severally further agrees to indemnify Agent and each of its Related Persons (to the extent not timely indemnified by any Credit Party), based on and to the extent of such Lender’s aggregate pro rata share with respect to the Loan from and against any and all losses, damages, costs, expenses, (including, without limitation, fees and expenses of counsel to the Agent), claims and liabilities of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document, or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by Agent or any of its Related Persons under or with respect to any of the foregoing; provided, however, that no Lender shall be liable to Agent or any of its Related Persons to the extent such liability has resulted primarily from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

(c) For purposes of this Section 9.8, a Lender’s “pro rata share” shall be determined based upon its share of the outstanding Loans and unused Term Loan Commitments at such time (or if such reimbursement payment is sought after the date on which the Loans have been paid in full and the Term Loan Commitments are terminated in accordance with such Lender’s pro rata share immediately prior to the date on which the Loans are paid in full and the Term Loan Commitments are terminated).

9.9 Resignation of Agent.

(a) Agent may resign at any time by delivering notice of such resignation to the Lenders and Borrower, effective on the earlier of: (i) forty-five (45) days after delivery of such notice or (ii) the date of the appointment or a successor Agent selected by the Required Lenders (the “**Resignation Effective Date**”). If Agent delivers any such notice, the Required Lenders shall have the right to appoint a successor Agent. If, within thirty (30) days after the retiring Agent having given notice of resignation, no successor Agent has been appointed by the Required Lenders that has accepted such appointment, then the retiring Agent may (but shall be under no obligation to), on behalf of the Lenders, appoint a successor Agent from among the Lenders. Each appointment under this clause (a) shall be subject to the prior consent of Borrower, which may not be unreasonably withheld but shall not be required during the continuance of a Default.

(b) With effect from the Resignation Effective Date, (i) the retiring Agent shall be discharged from its duties and obligations under the Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed), (ii) the Lenders shall assume and perform all of the duties of Agent until a successor Agent shall have accepted a valid appointment hereunder, (iii) the retiring Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Agent was, or because such Agent had been, validly acting as Agent under the Loan Documents and (iv) subject to its rights under Section 9.3, the retiring Agent shall take such action as may be reasonably necessary to assign to the successor Agent its rights as Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Agent, a successor Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Agent under the Loan Documents. After the retiring Agent’s resignation hereunder and under the other Loan Documents, the provisions of this Article, Section 1.7, Section 1.10 and Section 10.2 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its designees and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent

9.10 Release of Collateral. Each Lender hereby consents to the release and hereby directs Agent to release (or, in the case of clause (ii) below, release or subordinate) any Lien held by Agent for the benefit of the Lenders against (i) any Collateral that is sold by a Credit Party in an Asset Sale permitted by the Loan Documents (including pursuant to a valid waiver or consent), (ii) any property subject to a Lien permitted hereunder to secure Purchase Money Obligations, and (iii) all of the Collateral and all Credit Parties, upon the Termination Date. Each Lender hereby directs Agent, and Agent hereby agrees, upon receipt of reasonable advance notice from Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the Liens when and as directed in this Section 9.10. Upon request by Agent at any time, the Required Lenders will confirm in writing Agent’s authority to release or subordinate its interest in particular types or items of property, or to release any Credit Party from its obligations under any Loan Document, and Agent shall be entitled to refrain from taking any such action until it receives such written confirmation from the Required Lenders.

10. MISCELLANEOUS

10.1 Complete Agreement; Modification of Agreement.

(a) This Agreement and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and thereof, supersede all prior agreements, commitments, understandings or inducements (oral or written, expressed or implied). Borrower and each other Credit Party executing this Agreement or any other Loan Document shall have all duties and obligations under this Agreement and such other Loan Documents from the date of its execution and delivery, regardless of whether the Loan has been funded at that time.

(b) No amendment or waiver of any provision of any Loan Document and no consent to any departure by any Credit Party therefrom shall be effective unless the same shall be in writing and signed (1) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the Lenders or extending an existing Lien over additional property, by Agent and Borrower and any other Credit Party which is a party to such agreement, (2) in the case of any other waiver or consent, by Agent and the Required Lenders (or by Agent with the consent of the Required Lenders) and (3) in the case of any other amendment, by Agent and the Required Lenders (or by Agent with the consent of the Required Lenders) and Borrower and any other Credit Party which is a party to such agreement; provided, however, that no amendment, consent or waiver described in clause (2) or (3) above shall, unless in writing and signed by each Lender directly affected thereby (or by Agent with the consent of such Lender), in addition to any other Person the signature of which is otherwise required pursuant to any Loan Document, do any of the following:

- (i) waive any condition specified in Section 2.1, except any condition referring to any other provision of any Loan Document;
- (ii) increase the Term Loan Commitment of such Lender or subject such Lender to any additional material obligation;
- (iii) reduce (including through release, forgiveness, assignment or otherwise) (A) the principal amount of, the interest rate on, or any obligation of Borrower to repay (whether or not on a fixed date), any outstanding Loan owing to such Lender, or (B) any Fee or accrued interest payable to such Lender; provided, however, that this clause (iii) does not apply to any change to any provision increasing any interest rate or Fee during the continuance of a Default or to any payment of any such increase;

- (iv) waive or postpone any scheduled maturity date or other scheduled date fixed for the payment, in whole or in part, of principal of or interest on any Term Loan or Fee owing to such Lender or for the reduction of such Lender's Term Loan Commitment; provided, however, that this clause (iv) does not apply to any change to Mandatory Prepayments, including those required under Section 1.2, or to the application of any payment, including as set forth in Section 1.8;
- (v) except as provided in Section 9.10, release all or substantially all of the Collateral or any Guarantor from its guarantee of any Obligation of Borrower except in accordance with the provisions hereof;
- (vi) reduce or increase the proportion of Lenders required for the Lenders (or any subset thereof) to take any action hereunder or change the definition of the term "Required Lenders"; or
- (vii) amend Section 10.14 or this Section 10.1;

and provided, further, that (x)(A) any waiver of any payment applied pursuant to Section 1.8 to, and any modification of the application of any such payment to the Term Loan shall require the consent of the Required Lenders, and (B) any change to the definition of the term "Required Lenders" shall require the consent of the Required Lenders, (y) no amendment, waiver or consent shall affect the rights or duties under any Loan Document of, or any payment to, Agent (or otherwise modify any provision of Section 9 or the application thereof) unless in writing and signed by Agent in addition to any signature otherwise required and (z) the consent of Borrower shall not be required to change any order of priority set forth in Section 1.8.

- (c) Each waiver or consent under any Loan Document shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party shall entitle any Credit Party to any notice or demand in the same, similar or other circumstances. No failure on the part of any Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

10.2 Expenses. Borrower agrees to pay or reimburse Agent and each Initial Commitment Party (but not any Assignee or Participants) for all reasonable and documented out-of-pocket costs and expenses (including the fees and expenses of all counsel retained in connection therewith, limited to one firm of outside counsel to Agent; one firm of counsel for each of the Initial Commitment Parties; one specialty intellectual property counsel to the Initial Commitment Parties; and Agent;; if necessary, a single local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions; solely in the case of an actual or perceived conflict of interest, one additional counsel to each relevant jurisdiction for all such affected Persons taken as a whole), incurred in connection with: (a) the preparation, negotiation, execution, delivery, performance, administration and enforcement of the Loan Documents and the preservation of any rights thereunder; (b) collection, including deficiency collections; (c) any amendment, waiver or other modification with respect to any Loan Document or advice in connection with the administration of the Loan or the rights thereunder; and (d) any litigation, dispute, suit, proceeding or action (whether instituted by or between any combination of Agent, any Lender, Borrower or any other Person), and an appeal or review thereof, in any way relating to the Collateral, any Loan Document, or any action taken or any other agreements to be executed or delivered in connection therewith, whether as a party, witness or otherwise. The Borrower's obligations under this Section shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all obligations under any Loan Document.

10.3 No Waiver. Neither Agent’s failure, at any time, to require strict performance by Borrower or any other Credit Party of any provision of any Loan Document, nor Agent’s or any Lender’s failure to exercise, nor any delay in exercising, any right, power or privilege hereunder, shall operate as a waiver thereof or waive, affect or diminish any right of Agent or any Lender thereafter to demand strict compliance and performance therewith. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or future exercise thereof or the exercise of any other right, power or privilege. Any suspension or waiver of a Default or other provision under the Loan Documents shall not suspend, waive or affect any other Default or other provision under any Loan Document, and shall not be construed as a bar to any right or remedy that Agent or any Lender would otherwise have had on any future occasion. None of the undertakings, indemnities, agreements, warranties, covenants and representations of Borrower or any other Credit Party to Agent or any Lender contained in any Loan Document and no Default by Borrower or any other Credit Party under any Loan Document shall be deemed to have been suspended or waived by Agent or any Lender, unless such waiver or suspension is by an instrument in writing signed by an officer or other authorized employee of Agent or the Lenders, as applicable, and directed to Borrower, specifying such suspension or waiver (and then such waiver shall be effective only to the extent therein expressly set forth), and neither Agent nor any Lender shall, by any act (other than execution of a formal written waiver), delay, omission or otherwise, be deemed to have waived any of its rights or remedies hereunder.

10.4 Severability; Section Titles. Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of any Loan Document shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of such Loan Document. Except as otherwise expressly provided for in the Loan Documents, no termination or cancellation (regardless of cause or procedure) of any financing arrangement under the Loan Documents shall in any way affect or impair the Obligations, duties, covenants, representations and warranties, indemnities, and liabilities of Borrower or any other Credit Party or the rights of Agent or any Lender relating to any unpaid Obligation, (due or not due, liquidated, contingent or unliquidated), or any transaction or event occurring prior to such termination, or any transaction or event, the performance of which is not required until after the Maturity Date, all of which shall not terminate or expire, but rather shall survive such termination or cancellation and shall continue in full force and effect until the Termination Date; provided, that (i) the obligations to provide ESG Data, including under Sections 4.1(n) and 3.41 with respect to ESG Data shall survive until all obligations thereunder have been satisfied to Agent’s and Required Lenders’ satisfaction (including with respect to each Fiscal Year in which any Obligations were outstanding) and (ii) all indemnity obligations of the Credit Parties under the Loan Documents shall survive the Termination Date. The Section titles contained in any Loan Document are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between parties hereto.

10.5 Authorized Signature. Until Agent shall be notified in writing by Borrower or any other Credit Party to the contrary, the signature upon any document or instrument delivered pursuant hereto and believed by Agent or any of Agent's officers, agents, or employees to be that of an officer of Borrower or such other Credit Party shall bind Borrower and such other Credit Party and be deemed to be the act of Borrower or such other Credit Party affixed pursuant to and in accordance with resolutions duly adopted by Borrower's or such other Credit Party's Board of Directors, and Agent shall be entitled to assume the authority of each signature and authority of the Person whose signature it is or appears to be unless the Person acting in reliance thereon shall have actual knowledge to the contrary.

10.6 Notices Except as otherwise provided herein, whenever any notice, demand, request or other communication shall or may be given to or served upon any party by any other party, or whenever any party desires to give or serve upon any other party any communication with respect to this Agreement or any other Loan Document, each communication shall be in writing and shall be deemed to have been validly served, given or delivered (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the United States Mail, registered or certified mail, return receipt requested, with proper postage prepaid, (b) upon transmission, when sent by electronic mail transmission (with confirmation of transmission), (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid or (d) when hand-delivered, all of which shall be addressed to the party to be notified and sent to the address or e-mail address indicated in Schedule C or to such other address (or e-mail address) as may be substituted by notice given as herein provided. Failure or delay in delivering copies of any such communication to any Person (other than Borrower, any other Credit Party, Agent or any Lender) designated in Schedule C to receive copies shall in no way adversely affect the effectiveness of such communication.

10.7 Counterparts. Any Loan Document may be authenticated in any number of separate counterparts by any one or more of the parties thereto, and all of said counterparts taken together shall constitute one and the same instrument. Any Loan Document may be authenticated by manual signature, facsimile or, if approved in writing by Agent and the Required Lenders, electronic means, all of which shall be equally valid.

10.8 Time of the Essence. Time is of the essence for performance of the Obligations under the Loan Documents.

10.9 GOVERNING LAW. THE LOAN DOCUMENTS AND THE OBLIGATIONS ARISING UNDER THE LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATION LAWS OF NEW YORK.

10.10 SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

(a) BORROWER AND EACH OTHER CREDIT PARTY EXECUTING THIS AGREEMENT HEREBY CONSENT AND AGREE THAT THE STATE OR FEDERAL COURTS LOCATED IN NEW YORK COUNTY, NEW YORK, SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN BORROWER AND SUCH CREDIT PARTY AND ANY LENDER PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; PROVIDED, THAT THE LENDERS, BORROWER AND EACH CREDIT PARTY ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF NEW YORK COUNTY, NEW YORK; AND FURTHER PROVIDED, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE ANY LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO COLLECT THE OBLIGATIONS, TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF SUCH LENDER. BORROWER AND EACH OTHER CREDIT PARTY EXECUTING THIS AGREEMENT EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH NEW YORK JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH NEW YORK COURT, AND BORROWER AND SUCH CREDIT PARTY HEREBY WAIVE ANY OBJECTION THAT IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH NEW YORK COURTS. BORROWER AND EACH OTHER CREDIT PARTY EXECUTING THIS AGREEMENT HEREBY WAIVE PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREE THAT SERVICE OF SUCH SUMMONS, COMPLAINT AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER OR SUCH CREDIT PARTY AT THE ADDRESS SET FORTH IN SCHEDULE C OF THIS AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF BORROWER'S OR SUCH CREDIT PARTY'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE UNITED STATES MAIL, PROPER POSTAGE PREPAID.

(b) THE PARTIES HERETO WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE BETWEEN ANY LENDER, BORROWER AND ANY CREDIT PARTY ARISING OUT OF, CONNECTED WITH, RELATED OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THE LOAN DOCUMENTS OR THE TRANSACTIONS RELATED THERETO.

10.11 Press Releases. Neither any Credit Party nor any of its Affiliates will in the future issue any press release or other public disclosure using the name of Energy Impact Credit Fund I LP or its Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to the Required Lenders (or such shorter period as the Required Lenders may agree in their sole discretion) and without the prior written consent of the Required Lenders (such consent not to be unreasonably withheld, delayed or conditioned) unless (and only to the extent that) such Credit Party or Affiliate is required to do so under law and then, in any event, such Credit Party or Affiliate will, to the extent practicable and permitted by law, consult with the Required Lenders before issuing such press release or other public disclosure. Notwithstanding anything to the contrary in this Section 10.11, any Credit Party may make such public disclosures with respect to the transactions contemplated by the Loan Documents in connection with all regular and periodic reports (including without limitation any Form 8-Ks) and all registration statements and prospectuses, if any, filed by any Credit Party with any securities exchange or with the Securities and Exchange Commission or any governmental or private regulatory authority. The Borrower and each other Credit Party hereby authorizes Agent and its Affiliates (i) to make mention of Agent's participation in this transaction in its marketing, sales materials, printed media, tombstones or web-based material with the prior consent of the Borrower (not to be unreasonably withheld, conditioned or delayed) and to publish ESG Data provided hereunder in an annual ESG impact report and (ii) in connection with such marketing and reporting, to use each such Credit Party's name, trademark, trade device, service mark and/or symbol.

10.12 Reinstatement. This Agreement shall continue to be effective, or be reinstated, as the case may be, if at any time payment of all or any part of the Obligations is rescinded or must otherwise be returned or restored by Agent or the Lenders upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower or any other Credit Party, or otherwise, all as though such payments had not been made.

10.13 USA PATRIOT Act Notice and Customer Verification. Each Lender that is subject to the USA PATRIOT Act and the Agent (for itself and not on behalf of such Lender) hereby notify Borrower that pursuant to the "know your customer" regulations and the requirements of the USA PATRIOT Act, they are required to obtain, verify and record information that identifies each Credit Party, which information includes the name, address and tax identification number (and other identifying information in the event this information is insufficient to complete verification) that will allow such Lender or Agent, as applicable, to verify the identity of each Credit Party. This information must be delivered to such Lender and Agent no later than five days prior to the Closing Date and thereafter promptly upon request. This notice is given in accordance with the requirements of the USA PATRIOT Act and is effective as to the Lenders and the Agent.

10.14 Sharing of Payments, Etc. If any Lender, directly or through an Affiliate or branch office thereof, obtains any payment of any Obligation of any Credit Party (whether voluntary, involuntary or through the exercise of any right of setoff or the receipt of any Collateral or “proceeds” (as defined under the Code) of Collateral) other than pursuant to Section 1.14 or Section 8 and such payment exceeds the amount such Lender would have been entitled to receive if all payments had gone to, and been distributed by, Agent in accordance with the provisions of the Loan Documents, such Lender shall purchase for cash from other Lenders such participations in their Obligations as necessary for such Lender to share such excess payment with such Lenders to ensure such payment is applied as though it had been received by Agent and applied in accordance with this Agreement (or, if such application would then be at the discretion of Borrower, applied to repay the Obligations in accordance herewith); provided, however, that (a) if such payment is rescinded or otherwise recovered from such Lender in whole or in part, such purchase shall be rescinded and the purchase price therefor shall be returned to such Lender without interest and (b) such Lender shall, to the fullest extent permitted by applicable Requirements of Law, be able to exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation.

10.15 Reserved.

10.16 Confidentiality. Each of the Agent and the Lenders agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed:

- (a) to its branches and Affiliates and to its other Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential);
- (b) to the extent required or requested by any regulatory or self-regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners);
- (c) to the extent requested or required by applicable law or by any subpoena or similar legal process;
- (d) to any other party hereto;
- (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder;
- (f) subject to an agreement containing confidentiality provisions, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder;

(g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the Term Loans or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Term Loans; or

(h) with the consent of the Borrower.

In addition, the Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents or any Lender in connection with the administration of this Agreement, the other Loan Documents, and the Term Loans.

For purposes of this [Section 10.16](#), “**Information**” means all information received by the Agent or the Lenders from the Borrower or any of its Subsidiaries relating to the Borrower or any of its Subsidiaries or any of their respective businesses, pursuant to this Agreement or any of the Loan Documents. “**Information**” does not include information that is (i) available to the Agent, any Lender or any of their Related Persons on a nonconfidential basis prior to disclosure by the Borrower or any of its Subsidiaries, (ii) public or available to the Lenders’ or Agent’s industry other than as the result of a breach of this [Section 10.16](#), (iii) becomes available to the Agent, any Lender or any of their respective Related Parties on a nonconfidential basis from a source other than the Borrower who did not, to the knowledge of the Agent or such Lender acquire such information as a result of a breach of this [Section 10.16](#), or (iv) is developed by the Agent, any Lender or any of their respective Related Parties independently or and without reference to the Information. Any Person required to maintain the confidentiality of Information as provided in this [Section 10.16](#) shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

For purposes of this [Section 10.16](#), “**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the branches, partners, members, directors, officers, employees, agents, directors, trustees, administrators, managers, attorneys, advisors and representatives of such Person and of such Person’s Affiliates.

10.17 [Effect of Benchmark Transition Event](#).

(a) [Benchmark Replacement](#). Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, the Agent and the Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this [Section 10.17](#) will occur prior to the applicable Benchmark Transition Start Date.

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) Notices; Standards for Decisions and Determinations. Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Agent shall notify the Borrower of (x) if any tenor of a Benchmark is not being used pursuant to Section 10.17(d) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Agent or Lenders pursuant to this Section 10.17, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto or any other Loan Document, except, in each case, as expressly required pursuant to this Section 10.17.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Agent may elect to use another interest period for such Benchmark that is being published and is representative for any Benchmark settings at or after such time and to not use the unavailable or non-representative tenor or interest period and (ii) if a tenor that was not used pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Agent may again use such tenor or interest period for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Loans under this Agreement will be deemed to have converted into Base Rate Loans during the Benchmark Unavailability Period.

10.18 Voting Rights of CCM Lender. Notwithstanding anything herein to the contrary, except for the Term Loan Commitment held by it on the Closing Date and the Term Loans made by it on the Closing Date, CCM Lender shall not hold any Term Loans or Term Loan Commitments and shall not be an Eligible Assignee, and any purported assignment or participation in any Term Loan Commitments or Term Loans to CCM Lender shall be null and void. Notwithstanding anything to the contrary in this Agreement, CCM Lender shall not have any right to (i) attend (including by telephone) any meeting or discussions (or portion thereof) among Agent or any Lender (or any one or more of them) to which representatives of Credit Parties are not invited, or (ii) receive any information or material prepared by Agent or any Lender (or any one or more of them) or any communication by or among Agent and/or one or more Lenders, except to the extent such information or materials have been made available to any Credit Party or its representatives. Furthermore, notwithstanding anything to the contrary in this Agreement, (x) under no circumstances shall CCM Lender be permitted to (A) exercise any voting rights or other privileges with respect to any Term Loan Commitments or Term Loans, owned by, or maintained for the benefit of, CCM Lender, or (B) have voting rights or other privileges under the Loan Documents (and all voting percentages shall be recalculated to give effect to such voting nullification), except, in each case, for voting rights pertaining to those matters that require the consent of each Lender or each directly affected Lender and, in each case, for those matters that would adversely affect CCM Lender in any disproportionate and material respect as compared to other Lenders and (y) no amendment, modification, waiver, consent or other action with respect to any Loan Document shall deprive CCM Lender of any payments to which CCM Lender is entitled under the Loan Documents without CCM Lender providing its written consent. In furtherance of the foregoing, CCM Lender agrees to execute and deliver to Agent any instrument reasonably requested by Agent (at the direction of the Required Lenders) to evidence the voting of its interest as a Lender in accordance with the provisions of this Section 10.18; provided, further, that if CCM Lender fails to promptly execute such instrument such failure shall in no way prejudice any of Agent's or any Lender's rights under this paragraph. Notwithstanding anything herein to the contrary, for purposes of determining whether Required Lenders or all directly affected Lenders or all Lenders have (1) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Credit Party therefrom, (2) otherwise acted on any matter related to any Loan Document, or (3) directed or required Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, CCM Lender shall be deemed to have voted its interest as a Lender without discretion in the same proportion as the allocation of voting with respect to such matter by Lenders other than CCM Lender. For the avoidance of doubt, this Section 10.18 will not apply to any Assignee of CCM Lender permitted under Section 8(a).

10.19 Erroneous Payments.

(a) Each Lender hereby agrees that (i) if the Agent notifies such Lender that Agent has determined in its sole discretion that any funds received by such Lender from Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Lender (whether or not known to such Lender) (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, an “**Erroneous Payment**”) and demands in writing the return of such Erroneous Payment (or a portion thereof), such Lender shall promptly, but in no event later than two (2) Business Days thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Agent in same day funds at the Federal Funds Rate; and (ii) to the extent permitted by applicable law, such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payments received, including, without limitation, waiver of any defense based on “discharge for value” or any similar theory or doctrine. A notice of the Agent to any Lender under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting the immediately preceding clause (a), each Lender hereby further agrees that if it receives a payment from the Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Agent, (y) that was not preceded or accompanied by notice of payment, or (z) that such Lender otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each case, if an error has been made each such Lender, to the extent permitted by applicable law, agrees not to assert any right or claim to the Erroneous Payment, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payments received, including without limitation waiver of any defense based on “discharge for value” or any similar theory or doctrine. Each Lender agrees that, in each such case, it shall promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Agent of such occurrence and, upon demand from the Agent, it shall promptly, but in all events no later than two (2) Business Days thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Agent in same day funds at the Federal Funds Rate.

(c) The Borrower and each other Credit Party hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Erroneous Payment (or portion thereof) for any reason (and without limiting the Agent’s rights and remedies under this Section 10.19), the Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Credit Party.

(d) In addition to any rights and remedies of the Agent provided by law, Agent shall have the right, without prior notice to any Lender, any such notice being expressly waived by such Lender to the extent permitted by applicable law, with respect to any Erroneous Payment for which a demand has been made in accordance with this Section 10.19 and which has not been returned to the Agent, to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final but excluding trust accounts), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Agent or any of its Affiliate, branch or agency thereof to or for the credit or the account of such Lender. Agent agrees promptly to notify the Lender after any such setoff and application made by Agent; provided, that the failure to give such notice shall not affect the validity of such setoff and application.

(e) Each party's obligations under this Section 10.19 shall survive the resignation or replacement of the Agent, the termination of the Term Loan Commitment or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

11. GUARANTEE

11.1 The Guarantee. The Guarantors hereby jointly and severally guarantee, as a primary obligor and not as a surety to Agent and the Lenders and their respective successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest on (including any interest, fees, costs or charges that would accrue but for the provisions of the Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code whether or not any such interest, fees, costs or charges are allowed in any proceeding thereunder) the Loan made by the Lenders to, and the Notes held by each Lender of, Borrower, and all other Obligations from time to time owing to Agent and the Lenders by any Credit Party under any Loan Document (such obligations being herein collectively called the "**Guaranteed Obligations**"). The Guarantors hereby jointly and severally agree that if Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

11.2 Obligations Unconditional. The obligations of the Guarantors under Section 11.1 shall constitute a guarantee of payment and to the fullest extent permitted by applicable Requirements of Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of Borrower under this Agreement, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

- (a) at any time or from time to time, without notice to the Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;
- (c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;
- (d) any Lien or security interest granted to, or in favor of any Lender or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or
- (e) the release of any other Guarantor pursuant to Section 11.9.

Except for notices expressly provided for hereunder or under any other Loan Document, the Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that Agent or any Lender exhaust any right, power or remedy or proceed against Borrower under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. Subject to Section 10.1, the Guarantors waive any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by Agent or any Lender upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between Borrower and Agent or any Lender shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Agent or any Lender, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by Agent or any Lender or any other person at any time of any right or remedy against Borrower or against any other person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of Agent and the Lenders, and their respective successors and assigns.

- 11.3 **Reinstatement.** The obligations of the Guarantors under this Article XI shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Borrower or other Credit Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.
- 11.4 **Subrogation; Subordination.** Each Guarantor hereby agrees that until the unconditional payment and satisfaction in full in cash of all Guaranteed Obligations (other than inchoate obligations for indemnification or reimbursement for which no claim has been asserted) it shall not exercise any right or remedy, direct or indirect, arising against any Credit Party by reason of any performance by it of its guarantee in Section 11.1, whether by subrogation or otherwise, against Borrower or any Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Credit Party to another Credit Party or a Subsidiary of a Credit Party permitted pursuant to Section 5.1 shall be subordinated to such Credit Party's Obligations on terms reasonably acceptable to Agent and the Required Lenders.
- 11.5 **Remedies.** The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in Section 7.2 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 7.2) for purposes of Section 11.1, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 11.1.
- 11.6 **Instrument for the Payment of Money.** Each Guarantor hereby acknowledges that the guarantee in this Article XI constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.
- 11.7 **Continuing Guarantee.** The guarantee in this Article XI is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising. The guarantee in this Article XI shall terminate upon payment in full of all Guaranteed Obligations (other than inchoate obligations for indemnification or reimbursement for which no claim has been asserted) and the termination of the Term Loan Commitments, and Agent shall take such actions as are reasonably necessary to effect such termination.
- 11.8 **General Limitation on Guarantee Obligations.** In any action or proceeding involving any state corporate limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 11.1 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.1, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Credit Party or any other person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 11.10) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

11.9 Release of Guarantors. If, in compliance with the terms and provisions of the Loan Documents, all or substantially all of the Equity Interests of any Guarantor are sold or otherwise transferred (a “**Transferred Guarantor**”) to a person or persons, none of which is Borrower or a Subsidiary, such Transferred Guarantor shall, upon the consummation of such sale or transfer, be automatically released from its obligations under this Agreement (including under Section 10.2 hereof) and its obligations to pledge and grant any Collateral owned by it pursuant to any Loan Document and the pledge of such Equity Interests to Agent pursuant to the Loan Documents shall be automatically released, and, so long as Borrower shall have provided Agent such certifications or documents as Agent shall reasonably request, Agent shall take such actions as are necessary to effect each release described in this Section 11.9 in accordance with the relevant provisions of the Loan Documents.

11.10 Right of Contribution. Each Subsidiary Guarantor hereby agrees that to the extent that a Subsidiary Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Subsidiary Guarantor shall be entitled to seek and receive contribution from and against any other Subsidiary Guarantor hereunder which has not paid its proportionate share of such payment. Each Subsidiary Guarantor’s right of contribution shall be subject to the terms and conditions of Section 11.4. The provisions of this Section 11.10 shall in no respect limit the obligations and liabilities of any Subsidiary Guarantor to Agent and the Lenders, and each Subsidiary Guarantor shall remain liable to Agent and the Lenders for the full amount guaranteed by such Subsidiary Guarantor hereunder.

[Remainder of Page Intentionally Left Blank, Next Page is Signature Page]

IN WITNESS WHEREOF, this Term Loan, Guarantee and Security Agreement has been duly executed as of the date first written above.

Dragonfly Energy Corp., as Borrower and Grantor

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

Dragonfly Energy Holdings Corp. (f/k/a Chardan NexTech Acquisition 2 Corp.), as a Guarantor and Grantor

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

ALTER DOMUS (US) LLC, as Agent for the Lenders

By: /s/ Pinju Chiu
Name: Pinju Chiu
Title: Associate Counsel

SIGNATURE PAGE
TERM LOAN, GUARANTEE AND SECURITY AGREEMENT

ENERGY IMPACT CREDIT FUND I LP, as a Lender

By: Energy Impact Credit Fund I GP LLC, its general partner

By: /s/ Harry Giovanni
Name: Harry Giovanni
Title: Authorized Signatory

ENERGY IMPACT CREDIT FUND II LP, as a Lender

By: Energy Impact Credit Fund II GP LLC, its general partner

By: /s/ Harry Giovanni
Name: Harry Giovanni
Title: Authorized Signatory

CCM Investments 5 LLC, as a Lender

By: /s/ Jonas Grossman
Name: Jonas Grossman
Title: Manager

SIGNATURE PAGE
TERM LOAN, GUARANTEE AND SECURITY AGREEMENT

SCHEDULE A

DEFINITIONS

Capitalized terms used in this Agreement and the other Loan Documents shall have (unless otherwise provided elsewhere in this Agreement or in the other Loan Documents) the following respective meanings:

“**Acquisition Consideration**” shall mean the purchase consideration for any Permitted Acquisition and all other payments by any Credit Party in exchange for, or as part of, or in connection with, any Permitted Acquisition, whether paid in cash or by exchange of Equity Interests or of properties or otherwise and whether payable at or prior to the consummation of such Permitted Acquisition or deferred for payment at any future time, whether or not any such future payment is subject to the occurrence of any contingency, and includes any and all payments representing the purchase price and any assumptions of Indebtedness, “earn-outs” and other agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow or profits (or the like) of any Person or business; provided that any such future payment that is subject to a contingency shall be considered Acquisition Consideration only to the extent of the reserve, if any, required under GAAP at the time of such sale to be established in respect thereof by any Credit Party.

“**Acquisition Documents**” means the Merger Agreement and all agreements, documents and instruments executed or delivered in connection therewith.

“**Act**” means the Small Business Investment Act of 1958 and the regulations promulgated thereunder.

“**Activation Notice**” has the meaning set forth in [Section 3.25](#).

“**Adjusted Term SOFR**” shall mean, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than 1.0%, then Adjusted Term SOFR shall be deemed to be 1.0%.

“**Affected Lender**” has the meaning given to such term in [Section 1.14\(a\)](#).

“**Affiliate**” means, with respect to any Person: (i) each other Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, ten percent (10%) or more of the Stock having ordinary voting power for the election of directors of such Person or (ii) each other Person that controls, is controlled by or is under common control with such Person or any Affiliate of such Person. For the purpose of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

“**Agent**” means the Person identified as such in the preamble of this Agreement.

“**Agent Fee Letter**” has the meaning assigned to it in [Section 1.6\(b\)](#).

“Agent Indemnified Person” has the meaning assigned to it in [Section 1.10](#).

“Agreement” means this Agreement including all appendices, exhibits or schedules attached or otherwise identified thereto, and any appendices, exhibits or schedules to any of the foregoing, each as effect at the time such reference becomes operative; provided, that except as specifically set forth in this Agreement, any reference to the Disclosure Schedules to this Agreement shall be deemed a reference to the Disclosure Schedules as in effect on the Closing Date or in a written amendment thereto delivered by Borrower to Agent.

“Anti-Money Laundering Laws” has the meaning given to such term in [Section 3.22](#).

“Anti-Money Laundering Measures” has the meaning given to such term in [Section 3.22](#).

“Anti-Terrorism Laws” has the meaning given to such term in [Section 3.22](#).

“Applicable Margin” for any of the Term Loans means:

- (a) In the period from the Closing Date until but excluding April 1, 2023, a per annum rate equal to 13.5%, of which 6.50% shall be paid-in-kind.
- (b) Thereafter, on a quarterly basis, effective as of the first Business Day of the Fiscal Quarter following receipt by Agent of the Compliance Certificate and Credit Parties’ quarterly financial statements required to be delivered under this Agreement for the previous Fiscal Quarter (each day of such delivery, a “[Delivery Date](#)”) commencing with the Fiscal Quarter ending December 31, 2022, the Applicable Margin (and PIK Rate in the case of any Payment Date occurring on or prior to October 1, 2024) for the Term Loans shall be adjusted, if necessary, to the applicable percent per annum set forth in the pricing table set forth below corresponding to the Senior Leverage Ratio for the trailing twelve (12) Fiscal Month period ending on the last day of the most recently completed Fiscal Quarter prior to the applicable Delivery Date (each such period, a “[Calculation Period](#)”):

SENIOR LEVERAGE RATIO	APPLICABLE MARGIN	Applicable PIK Rate
Greater than or equal to 5.00:1	13.5%	6.5%
Less than 5.00:1 and greater than or equal to 4.00:1	12.5%	5.5%
Less than 4.00:1	11.5%	4.5%

If Credit Parties shall fail to timely deliver the Compliance Certificate, financial statements, certificates and/or other information required under this Agreement, the Applicable Margin shall be conclusively presumed to equal the highest Applicable Margin specified in the pricing table set forth above for the period commencing on the required delivery date of such financial statements, certificates and/or other information until the delivery thereof. In the event that (a) any financial statement delivered pursuant to [Section 4.1](#) or Compliance Certificate delivered pursuant to this Agreement is shown to be inaccurate and (b) such inaccuracy if corrected, would have led to the application of a higher Applicable Margin for any period (an “[Applicable Period](#)”) than the Applicable Margin applied for such Applicable Period, then (i) Borrower shall promptly (but in any event within two (2) Business Days after such inaccuracy has been shown) deliver to Agent a corrected Compliance Certificate for such Applicable Period, (ii) the Applicable Margin for such Applicable Period shall be the Applicable Margin corresponding to the information disclosed on the corrected Compliance Certificate, and (iii) Borrower shall immediately pay to Agent the accrued additional interest owing as a result of the application of such increased Applicable Margin for such Applicable Period, which payment shall be promptly applied by Agent. In the event that (x) any financial statement delivered pursuant to [Section 4.1](#) or Compliance Certificate delivered pursuant to this Agreement is shown to be inaccurate and (x) such inaccuracy if corrected, would have led to the application of a lower Applicable Margin for any Applicable Period than the Applicable Margin applied for such Applicable Period, then (I) Borrower shall promptly (but in any event within two (2) Business Days after such inaccuracy has been shown) deliver to Agent a corrected Compliance Certificate for such Applicable Period, (II) the Applicable Margin for such Applicable Period shall be the Applicable Margin corresponding to the information disclosed on the corrected Compliance Certificate, and (III) Borrower shall receive a credit toward any future interest payments in an amount equal to the excess interest paid by Borrower as a result of the application of such lower Applicable Margin, provided that the corrected Compliance Certificate is delivered to Agent within thirty (30) days of the date originally due under [Section 4.1](#) and after such thirty (30) day period, no credit shall be given. The rights of Agent set forth above shall survive the Termination Date and are in addition to rights of Agent and Lenders under this Agreement or any other Loan Document.

“**Asset Sale**” shall mean (a) any conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger, amalgamation or consolidation and including any sale and leaseback transaction) of any property excluding sales of inventory and dispositions of cash and cash equivalents, in each case, in the ordinary course of business, by any Credit Party and (b) any issuance or sale of any Equity Interests of any Credit Party, in each case, to any Person other than (i) Borrower, (ii) any Subsidiary Guarantor or (iii) other than for purposes of [Section 5.4](#) any other Subsidiary.

“**Applicable PIK Rate**” means, as of any date of determination with respect to each Payment Date occurring on or before October 1, 2024, the (a) Applicable Margin, minus (b) 7.0% per annum, as set forth in the table in the definition of Applicable Margin.

“**Assignee**” has the meaning given to such term in [Section 8\(a\)](#).

“**Assignment Agreement**” has the meaning given to such term in [Section 8\(a\)](#).

“**Attributable Indebtedness**” shall mean, when used with respect to any sale and leaseback transaction, as at the time of determination, the present value (discounted at a rate equivalent to the applicable Borrower’s then-current weighted average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such sale and leaseback transaction.

“**Available Tenor**” shall mean, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor or interest period for such Benchmark that is not being used pursuant to Section 10.17(D). As of the date of this Agreement, the only Available Tenors are (a) for SOFR Loans, Adjusted Term SOFR based on Term SOFR with an interest period of 3 months, and (b) for Base Rate Loans under clause (d) of the definition of Base Rate, Adjusted Term SOFR for based on Term SOFR with an interest period of 1 month; provided, that Agent may select to use additional interest periods in accordance with the terms of Section 10.17(D) and such interest periods shall become Available Tenors upon such selection.

“**Base Rate**” means, as of any date of determination, a variable rate of interest per annum equal to the highest of (a) two percent (2%), (b) the “Prime Rate” as published by the Wall Street Journal as of such date of determination (or, if such rate ceases to be so published, as quoted from such other generally available and recognizable source as Agent may reasonably select), (c) the *sum* of (i) the Federal Funds Rate *plus* (ii) one-half of one percent (0.50%), and (d) Adjusted Term SOFR for a one-month tenor in effect on such day *plus* 1.00 %.

“**Base Rate Loans**” means Loans bearing interest at rates determined by reference to the Base Rate.

“**Beach Point**” means BP Holdings XVII LP, in its capacity as a Lender, or any other of its Affiliates that may be a Lender from time to time.

“**Benchmark**” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 10.17.

“**Benchmark Replacement**” means, with respect to any Benchmark Transition Event, the sum of: (x) the alternate benchmark rate that has been selected by the Agent and the Borrower giving due consideration to (1) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (2) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities and (y) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than 1.00% per annum, the Benchmark Replacement will be deemed to be 1.00% per annum for the purposes of this Agreement and the other Loan Documents.

“**Benchmark Replacement Adjustment**” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, (x) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Agent and the Borrower giving due consideration to any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (y) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

“**Benchmark Replacement Date**” means the earliest to occur of the following events with respect to the then-current Benchmark:

- (a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or
- (b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

“**Benchmark Transition Event**” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or
- (c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Start Date**” means in the case of a Benchmark Transition Event, the earlier of (1) the applicable Benchmark Replacement Date and (2) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“**Benchmark Unavailability Period**” means, the period, if any, (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 10.17 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document pursuant to Section 10.17.

“**Blocked Accounts**” has the meaning given to such term in [Section 3.25\(a\)](#).

“**Board of Directors**” means, with respect to any Person, (i) in the case of any corporation or unlimited liability corporation, the board of directors of such Person, (ii) in the case of any limited liability company, the board of managers of such Person, (iii) in the case of any partnership, the board of directors or the board of managers, as applicable, of the general partner of such Person and (iv) in any other case, the functional equivalent of the foregoing.

“**Books and Records**” means all books, records, board minutes, contracts, licenses, insurance policies, environmental audits, business plans, files, computer files, computer discs and other data and software storage and media devices, accounting books and records, financial statements (actual and pro forma), filings with Governmental Authorities and any and all records and instruments relating to the Collateral or each Grantor’s business.

“**Borrower**” means the Persons identified as such in the preamble of this Agreement.

“**BSA**” has the meaning given to such term in [Section 3.22](#).

“**Business Day**” means any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in the State of New York.

“**Cap Table**” has the meaning ascribed to such term in [Section 3.39](#).

“**Capital Assets**” means, with respect to any Person, all equipment, fixed assets and Real Property or improvements of such Person, or replacements or substitutions therefor or additions thereto, that, in accordance with GAAP, have been or should be reflected as additions to property, plant or equipment on the balance sheet of such Person.

“**Capital Expenditures**” means, with respect to any Person, all expenditures made directly or indirectly by the Credit Parties during such period for Capital Assets (whether paid in cash or other consideration, financed by the incurrence of Indebtedness or accrued as a liability).

“**Capital Lease**” means, with respect to any Person, any lease of any property (whether real, personal or mixed) by such Person as lessee that, in accordance with GAAP, either would be required to be classified and accounted for as a capital lease on a balance sheet of such Person or otherwise would be disclosed as such in a note to such balance sheet, other than, in the case of Borrower, any such lease under which Borrower is the lessor.

“**Capital Lease Obligation**” means, of any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as Capital Leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“**Cash Equivalents**” means (a) any readily-marketable securities (i) issued by, or directly, unconditionally and fully guaranteed or insured by the United States federal government or (ii) issued by any agency of the United States federal government the obligations of which are fully backed by the full faith and credit of the United States federal government, (b) any readily-marketable direct obligations issued by any other agency of the United States federal government, any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case having a rating of at least “A-1” from S&P or at least “P-1” from Moody’s, (c) any commercial paper rated at least “A-1” by S&P or “P-1” by Moody’s and issued by any Person organized under the laws of any state of the United States, (d) any Dollar-denominated time deposit, insured certificate of deposit, overnight bank deposit or bankers’ acceptance issued or accepted by (i) any Lender or (ii) any commercial bank that is (A) organized under the laws of the United States, any state thereof or the District of Columbia, (B) “adequately capitalized” (as defined in the regulations of its primary federal banking regulators) and (C) has Tier 1 capital (as defined in such regulations) in excess of \$250,000,000 and (e) shares of any United States money market fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clause (a), (b), (c) or (d) above with maturities as set forth in the proviso below, (ii) has net assets in excess of \$500,000,000 and (iii) has obtained from either S&P or Moody’s the highest rating obtainable for money market funds in the United States; provided, however, that the maturities of all obligations specified in any of clauses (a), (b), (c) or (d) above shall not exceed 365 days.

“**Cash Management System**” has the meaning ascribed to such term in Section 3.25(a).

“**Casualty Event**” shall mean any involuntary loss of title or ownership, any involuntary loss of, damage to or any destruction of, or any condemnation or other taking (including by any Governmental Authority) of, any property of a Credit Party. “Casualty Event” shall include but not be limited to any taking of all or any part of any Real Property of any Person or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any Requirement of Law, or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of any Person or any part thereof by any Governmental Authority, civil or military, or any settlement in lieu thereof.

“**CCM Lender**” means CCM Investments 5 LLC, a Delaware limited liability company, in its capacity as a Lender, or any other of its Affiliates that may be a Lender from time to time.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

“**Certain Funds Provisions**” has the meaning assigned thereto in Section 2.1.

“**Change of Control**” means any event, transaction or occurrence as a result of which:

(a) any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) (i) shall have acquired beneficial ownership of 35% or more on a fully diluted basis of the voting and/or economic interest in the Equity Interests of Holdings or (ii) shall have obtained the power (whether or not exercised) to elect a majority of the members of the board of directors (or similar governing body) of Holdings; or

(b) Holdings ceases to own and control all of the economic and voting rights associated with all of the outstanding Ownership Interests of Borrower.

The Combination shall not constitute a Change of Control.

“**Charges**” means all Federal, state, county, city, municipal, local, foreign or other governmental taxes (including taxes owed to PBGC at the time due and payable), levies, customs or other duties, assessments, charges, liens, interest, penalties, expenses, claims or encumbrances upon or relating to (i) the Collateral, (ii) the Obligations, (iii) the employees, payroll, income or gross receipts of any Credit Party, (iv) the ownership or use of any assets by any Credit Party, or (v) any other aspect of any Credit Party’s business.

“**Chief Executive Office**” means the chief executive office of any Credit Party as set forth on Disclosure Schedule 3.2 hereto or as may be updated in accordance with Section 5.11.

“**Closing Certificate**” means that certain closing certificate of Borrower delivered to Agent and the Required Lenders as of the Closing Date in substantially the form of Exhibit F.

“**Closing Date**” means the Business Day on which the conditions precedent set forth in Section 2 have been satisfied or specifically waived in writing by Agent and the Lenders and the Term Loan has been made.

“**Closing Date (\$10 Per Share) Warrants**” means warrants exercisable to purchase 1,600,000 shares of the common stock of Holdings at an exercise price of \$10.00 per share. The Closing Date (\$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 Closing Date (\$10 Per Share) 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 Closing Date (\$10 Per Share) Warrants shall have customary registration rights requiring Holdings to file and keep effective a resale registration statement registering the resale of the shares of common stock underlying the Closing Date (\$10 Per Share) Warrants.

“**Closing Date Penny Warrants**” means penny warrants (i.e., with an exercise price of \$0.01/share) issued by Holdings exercisable to purchase 3.6% of Holdings’ 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 Closing Date Penny Warrants will have an exercise period of 10 years from the date of issuance. The shares issuable upon exercise of the Closing Date Penny Warrants shall have customary registration rights requiring Holdings to file and keep effective a resale registration statement registering the resale of the shares of common stock underlying the Closing Date Penny Warrants.

“**Closing Date Warrants**” means the Closing Date Penny Warrants and Closing Date (\$10 Per Share) Warrants.

“**Code**” means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, Agent’s Lien on any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “Code” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions of this Agreement relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions; provided further, that to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern.

“**Collateral**” has the meaning assigned to it in [Section 6.1](#).

“**Combination**” means a business combination transaction pursuant to which Borrower shall merge with and into Bronco Merger Sub, Inc., a wholly owned subsidiary of Holdings, and thereby become a wholly-owned subsidiary of Holdings.

“**Commitment Letter**” means that certain commitment letter, dated May 15, 2022 (as amended in accordance with its terms), made by EICF Agent LLC and CCM Investments 5 LLC and accepted by Dragonfly Energy Corp. and Chardan NexTech Acquisition 2 Corp.

“**Compliance Certificate**” means a compliance certificate in the form attached as [Exhibit E](#) hereto executed by a Responsible Officer of the Borrower relating to the financial performance of the Credit Parties.

“**Conforming Changes**” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “Base Rate” and the definition of “U.S. Government Securities Business Day”, the addition of a concept of “interest period”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters) that Agent decides in consultation with Borrower may be appropriate to reflect the adoption and implementation of any such rate and to permit the use and administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent decides that adoption of any portion of such market practice is not administratively feasible or if Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Document).

“**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 \$35,000,000 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,
- (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, if any, mutually agreed to by Required Lenders and Borrower in writing, 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.

Notwithstanding the foregoing, for each of the calendar months set forth below, EBITDA shall be deemed to be the amount set forth below for such calendar month:

Month Ended	Adjusted EBITDA
January 31, 2022	\$ (287,000)
February 28, 2022	\$ (271,000)
March 31, 2022	\$ (159,000)
April 30, 2022	\$ (214,000)
May 31, 2022	\$ (60,000)
June 30, 2022	\$ 577,000
July 31, 2022	\$ (416,000)

“**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, 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), (b) and (d) of this definition shall be calculated by multiplying the actual amounts of such Consolidated Interest Expense, Permitted Board Fees 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), (l) and (m) of the definition of Indebtedness, determined on a consolidated basis in accordance with GAAP, in each case, except to the extent constituting Subordinated Debt; 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).

“Contingent Obligation” shall mean, as to any person, any obligation, agreement, understanding or arrangement of such person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations (“primary obligations”) of any other person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of such person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; (d) with respect to bankers’ acceptances, letters of credit and similar credit arrangements, until a reimbursement obligation arises (which reimbursement obligation shall constitute Indebtedness); or (e) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term “Contingent Obligation” shall not include endorsements of instruments for deposit or collection in the ordinary course of business or any product warranties. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such person may be liable, whether singly or jointly, pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

“Contractual Obligation” means as to any Person, any provision of any security issued by such Person or of any agreement, instrument, or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control Agreement” means a deposit account control agreement and/or lock box agreement among Agent, any financial institution at which a Blocked Account is maintained, and the applicable Credit Party, which shall provide, among other things, that such financial institution executing such agreement has no rights of setoff or recoupment or any other claim against such Blocked Account other than for payment of its service fees and other charges directly related to the administration of such account, and shall give the Agent “control” of such Blocked Account as such term is defined in Section 9-104 of the Code.

“Copyrights” shall mean all of the following now owned or hereafter adopted or acquired by any Person: (i) all copyrights in any original work of authorship fixed in any tangible medium of expression, now known or later developed, all registrations and applications for registration of any such copyrights in the United States or any other country, including registrations, recordings and applications, and supplemental registrations, recordings, and applications in the United States Copyright Office; and (ii) all Proceeds of the foregoing, including license royalties and proceeds of infringement suits, the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world and all renewals and extensions thereof.

“Credit Parties” means the Borrower and the Guarantors.

“Debt Issuance” shall mean the incurrence by any Credit Party of any Indebtedness after the Closing Date (other than as permitted by [Section 5.1](#)).

“Default” means any Event of Default or any event that, with the passage of time or notice or both, would, unless cured or waived, become an Event of Default.

“Default Rate” has the meaning assigned to it in [Section 1.5\(c\)](#).

“Designated Person” has the meaning assigned to it in [Section 3.22\(a\)](#).

“Disqualified Capital Stock” shall mean any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, prior to one hundred eighty (180) days after the Maturity Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests referred to in (a) above, in each case at any time prior to one hundred eighty (180) days after the Maturity Date, or (c) contains any repurchase obligation which may come into effect prior to payment in full of all Obligations; provided, however, that any Equity Interests that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Equity Interests upon the occurrence of a change in control or an asset sale occurring shall not constitute Disqualified Capital Stock.

“Disqualified Lender” means each Person identified on Disclosure Schedule (8(a)) and its Affiliates reasonably identifiable by name, as reasonably updated by the Borrower in consultation with Agent and the Required Lender from time to time.

“Distributions” shall mean, collectively, with respect to each Credit Party, all dividends, cash, options, warrants, rights, instruments, distributions, returns of capital or principal, income, interest, profits and other property, interests (debt or equity), or proceeds, including as a result of a split, revision, reclassification or other like change of the Pledged Securities, from time to time received, receivable or otherwise distributed to such Credit Party in respect of or in exchange for any or all of the Pledged Securities.

“Dollars” or **“\$”** means lawful currency of the United States of America.

“Domestic Subsidiary” means any Subsidiary that is not a Foreign Subsidiary.

“Eligible Assignee” shall mean (a) a commercial bank organized under the laws of the United States, or any state thereof, and having a combined capital and surplus of at least \$100,000,000; (b) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development (the **“OECD”**), or a political subdivision of any such country, and having a combined capital and surplus of at least \$100,000,000, provided that such bank is acting through a branch or agency located in the country in which it is organized or another country which is also a member of the OECD; (c) any nationally recognized financial institution or any other entity which is an “accredited investor” (as defined in Regulation D under the U.S. Securities Act of 1933) which extends credit or buys loans as one of its businesses, including but not limited to commercial finance companies, insurance companies, mutual funds and lease financing companies; (d) a Lender or Related Fund; and (e) a Person that is primarily engaged in the business of lending that is (i) a Subsidiary of a Lender, (ii) a Subsidiary of a Person of which a Lender is a Subsidiary or (iii) a Person of which a Lender is a Subsidiary; provided, however, that notwithstanding the foregoing, none of the following shall be Eligible Assignees: (i) Holdings, Borrower or any of their respective Affiliates or Subsidiaries; or (ii) any holder of Subordinated Debt.

“Embargoed Person” means any party that (i) is publicly identified on the most current list of “Specially Designated Nationals and Blocked Persons” published by the OFAC or resides, is organized or chartered in a country or territory subject to OFAC sanctions or embargo programs or (ii) is publicly identified as prohibited from doing business with the United States under the International Emergency Economic Powers Act, the Trading With the Enemy Act, or any other Requirement of Law.

“Environmental Laws” means all Federal, state and local laws, statutes, ordinances and regulations, now or hereafter in effect, and any applicable judicial or administrative interpretation thereof relating to the regulation and protection of human health, safety, the environment and natural resources (including ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation).

“Environmental Liabilities” means all liabilities, obligations, responsibilities, remedial actions, removal costs, losses, damages of whatever nature, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim, suit, action or demand of whatever nature by any Person and which relate to any health, safety or other condition regulated under any Environmental Law, environmental permits, Permit from or law or regulation of, any Governmental Authority setting standards concerning social, governance, labor, health and safety or security risks or in connection with any Release, threatened Release, or the presence of a Hazardous Material.

“**Equity Interest**” shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of property of, such partnership, whether outstanding on the date hereof or issued after the Closing Date, but excluding debt securities convertible or exchangeable into such equity.

“**Equity Issuance**” shall mean, without duplication, (i) any issuance or sale by Holdings after the Closing Date of any Equity Interests in Holdings (including any Equity Interests issued upon exercise of any warrant or option) or any warrants or options to purchase Equity Interests or (ii) any contribution to the capital of Holdings.

“**ERISA**” means the Employee Retirement Income Security Act of 1974 (or any successor legislation thereto), and any regulations promulgated thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with any Credit Party, is treated as a single employer under Section 414(b), (c), (m) or (o) of the IRC, or, solely for the purposes of Section 302 of ERISA and Section 412 of the IRC, is treated as a single employer under Section 414 of the IRC.

“**ERISA Event**” shall mean (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the IRC or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(b) of the IRC or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by any Credit Party or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by any Credit Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan; (f) the incurrence by any Credit Party or any ERISA Affiliate of any liability with respect to any withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by any Credit Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Credit Party or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“**Erroneous Payment**” has the meaning assigned to it in [Section 10.19](#).

“**ESG**” is an acronym that means environmental, social and governance.

“**ESG Data**” means, with respect to any Person, data (which may include qualitative and quantitative data) relating to ESG performance metrics, environmental, impacts and other ESG attributes of such Person, their assets and/or operations.

“**Event of Default**” has the meaning assigned to it in [Section 7.1](#).

“Excess Cash Flow” means, with respect to any period,

- (a) the sum of (without duplication)
 - (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*
 - (v) to the extent included in the calculation of Consolidated Net Income, the proceeds of grants from any Governmental Authority (less any costs and expenses incurred by the Credit Parties associated with carrying out the project for which such grant was made); provided such proceeds are used for the purpose to which they are earmarked pursuant to such grants, *plus*
 - (vi) the aggregate amount of all other non-cash gains increasing Consolidated Net Income (including for certainty all unrealized foreign exchange gains) for 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.

“**Excess Cash Flow Certificate**” has the meaning assigned to it in [Section 1.2\(f\)](#).

“**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 among all such accounts does not exceed \$250,000 in the aggregate, (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 among all such accounts does not exceed \$100,000 in the aggregate.

“**Excluded Perfection Actions**” means, collectively, (a) any filings or other actions in any jurisdiction outside of the United States or required by the Requirements of Law of any jurisdiction outside of the United States (including any execution or delivery of any security or pledge agreement governed by the laws of any jurisdiction outside of the United States) to create or perfect any security interest in assets, including any Intellectual Property registered in any jurisdiction outside of the United States, (b) the execution and delivery of Control Agreements with respect to Excluded Accounts, (c) any requirement to obtain landlord waivers, estoppels or collateral access letters for any location where any Grantor maintains Collateral having a value of less than \$500,000, (d) perfection obtained through notation on a certificate of title with respect to any motor vehicle having a value of less than \$500,000, (e) any action to perfect letter of credit rights, commercial tort claims, or instruments having a value of less than \$500,000 except to the extent perfection can be obtained through the filing of Uniform Commercial Code financing statements, and (f) any other perfection action as to which the Agent and the Borrower reasonably determine that the costs of such perfection action with respect to such assets are excessive in relation to the value of the security or other benefit afforded thereby.

“**Excluded Property**” has the meaning assigned to it in [Section 6.1](#).

“**Excluded Subsidiary**” means (a) any Foreign Subsidiary and (b) any Foreign Subsidiary Holdco.

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to [Section 1.7](#), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient's failure to comply with [Section 8\(b\)](#); and (d) any withholding Taxes imposed under FATCA.

“**Executive Orders**” has the meaning given to such term in Section 3.22.

“**FATCA**” means Sections 1471 through 1474 of the IRC, as of the date of this Agreement, any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the IRC and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the IRC.

“**FCPA**” has the meaning given to such term in Section 3.22(e).

“**Federal Funds Rate**” means, for any day, the greater of (a) means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) quoted to the Agent by three major banks of recognized standing (as selected by the Agent) on such day on such transactions as determined by the Administrative Agent and (b) 0%.

“**Federal Reserve Bank of New York’s Website**” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

“**Federal Reserve Board**” means the Board of Governors of the Federal Reserve System of the United States.

“**Fees**” means any and all fees due to Agent as set forth in Section 1.6.

“**Financial Statements**” means, with respect to any Person, the income statement, balance sheet and statement of cash flows of such Person, prepared for the time period specified and prepared in accordance with GAAP setting forth in each case in comparative form the figures for such time period the previous year, certified by a Financial Officer as being fairly stated in all material respects.

“**Fiscal Month**” means any of the monthly accounting periods of Borrower.

“**Fiscal Quarter**” means any of the quarterly accounting periods of Borrower.

“**Fiscal Year**” means the twelve (12) month period of Borrower ending December 31 of each year. Subsequent changes of the fiscal year of Borrower shall not change the term “Fiscal Year” unless Agent shall consent in writing to such change.

“**Fixed Charge Coverage Ratio**” means, with respect to any Person for any measuring period of 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 made during such measuring period (without duplication of any Restricted Payments that are scheduled principal payments made on account of Subordinated Debt which are included as “Consolidated Fixed Charges” pursuant to the definition thereof), 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 (a)(z) of this definition shall be calculated by multiplying (xx) the actual amounts of such Restricted Payments since the Closing Date by (yy) 360, *divided by* (zz) the number of days elapsed from the Closing Date until applicable the date of determination.

“**Foreign Lender**” shall have the meaning ascribed to such term in [Section 8\(b\)\(ii\)](#).

“**Foreign Subsidiary**” means a Subsidiary that is organized under the laws of a jurisdiction other than the United States or any state thereof or the District of Columbia or Canada or any province or territory thereof.

“**Foreign Subsidiary Holdco**” means any direct or indirect Domestic Subsidiary if all of its assets (directly or through one or more disregarded entities) consist of Equity Interests in, and/or debt issued by, one or more (x) Foreign Subsidiaries and/or (y) other Foreign Subsidiary Holdcos.

“**GAAP**” means generally accepted accounting principles in the United States of America as in effect from time to time, consistently applied.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“**Grantor**” means Borrower, each Subsidiary Guarantor, and Holdings.

“**Guaranteed Indebtedness**” means, as to any Person, any obligation of such Person guaranteeing any indebtedness, lease, dividend, or other obligation (“primary obligations”) of any other Person (the “primary obligor”) in any manner, including any obligation or arrangement of such guaranteeing Person (whether or not contingent): (i) to purchase or repurchase any such primary obligation; (ii) to advance or supply funds (a) for the purchase or payment of any such primary obligation or (b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet condition of the primary obligor; (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; or (iv) to indemnify the owner of such primary obligation against loss in respect thereof.

“**Guaranteed Obligations**” shall have the meaning ascribed to such term in Section 11.1.

“**Guarantees**” shall mean the guarantees issued pursuant to Article XI by Holdings and the Subsidiary Guarantors.

“**Guarantors**” means Holdings and the Subsidiary Guarantors.

“**Hazardous Material**” means any substance, material or waste that is regulated by or forms the basis of liability now or hereafter under, any Environmental Law, including any material or substance that is (a) defined as a “solid waste,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “pollutant,” “contaminant,” “hazardous constituent,” “special waste,” “toxic substance” or other similar term or phrase under any Environmental Law, (b) petroleum or any fraction or by-product thereof, asbestos, polychlorinated biphenyls (PCBs), or any radioactive substance.

“**Hedging Agreement**” shall mean any swap, cap, collar, forward purchase or similar agreements or arrangements dealing with interest rates, currency exchange rates or commodity prices, either generally or under specific contingencies.

“**Hedging Obligations**” shall mean obligations under or with respect to Hedging Agreements.

“**Holdings**” means the Persons identified as such in the preamble of this Agreement.

“**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 (excluding interest penalties for late payments under commercial contracts entered into in the ordinary course of business and, for the avoidance of doubt, which commercial contracts do not relate to obligations for borrowed money or purchase money indebtedness); (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 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 Equity Interests (or any Equity Interests 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); (m) earn-outs and similar payment obligations; and (n) all Contingent Obligations of such Person in respect of Indebtedness or obligations of others of the kinds referred to in clauses (a) through (m) 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.

“**Indemnified Liabilities**” and “**Indemnified Person**” have the respective meanings assigned to them in Section 1.10.

“**Indemnified Taxes**” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“**Initial Commitment Parties**” means EICF Agent LLC (together with any of its affiliates that may make the Term Loans on the Closing Date) and CCM Investments 5 LLC in their capacities as the “Initial Commitment Parties” (as defined under the Commitment Letter). Upon effectiveness of the assignment by the CCM Lender to BP Holdings XVII LP, Beach Point shall be deemed an “Initial Commitment Party” for all purposes of this Agreement.

“**Initial Transactions**” has the meaning assigned to “Transactions” as defined in Exhibit A to the Commitment Letter.

“**Insurance Requirements**” means, collectively, all provisions of the insurance policies, all requirements of the issuer of any of the insurance policies and all orders, rules, regulations and any other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) binding upon each Credit Party which is an owner of Mortgaged Property and applicable to the Mortgaged Property or any use or condition thereof.

“**Intellectual Property**” means any and all Licenses, Patents, Copyrights, Trademarks, and Trade Secrets.

“**IRC**” and “**IRS**” mean respectively, the Internal Revenue Code of 1986 and the Internal Revenue Service, and any successors thereto.

“**Joinder Agreement**” means each Joinder Agreement of a new Subsidiary (other than a Foreign Subsidiary) delivered to the Agent after the Closing Date in substantially the form of Exhibit H pursuant to Sections 1.12 and 3.27(b).

“**Lead Arranger**” means EICF Agent LLC in its capacity as the “Lead Arranger” (as defined under the Commitment Letter).

“**Lender**” means each of those certain financial institutions set forth on Schedule B attached hereto, and if at any time any Lender shall decide to assign all or any of the Obligations, such term shall include such assignee permitted in accordance with Section 8.

“**Lender Fee Letter**” has the meaning assigned to it in Section 1.6(a).

“**Lender Indemnified Person**” has the meaning assigned to it in Section 1.10.

“**Liabilities**” means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, taxes, commissions, charges, disbursements and expenses, in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“**Licenses**” shall mean, with respect to each Grantor, all license and distribution agreements with, and covenants not to sue, any other party with respect to any Patent, Trademark, Trade Secret or Copyright, whether such Grantor is a licensor or licensee, distributor or distributee under any such license or distribution agreement, together with any and all (i) renewals, extensions, supplements, divisions, and continuations thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements or violations thereof, (iii) rights to sue for past, present and future infringements or violations thereof and (iv) other rights to use, exploit or practice any or all of the Patents, Trademarks, Trade Secrets or Copyrights.

“**Lien**” means any mortgage, security deed or deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, lien, charge, security interest, security title, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever having the practical effect of creating a security interest (including any lease or title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the Code or comparable law of any jurisdiction).

“**Liquidity**” means, as of any date of determination, the balance of unrestricted cash and Cash Equivalents of Credit Parties’ as of the last day of the Fiscal Month most recently ended, held in a deposit account that is subject to a Control Agreement in favor of Agent.

“**Liquidity (Average)**” means, as of any date of determination, the daily average balance of unrestricted cash and Cash Equivalents of Credit Parties’ for the last Fiscal Month of the most recently ended Fiscal Quarter, held in a deposit account that is subject to a Control Agreement in favor of Agent.

“**Lists**” has the meaning given to such term in Section 3.22.

“**Litigation**” means any claim, lawsuit, litigation, investigation or proceeding of or before any arbitrator or Governmental Authority.

“**Loan**” has the meaning given to such term in [Section 1.1](#).

“**Loan Documents**” means this Agreement, Lender Fee Letter, the Agent Fee Letter, each Note, the Guarantees, each Mortgage, the Pledge Agreement, the Control Agreements, each Power of Attorney, any waiver or consent of a landlord or mortgagee executed in favor of Agent for the benefit of the Lenders, and all other agreements, instruments, documents and certificates executed and delivered to, and in favor of, Agent in connection with this Agreement, and delivered to, and in favor of, Agent in connection with the Agreement or the transactions contemplated thereby. Any reference in the Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and shall refer to the Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative. The Loan Documents shall not include the Closing Date Warrants.

“**Mandatory Prepayments**” has the meaning given to such term in [Section 1.2\(b\)](#).

“**Margin Stock**” has the meaning given to such term in [Section 3.8](#).

“**Material Adverse Effect**” means: a material adverse effect on (a) the business, assets, operations, or financial or other condition of the Credit Parties taken as a whole, (b) the validity and enforceability of the Loan Documents in any material respect, (c) Borrower’s or any other Credit Party’s ability to pay or perform the Obligations under the Loan Documents to which such Credit Party is a party in accordance with the terms thereof, (d) the Collateral or Agent’s Liens on a material portion of the Collateral or the priority of any such Lien, or (e) Agent’s or any Lender’s rights and remedies under this Agreement and the other Loan Documents.

“**Maturity Date**” means, with respect to the Term Loan, the earliest to occur of (i) the date of the termination of the acceleration of the maturity of any Obligations pursuant to [Section 7.2](#) and (ii) the Stated Maturity Date.

“**Maximum Lawful Rate**” has the meaning given to such term in [Section 1.5\(e\)](#).

“**Merger Agreement**” means that certain Agreement and Plan of Merger, dated as of May 15, 2022, by and among Holdings, Bronco Merger Sub, Inc., a wholly owned subsidiary of Holdings created to effectuate the Combination, and Borrower.

“**Mortgage**” means any mortgage or deed of trust from the relevant Credit Party in favor of Agent for its benefit and the benefit of the Lenders relating to such Credit Party’s real property owned as of the Closing Date and any other mortgage or deed of trust delivered to the Agent pursuant to [Section 3.27](#).

“**Mortgaged Property**” shall have the meaning assigned to such term in the Mortgages.

“**Multiemployer Plan**” shall mean a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA (a) to which any Grantor or any ERISA Affiliate is then making or accruing an obligation to make contributions; (b) to which any Grantor or any ERISA Affiliate has within the preceding five plan years made contributions; or (c) with respect to which any Grantor could incur liability.

“**Net Cash Proceeds**” shall mean:

- (a) with respect to any Asset Sale (other than any issuance or sale of Equity Interests), the cash proceeds received by any Credit Party (including cash proceeds subsequently received (as and when received by any Credit Party) in respect of non-cash consideration initially received) net of (i) selling expenses (including reasonable brokers’ or investment bankers’ fees or commissions, legal, accounting and other professional and transactional fees, survey costs, title insurance premiums, search and recording charges, transfer and similar taxes and Credit Party’s good faith estimate of income taxes actually paid or payable in connection with such sale); (ii) amounts provided as a reserve, in accordance with GAAP, against (x) any reserves for adjustment of the purchase price of such Asset Sale, (y) any liabilities under any indemnification obligations associated with such Asset Sale or (z) any other liabilities retained by any Credit Party associated with the properties sold in such Asset Sale (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds); (iii) Credit Party’s good faith estimate of payments required to be made with respect to unassumed liabilities relating to the properties sold within ninety (90) days of such Asset Sale (provided that, to the extent such cash proceeds are not used to make payments in respect of such unassumed liabilities within ninety (90) days of such Asset Sale, such cash proceeds shall constitute Net Cash Proceeds); and (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness which is secured by a Lien on the properties sold in such Asset Sale (so long as such Lien was permitted to encumber such properties under the Loan Documents at the time of such sale) and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such properties);
- (b) with respect to any Debt Issuance, any Equity Issuance or any other issuance or sale of Equity Interests by any Credit Party, the cash proceeds thereof, net of customary underwriting discounts, fees, commissions, costs and other expenses incurred in connection therewith; and
- (c) with respect to any Casualty Event, the cash insurance proceeds, condemnation awards and other compensation received in respect thereof net of (i) all reasonable costs and expenses incurred in connection with the collection of such proceeds, awards or other compensation in respect of such Casualty Event, (ii) Credit Party’s good faith estimate of income taxes actually paid or payable in connection therewith, (iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness which is secured by a Lien on the properties subject to such Casualty Event (so long as such Lien is a Permitted Lien) and which is repaid with such proceeds, (iv) reasonable reserves established for liabilities estimated to be payable in respect of such Casualty Event.

“Non-Funding Lender” has the meaning given to such term in [Section 1.13](#).

“Note” means any Term Note.

“Notice of Borrowing” has the meaning given to such term in [Section 1.1\(b\)](#).

“Obligations” means all loans, advances, debts, expense reimbursement, fees, liabilities, and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or amounts are liquidated or determinable) owing by Borrower and any other Credit Party to Agent or to the Lenders arising under any of the Loan Documents, of any kind or nature, present or future, whether or not evidenced by any note, agreement or other instrument, and all covenants and duties regarding such amounts. This term includes all principal, interest, Fees, Charges, expenses, attorneys’ fees and any other sum chargeable to Borrower under any of the Loan Documents (including interest accruing at the then applicable rate provided in this Agreement after the maturity of the Loan, and Fees, Charges, costs, expenses and interest accruing at the then applicable rate provided in this Agreement after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, whether or not a claim for post-filing or post-petition interest or a claim for such Fees, Charges, costs and expense is allowed in such proceeding), and all principal and interest due in respect of the Loan and all obligations and liabilities of any Guarantor under any Guarantee. The Obligations shall not include any obligations or liabilities under the Closing Date Warrants.

“OFAC” has the meaning given to such term in [Section 3.22](#).

“OFAC Laws and Regulations” has the meaning given to such term in [Section 3.22](#).

“Officers’ Certificate” means a certificate executed by the chairman of the Board of Directors (if an officer), the Chief Executive Officer, the president or one of the other Responsible Officers, each in such Person’s official (and not individual) capacity.

“Organization Chart” means an accurate and complete organization chart reflecting all of the direct and indirect Subsidiaries of Holdings (including the applicable ownership percentages) as of the date of delivery to Agent.

“Organizational Documents” shall mean, with respect to any Person, (i) in the case of any corporation or unlimited liability corporation, the certificate or articles of incorporation, as applicable, and by-laws (or similar documents) of such Person, (ii) in the case of any limited liability company, the certificate of formation and operating agreement (or similar documents) of such Person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar documents) of such Person, (iv) in the case of any general partnership, the partnership agreement (or similar document) of such Person and (v) in any other case, the functional equivalent of the foregoing.

“Other Lists” has the meaning given to such term in [Section 3.22](#).

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“Ownership Interests” means, as applied to any Person, corporate stock and any and all securities, shares, partnership interests (whether general, limited, special or other), limited liability company interests, membership interests, equity interests, participations, rights or other equivalents (however designated and of any character) of corporate stock of such Person or any of the foregoing issued by such Person (whether a corporation, a partnership, a limited liability company or another entity) and shall include securities convertible into Ownership Interests and rights, warrants or options to acquire Ownership Interests.

“Participant” has the meaning given to such term in [Section 8\(a\)](#).

“Participant Register” has the meaning given to such term in [Section 8\(a\)](#).

“Patents” means all of the following in which any Person now holds or hereafter acquires any interest: (i) all letters patent of the United States or any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or any other country, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State or Territory thereof, or any other country; and (ii) all reissues, continuations, divisionals, continuations-in-part or extensions thereof.

“Payment Date” has the meaning given to such term in [Section 1.1](#).

“PBG” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Perfection Certificate” means a certificate in the form of [Exhibit A](#) attached to this Agreement or any other form approved by the Agent and the Required Lenders, as the same shall be supplemented from time to time by a Perfection Certificate Supplement or otherwise.

“Perfection Certificate Supplement” means a certificate supplement in the form of [Exhibit I](#) attached to this Agreement or any other form approved by the Agent.

“Permit” means, with respect to any Person, any permit, approval, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other Contractual Obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Permitted Acquisition” shall mean any transaction for the (a) acquisition of all or substantially all of the assets or property of any Person, or of any business or division of any Person; or (b) acquisition (including by merger or consolidation) of the Equity Interests of any Person that becomes a Subsidiary after giving effect such transaction; provided that each of the following conditions shall be met:

- (i) no Default then exists or would result therefrom;
- (ii) prior to the consummation of any such Permitted Acquisition, the Borrower shall have delivered to the Agent (A) a certificate of the chief executive officer or other Responsible Officer of Borrower demonstrating, in reasonable detail, compliance with the financial covenants referred to in Section 4.2 on a *pro forma* basis (based on the financial covenant levels for the testing period then most recently ended or, in the case of any proposed acquisition to be consummated prior to December 31, 2022, for the period ending December 31, 2022) before and after giving effect to such Permitted Acquisition, such *pro forma* ratios being determined as if (x) such Permitted Acquisition had been completed at the beginning of the most recent testing period for which financial information for the Credit Parties and the business or Person to be acquired, is available, and (y) any such Indebtedness, or other Indebtedness incurred to finance such Permitted Acquisition, had been outstanding for such entire testing period, and (B) historical financial statements relating to the business or Person to be acquired evidencing positive EBITDA (determined in accordance with GAAP only as earnings before interest, taxes, depreciation and amortization, and not any other adjustments without the prior written approval of Agent (at the direction of the Required Lenders)) for the most recent trailing-twelve month period for which financial statements are available as determined by Agent (at the direction of the Required Lenders) and such other information as the Agent or the Required Lenders may reasonably request;
- (iii) no Credit Party shall, in connection with any such transaction, assume or remain liable with respect to any Indebtedness except to the extent permitted under Section 5.1;
- (iv) the Person or business to be acquired shall be, or shall be engaged in, a business of the type that the Credit Parties are permitted to be engaged in under Section 5.6, the Credit Parties shall comply with Sections 1.12 and 3.27 with respect to the assets or Person acquired, and shall be free and clear of any Liens, other than Permitted Liens;

- (v) the Board of Directors of the Person to be acquired shall not have indicated publicly its opposition to the consummation of such acquisition (which opposition has not been publicly withdrawn);
- (vi) all transactions in connection therewith shall be consummated in accordance with all applicable Requirements of Law in all material respects;
- (vii) with respect to any transaction involving Acquisition Consideration of more than \$1,750,000, unless the Agent (at the direction of the Required Lenders) shall otherwise agree, Borrower shall have provided the Agent with (A) to the extent available, historical Financial Statements for the last three Fiscal Years (or, if less, the number of years since formation) of the Person or business to be acquired (audited if available without additional cost or delay) and unaudited Financial Statements thereof for the most recent interim period which are available, (B) reasonably detailed pro forma projections for the succeeding three years for Borrower (and to the extent available projections of the target), after giving effect to such transaction, (C) a reasonably detailed description of all material information relating thereto and copies of all available material documentation pertaining to such transaction, (D) a quality of earnings report and (E) all such other information and data relating to such transaction or the Person or business to be acquired as may be reasonably requested by the Agent or the Required Lenders;
- (viii) at least seven (7) Business Days prior to the proposed date of consummation of the transaction, Borrower shall have delivered to the Agent an Officer's Certificate certifying that (A) such transaction complies with this definition (which shall have attached thereto reasonably detailed backup data and calculations showing such compliance), and (B) such transaction could not reasonably be expected to result in a Material Adverse Effect;
- (ix) the Acquisition Consideration (exclusive of any amounts financed by Equity Issuances and subordinated vendor take-back debt) for such acquisition shall be less than \$5,000,000, and the aggregate amount of the Acquisition Consideration (exclusive of any amounts financed by Equity Issuances and subordinated vendor take-back debt) for all Permitted Acquisitions since the Closing Date shall not exceed \$10,000,000; provided that any Equity Interests constituting all or a portion of such Acquisition Consideration shall not have a cash dividend requirement on or prior to the date that is one hundred eighty (180) days prior to the Maturity Date; and
- (x) the target acquired is organized under the laws of a State within the United States, the District of Columbia or a province within Canada, and any assets, business or division acquired shall be located in the United States or a province within Canada.

"Permitted Board Fees" has the meaning assigned thereto in [Section 5.5](#).

“Permitted Liens” means the following encumbrances: (i) Liens for Taxes or Charges not yet due or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP, or for Taxes in an amount not to exceed \$25,000 that are discharged promptly upon a Responsible Officer obtaining knowledge thereof; (ii) carriers’, warehousemen’s, suppliers’, mechanics’, materialmen’s, repairmen’s or other similar liens arising in the ordinary course of business; (iii) attachment, judgment or other similar Liens arising in connection with court or arbitration proceedings which do not give rise to an Event of Default under Section 7.1(j); (iv) zoning restrictions, easements, licenses, servitudes, rights of way, or other restrictions on the use of real property or other minor irregularities in title thereto, so long as the same do not materially impair the use, value, or marketability of such real estate; (v) Purchase Money Liens securing Purchase Money Obligations (or rent) to the extent permitted under Section 5.1(f); (vi) Liens in favor of Agent for its benefit and the benefit of the Lenders securing the Obligations; (vii) Liens arising in the ordinary course of business in connection with worker’s compensation, unemployment compensation and other types of social security (excluding Liens arising under ERISA), including to secure any letters of credit in respect of any of the foregoing; (viii) statutory environmental Liens in the ordinary course of business for sums not yet due; (ix) leases or subleases granted to others in each case not interfering with the ordinary conduct of the business of any Loan Party or any of its Subsidiaries; (x) Liens in existence on the Closing Date that are listed, and the property subject thereto described, in Disclosure Schedule 3.20(a), plus renewals, replacements and extensions of such Liens, provided that (A) the aggregate principal amount of the Indebtedness, if any, secured by such Liens does not increase from that amount outstanding at the time of any such renewal, replacement or extension plus any accrued interest, fees, premiums or expenses payable in connection with such renewal, replacement, or extension, and (B) any such renewal, replacement or extension does not encumber any additional assets or properties of the Credit Parties or any of their Subsidiaries; (xi) deposits securing the performance of appeal, surety, stay, customs and appeal bonds, bids, leases and other contracts in the ordinary course of business (but not to include any contracts in respect of the payment for borrowed money), including to secure any letters of credit in respect of any of the foregoing; (xii) bankers’ Liens, rights of setoff and other similar Liens existing solely with respect to cash and cash equivalents on deposit in one or more accounts maintained by any Credit Party, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank or banks with respect to cash management and operating account arrangements; (xiii) Liens on insurance proceeds to the extent securing the financing of insurance premiums in the ordinary course of business; (xiv) Liens arising from precautionary UCC financing statement filings regarding operating leases of personal property and consignment arrangements entered into in the ordinary course of business; (xv) (i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods and incurred in the ordinary course of business and (ii) Liens on specific items of inventory or other goods and proceeds thereof of any Person securing such Person’s obligations in respect of bankers’ acceptances or letters of credit permitted under Section 5.1 issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business; (xvi) non-exclusive licenses or sublicenses of personal property granted in the ordinary course of business; (xvii) [reserved]; (xviii) [reserved]; (xix) any Lien arising under conditional sale, title retention (including extended retention of title), consignment or similar arrangements for the sale of goods in the ordinary course of business; provided that such Lien attaches only to the goods subject to such sale, title retention, consignment or similar arrangement; and (xx) additional Liens of any Loan Party or any Subsidiary not otherwise permitted by this definition that (A) were not incurred in connection with borrowed money, (B) do not materially impair the use of assets subject to such Liens and (C) do not secure obligations in excess of \$250,000 in the aggregate for all such Liens at any time.

“**Permitted Redomicile**” means the change, after the Closing Date, of Holdings’ jurisdiction of incorporation from Delaware to Nevada, including amendments to the Holdings’ Organizational Documents to effectuate the same and any change in name of Holdings necessitated in connection therewith.

“**Person**” means any individual, sole proprietorship, partnership, limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, entity or government (whether Federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof), and shall include such Person’s successors and assigns.

“**PIK Rate**” means, as of any date of determination, the (a) Applicable Margin, minus (b) 7.0% per annum.

“**Plan**” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the IRC or Section 302 of ERISA, and in respect of which any Credit Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“**Pledge Agreement**” means that certain Pledge Agreement, dated as of the Closing Date, by and among the Credit Parties and the Agent pledging as Collateral for the Obligations any Ownership Interests of Subsidiaries owned by each Credit Party (other than Excluded Property).

“**Pledged Securities**” shall mean, collectively, with respect to each Credit Party, (i) all issued and outstanding Equity Interests of each issuer set forth on Schedule 10(a) to the Perfection Certificate as being owned by such Credit Party and all options, warrants, rights, agreements and additional Equity Interests of whatever class of any such issuer acquired by such Credit Party (including by issuance), together with all rights, privileges, authority and powers of such Credit Party relating to such Equity Interests in each such issuer or under any Organizational Document of each such issuer, and the certificates, instruments and agreements representing such Equity Interests and any and all interest of such Credit Party in the entries on the books of any financial intermediary pertaining to such Equity Interests, (ii) all Equity Interests of any Subsidiary, which Equity Interests are hereafter acquired by such Credit Party (including by issuance) and all options, warrants, rights, agreements and additional Equity Interests of whatever class of any such Subsidiary acquired by such Credit Party (including by issuance), together with all rights, privileges, authority and powers of such Credit Party relating to such Equity Interests or under any Organizational Document of any such Subsidiary, and the certificates, instruments and agreements representing such Equity Interests and any and all interest of such Credit Party in the entries on the books of any financial intermediary pertaining to such Equity Interests, from time to time acquired by such Credit Party in any manner, and (iii) all Equity Interests issued in respect of the Equity Interests referred to in clause (i) or (ii) upon any consolidation or merger of any issuer of such Equity Interests; provided, however, that Pledged Securities shall not include any Equity Interests which are not required to be pledged pursuant to Section 3.27.

“**Power of Attorney**” means each Power of Attorney of the Credit Parties delivered to Agent as of the Closing Date in substantially the form of Exhibit D and any Power of Attorney delivered to the Agent after the Closing Date pursuant to Section 1.12.

“**Prepayment**” has the meaning given to such term in Section 1.2(h).

“**Pro Forma Basis**” shall mean on a basis in accordance with GAAP.

“**Proceeds**” means “proceeds,” as such term is defined in the Code and, in any event, shall include: (i) any and all proceeds of any insurance, indemnity, warranty or guarantee payable to any Grantor from time to time with respect to any Collateral; (ii) any and all payments (in any form whatsoever) made or due and payable to any Grantor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of any Collateral by any governmental body, authority, bureau or agency (or any Person acting under color of governmental authority); (iii) any recoveries by any Grantor against third parties with respect to any litigation or dispute concerning any Collateral, including claims arising out of the loss or nonconformity of, interference with the use of, defects in, or infringement of rights in, or damage to, Collateral; and (iv) any and all other amounts, rights to payment or other property acquired upon the sale, lease, license, exchange or other disposition of Collateral (excluding amounts and rights to payment arising from the rental of any of the Collateral to customers of the Borrower or any of its Subsidiaries or distributors) and all rights arising out of Collateral.

“**Property**” means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

“**Purchase Money Lien**” means any Lien upon any fixed assets that secure the Purchase Money Obligations related thereto but only if such Lien shall at all times be confined solely to the asset the purchase price of which was financed or refinanced through the incurrence of the Purchase Money Obligations secured by such Lien (and the proceeds thereof) and only if such Lien secures only such Purchase Money Obligations.

“**Purchase Money Obligations**” means for any Person the obligations of such Person in respect of Indebtedness (including Capital Lease Obligations) incurred for the purpose of financing all or any part of the purchase price of any property (including Equity Interests of any Person) or the cost of installation, construction or improvement of any property and any refinancing thereof; provided, however, that (i) such Indebtedness is incurred within one year after such acquisition, installation, construction or improvement of such property by such Person and (ii) the amount of such Indebtedness does not exceed 100% of the cost of such acquisition, installation, construction or improvement, as the case may be.

“**Real Property**” shall mean, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“**Recipient**” means Agent and any Lender.

“**Refinancing**” means both (a) the repayment by the Borrower on the Closing Date of all outstanding indebtedness and other obligations incurred and outstanding in connection with the issuance and disbursement of proceeds of Borrower’s Fixed Rate Senior Notes, Series 2021-6 issued pursuant to that Trust Indenture, dated as of November 24, 2021, between Borrower and UMB Bank, National Association, and with respect to which proceeds thereof were disbursed pursuant to the Proceeds Disbursing and Security Agreement, dated as of November 24, 2021, among Borrower, as issuer, UMB Bank, National Association, as disbursing agent, and Newlight Capital LLC, as servicer, and (b) the termination and release of all related security interests, liens and guarantees in respect of the foregoing.

“**Register**” has the meaning given to such term in Section 8(a).

“**Related Agreements**” means, collectively, the Acquisition Documents.

“**Related Fund**” shall mean, with respect to any Lender, a fund or other investment vehicle that invests in commercial loans and is managed by such Lender or by the same investment advisor (or an Affiliate of the same investment advisor) that manages such Lender.

“**Related Persons**” means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates.

“**Release**” means as to any Person, any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Materials in the indoor or outdoor environment by such Person, including the movement of Hazardous Materials through or in the air, soil, surface water, ground water or property.

“**Relevant Governmental Body**” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

“**Rental Office**” means any rental office of the Borrower or any of its Subsidiaries.

“**Required Lenders**” means, at any time, Lenders having at such time in excess of fifty percent (50%) of the sum of the aggregate Term Loan Commitments then in effect (or, if such Term Loan Commitments are terminated, the amount outstanding under the Term Loan); provided, however, that at any time when there are two (2) or more Lenders that are not Affiliates and each hold greater than fifteen percent (15%) of the Term Loan Commitments (or aggregate outstanding Term Loan if the Term Loan Commitments are no longer in effect), Required Lenders shall require at least two (2) such Lenders. For purposes of calculation of Required Lenders, a Lender and any of its Affiliates that are also a Lender, and their respective Term Loan Commitments and/or holdings of the Term Loan, shall be deemed to be a single Lender with a single consolidated Term Loan Commitment and/or holding a single consolidated Term Loan. Notwithstanding the foregoing, the voting rights of CCM Lender are limited in accordance with Section 10.18.

“**Requirement of Law**” means as to any Person, the Certificate or Articles of Incorporation and By-Laws or other Organizational Documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case, binding upon such Person or any of its property or to which such Person or any of its property is subject.

“**Responsible Officer**” means, with respect to any Person (other than an individual), any corporate officer, but in any event, with respect to financial matters, the chief financial officer, chief operating officer, chief accounting officer, or treasurer of such Person.

“**Restricted Payment**” means: (a) the declaration or payment of any dividend or the incurrence of any liability to make any other payment or distribution of cash or other property or assets on or in respect of Borrower’s or any other Credit Party’s Stock, (b) any payment or distribution made in respect of any Subordinated Debt of Borrower or any other Credit Party in violation of any subordination or other agreement made in favor of Agent for the benefit of the Lenders, (c) any payment on account of the purchase, redemption, defeasance or other retirement of Borrower’s or any other Credit Party’s Stock or any other payment or distribution made in respect of any thereof, either directly or indirectly, or (d) any payment by any Credit Party or any of its Subsidiaries of any management, consulting or similar fees to Sponsor or any of its Affiliates (other than Borrower or any of its Subsidiaries), whether pursuant to a management agreement or otherwise.

“**SBA**” means the United States Small Business Administration and any successor thereto.

“**SBA Documents**” means, collectively, SBA forms 480, 652 and 1031, the SBA Side Letter and a promissory note in favor of each Lender that is an SBIC.

“**SBA Side Letter**” means a Small Business Investment Company side letter among the Borrower and any Lender that is an SBIC in form and substance reasonably satisfactory to the Lead Arranger.

“**SBIC**” means Lead Arranger or certain of its Affiliates that is a Federal licensee under the Act.

“**SDN List**” has the meaning given to such term in [Section 3.22](#).

“**Secretarial Certificate**” means, as applicable, each Secretarial Certificate of the Credit Parties delivered to Agent as of the Closing Date in substantially the form of [Exhibit C](#) or any Secretarial Certificate delivered to the Agent after the Closing Date pursuant to [Section 1.12](#).

“**Senior Leverage Ratio**” shall mean, at any date of determination, the ratio of (a) Consolidated Indebtedness on such date minus 100% of the unrestricted cash and Cash Equivalents held by the Credit Parties and their Subsidiaries in an amount not to exceed \$500,000 and subject to a Control Agreement in the period beginning forty-five (45) days after the Closing Date to (b) Consolidated EBITDA for the trailing twelve (12) Fiscal Month period most recently ended.

“**SOFR**” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“**SOFR Loan**” means a Loan that bears interest at a rate based on Adjusted Term SOFR, other than pursuant to the definition of “Base Rate”.

“**SOFR Administrator**” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**Solvent**” means, with respect to any Person on a particular date, that on such date (a) the assets of such Person, at a fair valuation, exceed its liabilities, including contingent liabilities, (b) the remaining capital of such Person is not unreasonably small to conduct its business and (c) such Person will not have incurred debts, and does not have the present intent to incur debts, beyond its ability to pay such debts as they mature. For purposes of this definition, “debt” means any liability on a claim, and “claim” means any (i) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, or (ii) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured. In computing the amount of contingent liabilities of any Person on any date, such liabilities shall be computed at the amount that, in the judgment of the Agent in light of all facts and circumstances existing at such time, represents the amount of such liabilities that reasonably can be expected to become actual or matured liabilities.

“**Sponsor**” means Chardan Capital Markets LLC, a Delaware limited liability company.

“**Stated Maturity Date**” means October 7, 2026; provided, that, if such date is not a Business Day, then the Stated Maturity Date shall be deemed to be the immediately preceding Business Day.

“**Subordinated Debt**” any unsecured, subordinated indebtedness of Credit Parties subject to a Subordination Agreement in form and substance reasonably acceptable to Agent and the Required Lenders.

“**Subordinated Loan Documents**” means, collectively, each Subordination Agreement and all other agreements, indentures and instruments pursuant to which any Subordinated Debt is issued or extended or subordinated, in each case as amended, amended and restated, refinanced, replaced or otherwise modified from time to time to the extent permitted by the terms of the applicable Subordination Agreement.

“**Subordination Agreement**” means each subordination agreement or the applicable subordination terms entered into in connection with any Indebtedness of Credit Parties that is subordinated to the Obligations, in each case as amended, amended and restated, refinanced, replaced or otherwise modified from time to time to the extent permitted by the terms of the applicable subordination agreement or subordination terms.

“**Subsidiary**” means, with respect to any Person, (i) any corporation of which an aggregate of more than fifty percent (50%) of the outstanding Stock having ordinary voting power to elect a majority of the Board of Directors of such corporation (irrespective of whether, at the time, Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person and/or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such Stock whether by proxy, agreement, operation of law or otherwise, and (ii) any partnership or limited liability company in which such Person or one or more Subsidiaries of such Person has an equity interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or manager or may exercise the powers of a general partner or manager.

“**Subsidiary Guarantor**” means each direct or indirect Subsidiary of the Borrower as of the Closing Date and each other direct or indirect Subsidiary that becomes a party to this Agreement pursuant to [Section 1.12](#).

“**Substitute Lender**” has the meaning given to such term in [Section 1.14\(a\)](#).

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Term Loan**” has the meaning given to such term in [Section 1.1](#).

“**Term Loan Commitment**” means the commitment of each Lender under this Agreement to make or otherwise fund its portion of the Loan as set forth on [Schedule B](#) attached hereto. The aggregate amount of the Term Loan Commitments as of the Closing Date is \$75,000,000.

“**Term Note**” has the meaning given to such term in [Section 1.1](#).

“**Term Sheet**” means that certain Summary of Terms and Conditions attached as Exhibit B to the Commitment Letter.

“**Term SOFR**” means the Term SOFR Reference Rate for an interest period of three (3) months for each quarter (or, only in the case of the Loans made on the Closing Date, for the period from the Closing Date until the end of the quarter in which the Closing Date occurs) as determined on the day (such day, the “[Periodic Term SOFR Determination Day](#)”) that is two (2) U.S. Government Securities Business Days prior to the first day of such quarter (or, only in the case of the Loans made on the Closing Date, prior to the Closing Date), as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for such interest period has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such interest period as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such interest period was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day.

“**Term SOFR Adjustment**” means (a) for any calculation with respect to a SOFR Loan, a percentage equal to 0.26161% per annum, and (b) for any calculation with respect to a Base Rate Loan, a percentage equal to 0.11448% per annum.

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Agent in its reasonable discretion).

“**Term SOFR Reference Rate**” means the forward-looking term rate based on SOFR.

“**Termination Date**” means the date on which all Obligations under this Agreement are paid in full, in cash (other than contingent obligations and expense reimbursement not yet due and payable), and Borrower shall have no further right to borrow any moneys or obtain other credit extensions or financial accommodations from the Lenders under this Agreement.

“**Title IV Plan**” means a pension plan subject to Title IV of ERISA, other than a Multiemployer Plan, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

“**Trademarks**” means all of the following now owned or hereafter adopted or acquired by any Person: (i) all trademarks, trade names, trade dress, domain names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered) all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State or Territory thereof, or any other country or any political subdivision thereof; (ii) all reissues, extensions or renewals thereof; and (iii) all goodwill associated with or symbolized by any of the foregoing.

“**Trade Secrets**” means all of the following in which any Person now holds or hereafter acquires any interest: all know-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, technical, marketing, financial and business data and databases, pricing and cost information, business and marketing plans, customer and supplier lists and information, all other confidential and proprietary information, together with any and all rights and privileges arising under applicable law and international treaties and conventions with respect to such trade secrets throughout the world.

“**Transaction Documents**” means, collectively, the Loan Documents and Related Agreements.

“**Transactions**” means, collectively, the transactions to occur on or prior to the Closing Date pursuant to the Transaction Documents, including (a) the execution, delivery and performance of the Loan Documents and the initial borrowings hereunder; (b) the consummation of the Combination and transactions contemplated by the Acquisition Documents; and (c) the payment of all fees and expenses to be paid on or prior to the Closing Date and owing in connection with the foregoing.

“**Transferred Guarantor**” has the meaning given to such term in [Section 11.9](#).

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“**USA PATRIOT Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56).

“**U.S. Borrower**” means a Borrower that is a U.S. Person.

“**U.S. Government Securities Business Day**” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“**U.S. Person**” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the IRC.

“**U.S. Publicly-Traded Entity**” has the meaning given to such term in [Section 3.22](#).

“**U.S. Tax Compliance Certificate**” shall have the meaning ascribed to such term in [Section 8\(b\)\(ii\)\(C\)](#).

“**Voluntary Prepayment**” has the meaning given to such term in [Section 1.2\(b\)](#).

“**Voting Stock**” means, with respect to any Person, any class or classes of Equity Interests pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the Board of Directors of such Person.

“**Warrant (\$10 Per Share)**” means a warrant issued by Holdings, substantially in the form of [Exhibit K](#) hereto, exercisable for shares of common stock of Holdings at an exercise price of \$10.00 per share.

“**Wholly Owned Subsidiary**” means, as to any Person, (a) any corporation 100% of whose capital stock (other than directors’ qualifying shares) is at the time owned by such Person and/or one or more Wholly Owned Subsidiaries of such Person and (b) any partnership, association, joint venture, limited liability company or other entity in which such Person and/or one or more Wholly Owned Subsidiaries of such Person have a 100% equity interest at such time.

“**Withdrawal Liability**” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“**Withholding Agent**” means Borrower and Agent.

Any accounting term used in this Agreement or the other Loan Documents shall have, unless otherwise specifically provided therein, the meaning customarily given such term in accordance with GAAP, and all financial computations thereunder shall be computed, unless otherwise specifically provided therein, in accordance with GAAP consistently applied; provided, that all financial covenants and calculations in the Loan Documents shall be made in accordance with GAAP as in effect on the Closing Date unless Borrower and Agent shall otherwise specifically agree in writing. If Borrower requests an amendment to any provision hereof to eliminate the effect of (a) any change in GAAP or the application thereof or (b) the issuance of any new accounting rule or guidance or in the application thereof, in each case, occurring after the date of this Agreement, then Agent (in consultation with the Lenders) and Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such change or issuance with the intent of having the respective positions of the Lenders and Borrower after such change or issuance conform as nearly as possible to their respective positions as of the date of this Agreement. That certain items or computations are explicitly modified by the phrase “in accordance with GAAP” shall in no way be construed to limit the foregoing. Notwithstanding anything to the contrary contained herein, any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015, such lease shall not be considered a capital lease, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

All other capitalized terms contained in this Agreement or the other Loan Documents, but not defined herein or therein, shall, unless the context indicates otherwise, have the meanings provided for by the Code. The words “herein,” “hereof” and “hereunder” or other words of similar import refer to this Agreement as a whole, including the exhibits and schedules thereto, as the same may from time to time be amended, restated, modified or supplemented, and not to any particular section, subsection or clause contained in this Agreement.

For purposes of this Agreement and the other Loan Documents, the following additional rules of construction shall apply, unless specifically indicated to the contrary: (a) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural; (b) the term “or” is not exclusive; (c) the term “including” (or any form thereof) shall not be limiting or exclusive; (d) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations; and (e) all references to any instruments or agreements, including references to any of the Loan Documents, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof.

SCHEDULE B

SCHEDULE OF TERM LOAN COMMITMENTS

Lender	Term Loan Commitment
Energy Impact Credit Fund I LP	\$10,000,000.00
Energy Impact Credit Fund II LP	\$20,000,000.00
CCM Investments 5 LLC	\$45,000,000.00
TOTAL	\$75,000,000.00

SCHEDULE OF AMORTIZATION OF THE LOAN

Payment Date	Percentage of Original Loan Amount	Quarterly Principal Payment
January 1, 2023	0%	\$ 0
April 1, 2023	0%	\$ 0
July 1, 2023	0%	\$ 0
October 1, 2023	0%	\$ 0
January 1, 2024	0%	\$ 0
April 1, 2024	0%	\$ 0
July 1, 2024	0%	\$ 0
October 1, 2024	1.25%	\$ 937,500
January 1, 2025	1.25%	\$ 937,500
April 1, 2025	1.25%	\$ 937,500
July 1, 2025	1.25%	\$ 937,500
October 1, 2025	1.25%	\$ 937,500
January 1, 2026	1.25%	\$ 937,500
April 1, 2026	1.25%	\$ 937,500
July 1, 2026	1.25%	\$ 937,500
October 1, 2026	1.25%	\$ 937,500
	All remaining principal outstanding on the Maturity Date	All remaining principal outstanding on the Maturity Date
Maturity Date		

SCHEDULE C

AGENT'S, LENDERS' AND CREDIT PARTIES' ADDRESSES FOR NOTICES

Agent's Address

Name: ALTER DOMUS (US) LLC
Address: 225 W. Washington Street, 9th Floor
Chicago, Illinois 60606

Attn: Legal Department, Emily Ergang Pappas and Mike Kumor
Telephone: (312) 564-5100
Email: Legal_Agency@alterdomus.com, Emily.ErgangPappas@alterdomus.com and adagencyteam2@alterdomus.com

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

Holland & Knight LLP
150 N. Riverside Plaza, Suite 2700
Chicago, Illinois 60606
Attn: Joshua M. Spencer
Email: Joshua.Spencer@hklaw.com

Lead Arranger's Address

Name: EICF Agent LLC
Address: 600 3rd Avenue, Floor 38
New York, NY 10016

Attn: Harry Giovani
Telephone: (212) 899-9714
Email: giovani@energyimpactpartners.com

with a copy to:

Name: Chapman and Cutler LLP
Address: 1270 Avenue of the Americas, 30th Floor
New York, New York 10020

Attn: Anthony M. DiGiacomo
Telephone: (212) 655-2530
Facsimile: (212) 655-2531
Email: digiacom@chapman.com

Lenders' Address

Name: Energy Impact Credit Fund I LP and Energy Impact Credit Fund II LP
Address: 600 3rd Avenue, Floor 38
New York, NY 10016
Attn: Harry Giovanni
Telephone: (212) 899-9714
Email: giovani@energyimpactpartners.com

with a copy to:

Name: Chapman and Cutler LLP
Address: 1270 Avenue of the Americas, 30th Floor
New York, New York 10020
Attn: Anthony M. DiGiacomo
Telephone: (212) 655-2530
Facsimile: (212) 655-2531
Email: digiacom@chapman.com

Name: CCM Investments 5 LLC
Address: 17 State Street, Suite 2130
New York, NY 10004

Borrower's Address

Name: Dragonfly Energy Corp.
Address: 1190 Trademark Drive, #108
Reno, Nevada 89521
Attn: John Marchetti and Nicole Harvey
Telephone: (775) 622-3448
Email: jmarchetti@dragonflyenergy.com and nharvey@dragonflyenergy.com
Website: https://dragonflyenergy.com

with a copy to:

Name: O'Melveny & Myers LLP
Address: Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
Attn: Jennifer Taylor
Telephone: (415) 984-8922
Email: jtaylor@omm.com

Guarantor's Address

Name: Dragonfly Energy Holdings Corp.
Address: 1190 Trademark Drive, #108
Reno, Nevada 89521
Attn: John Marchetti and Nicole Harvey
Telephone: (775) 622-3448
Email: jmarchetti@dragonflyenergy.com and nharvey@dragonflyenergy.com
Website: https://dragonflyenergy.com

with a copy to:

Name: O'Melveny & Myers LLP
Address: Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
Attn: Jennifer Taylor
Telephone: (415) 984-8922
Email: jtaylor@omm.com

SCHEDULE D

CLOSING CHECKLIST

See attached.

SCHEDULE E

RESTRICTED LOCATIONS

1. Crimea
2. Cuba
3. Iran
4. North Korea
5. Sudan
6. Syria
7. Russia

SCHEDULE F

POST-CLOSING MATTERS

The items set forth below shall be delivered by Credit Parties to the Agent, and performed and completed to the satisfaction of Agent, within the periods set forth opposite such item below:

Post-Closing Item		Required Completion Date
1.	Control Agreements duly authorized, executed and delivered by each bank where a Blocked Account for the benefit of Borrower or any Grantors is maintained.	Within 45 days of the Closing Date
2.	Delivery of original stock certificates evidencing Pledged Securities, original instruments of transfer/stock powers, original Notes, original signature pages to each Power of Attorney and original signature pages to the Closing Date Warrants.	Within 5 Business Days of the Closing Date
3.	Insurance endorsements naming Agent, on behalf of the Lenders, as lender's loss payee and additional insured pursuant to Section 3.15(b) of this Agreement.	Within 30 days of the Closing Date
4.	Landlord waivers with respect to the below properties pursuant to Section 3.24 of this Agreement. a. 1190 Trademark Drive, Reno, Nevada b. 1375 Greg Street, Sparks, Nevada c. 12815 Old Virginia Road, Reno, Nevada	Within 30 days of the Closing Date
5.	Bailee Waiver with Watchpoint Logistics pursuant to Section 3.24 of this Agreement.	Within 30 days of the Closing Date

EXHIBIT A

FORM OF PERFECTION CERTIFICATE

See attached.

EXHIBIT B
FORM OF TERM NOTE

\$(TERM LOAN AMOUNT)

[DATE]

1. FOR VALUE RECEIVED, the receipt and sufficiency of which are hereby acknowledged, DRAGONFLY ENERGY CORP., a Nevada corporation ("**Borrower**") hereby promises to pay to [NAME OF LENDER], a [jurisdiction of organization] [type of organization] ("**Lender**"), up to [TERM LOAN AMOUNT IN WORDS] DOLLARS (\$(TERM LOAN AMOUNT)), or, if less, the outstanding principal amount of the Term Loans made by Lender to Borrower pursuant to the Agreement (as defined below) and evidenced by this Term Note, together with interest on the unpaid balance of such amount from the date of this Term Note. This Term Note is one of the Term Notes issued under the Term Loan, Guarantee and Security Agreement dated as of October 7, 2022 (as amended, restated, supplemented or otherwise modified from time to time, the "**Agreement**") by and among Borrower, DRAGONFLY ENERGY HOLDINGS CORP. (f/k/a Chardan NexTech Acquisition 2 Corp.), a Delaware corporation ("**Holdings**"), the other Credit Parties from time to time party thereto, Lender, the other lenders from time to time party thereto and ALTER DOMUS (US) LLC as agent for the lenders (in such capacity, the "**Agent**"), to which a reference is made for a statement of all of the terms and conditions of the Term Loan evidenced hereby. Capitalized terms not defined in this Term Note shall have the respective meanings assigned to them in the Agreement. This Term Note is secured by the Collateral to the extent provided pursuant to the Loan Documents, and is entitled to the benefit of the rights and security provided thereby.
2. Interest on the outstanding principal balance under this Term Note is payable in the amounts set forth in the Agreement, including, if applicable, the Default Rate (in each case calculated in the manner specified in the Agreement), in immediately available Dollars at the time and in the manner specified in the Agreement. The outstanding principal and interest under this Term Note shall be immediately due and payable on the Maturity Date, and prior to the Maturity Date, such outstanding principal and accrued interest shall be due and payable in accordance with the Agreement.
3. This Term Note may be voluntarily prepaid on the terms and conditions set forth in the Agreement.
4. Payments received by Lender shall be applied against principal and interest as provided for in the Agreement. Except as otherwise provided for in this Term Note or the Agreement and to the fullest extent permitted by applicable law, Borrower waives: (a) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all of the Obligations, the Loan Documents or this Term Note; (b) all rights to notice and a hearing prior to Agent's or Lender's taking possession or control of, or to Agent's or Lender's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing Agent or Lender to exercise any of its remedies; and (c) the benefit of all valuation, appraisal and exemption laws.

- 5. Borrower acknowledges that this Term Note is executed as part of a commercial transaction and that the proceeds of this Term Note will not be used for any personal or consumer purpose.
- 6. Borrower agrees to pay to Lender all fees and expenses in accordance with the terms of the Agreement.
- 7. Upon the occurrence and continuance of any one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Term Note shall become, or may be declared to be, immediately due and payable, all as provided in the Agreement.
- 8. **BORROWER ACKNOWLEDGES THAT BORROWER HAS WAIVED THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ON THIS TERM NOTE. THIS TERM NOTE IS GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ANY PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.**

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, intending to be legally bound, Borrower has caused this Term Note to be executed as of the date first written above.

BORROWER:

DRAGONFLY ENERGY CORP.

By: _____
Name:
Title:

SIGNATURE PAGE
TERM NOTE

EXHIBIT C

FORM OF SECRETARIAL CERTIFICATE

See attached.

EXHIBIT D

FORM OF POWER OF ATTORNEY

This POWER OF ATTORNEY, dated as of [DATE], is executed and delivered by [NAME OF CREDIT PARTY] (“**Credit Party**”), to ALTER DOMUS (US) LLC, as Agent for the Lenders (in such capacity, hereinafter referred to as “**Agent**”) under that certain Term Loan, Guarantee and Security Agreement dated October 7, 2022 (as the same may be amended, restated or supplemented from time to time, the “**Agreement**”; capitalized terms are used herein as defined in the Agreement) by and among the Credit Party, the other Credit Parties signatory thereto, the lenders from time to time party thereto and Agent. Each Credit Party irrevocably waives any right to commence any suit or action, in law or equity, against any person or entity which acts in reliance upon or acknowledges the authority granted under this Power of Attorney. The Power of Attorney granted hereby is coupled with an interest, and may not be revoked or canceled by Credit Party until the Termination Date.

Until the Termination Date, after the occurrence and during the continuance of an Event of Default, Credit Party hereby irrevocably constitutes and appoints Agent (and all officers, employees or agents designated by Agent), with full power of substitution, as Credit Party’s true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Credit Party and in the name of Credit Party or in its own name, in Agent’s discretion, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary or desirable to accomplish the purposes of the Loan Documents and, without limiting the generality of the foregoing, Credit Party hereby grants to Agent the power and right, on behalf of Credit Party, without notice to or assent by Credit Party, to do the following: (a) sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, and notices in connection with any of the Collateral; (b) effect any repairs to any Collateral, or continue or obtain any insurance with respect to any Collateral and pay all or any part of the premiums therefor and costs thereof, and make, settle and adjust all claims under such policies of insurance, and make all determinations and decisions with respect to such policies; (c) pay or discharge any taxes, liens, security interests, or other encumbrances levied or placed on or threatened against any Collateral; (d) defend any suit, action or proceeding brought against Credit Party with respect to any Collateral if Credit Party does not defend such suit, action or proceeding or if Agent believes that Credit Party is not pursuing such defense in a manner that will maximize the recovery to Agent, and settle, compromise or adjust any suit, action, or proceeding described above and, in connection therewith, give such discharges or releases as Agent may deem appropriate; and (e) sell, transfer, pledge, compromise payment or make any other agreement with respect to, or otherwise deal with any Collateral, and execute, in connection with such sale or action, any endorsements, assignments or other instruments of conveyance or transfer in connection therewith; and to do, at Agent’s option and Credit Party’s expense, all acts and other things that Agent reasonably deems necessary to perfect, preserve, or realize upon any Collateral and Agent’s Liens thereon, all as fully and effectively as Credit Party might do. Agent agrees that it shall not exercise any power or authority granted under this Power of Attorney unless an Event of Default has occurred and is continuing.

Credit Party hereby ratifies, to the extent permitted by law, all that said attorneys shall lawfully do or cause to be done by virtue hereof.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Power of Attorney has been executed by Credit Party as of the date first referenced above.

[NAME OF CREDIT PARTY]

By: _____
Name:
Title:

SIGNATURE PAGE
POWER OF ATTORNEY

EXHIBIT E

FORM OF COMPLIANCE CERTIFICATE

See attached.

EXHIBIT F

FORM OF CLOSING CERTIFICATE

October 7, 2022

This Closing Certificate (this “**Certificate**”) is being delivered on behalf of DRAGONFLY ENERGY CORP., a Nevada corporation (the “Borrower”), and Dragonfly Energy Holdings Corp. (f/k/a Chardan NexTech Acquisition 2 Corp.) (“**Holdings**” and collectively with the Borrower, the “**Credit Parties**” and, each, a “**Credit Party**”), pursuant to that certain Term Loan, Guarantee and Security Agreement, dated as of the date hereof (the “**Loan Agreement**”), by and among the Borrower, Holdings, the Lenders from time to time party thereto and ALTER DOMUS (US) LLC, as agent (in such capacity, “**Agent**”). All capitalized terms used and not defined herein have the meanings herein as set forth in the Loan Agreement.

I, the undersigned, am the acting [] of the Borrower and Holdings, and I am familiar with the facts contained herein. By executing this Certificate I hereby certify, solely in my capacity as the [] of the Borrower and Holdings and not in any individual capacity, as of the date of this Certificate, that:

1. I am a Responsible Officer of Borrower and Holdings and as such have knowledge of the business and affairs of the Credit Parties and the matters herein set forth.
2. All covenants, agreements and conditions contained in the Loan Agreement and the other Loan Documents which are required to have been performed or complied with in all material respects by the Credit Parties on or before the Closing Date (except for those requirements which are in the exclusive control of Agent or a Lender and/or the satisfaction of which is conditioned upon the Credit Parties providing deliveries “in form and substance satisfactory to Agent”, “reasonably satisfactory to Agent” or as otherwise qualified with similar language) have been so performed or complied with on or before the date hereof or will be complied with in all material respects on the Closing Date simultaneously with the execution and delivery of the Loan Agreement.
3. Each of the representations and warranties made by any Credit Party set forth in the Loan Agreement or in any other Loan Document is true and correct in all material respects, except to the extent such representations and warranties expressly relate to an earlier date, in which case they are true and correct in all material respects as of such earlier date (except in each case (whether the date hereof or such earlier date) to the extent that such representation or warranty is qualified by “Material Adverse Effect” or any other materiality qualifier, in which case it is true and correct in all respects).
4. The Specified Merger Agreement Representations are true in all material respects; *provided*, that any such Specified Merger Agreement Representation that is qualified by materiality is true in all respects (except in the case of any Specified Merger Agreement Representation which expressly relates to a given date or period, such representation and warranty is true and correct in all material respects as of the respective date or for the respective period, as the case may be).

5. A true and correct copy of any and all modifications, amendments, waivers or consents to the Merger Agreement, as in effect on the date of hereof, is attached hereto as Exhibit A.

I make the above certifications solely in my capacity as a Responsible Officer of Borrower and Holdings and not in any individual capacity or personally and it is not intended to attract or attach personal liability to me.

[Signature Page Follows]

IN WITNESS WHEREOF, this Certificate has been duly executed as of the date first written above.

BORROWER:

DRAGONFLY ENERGY CORP.

By: _____
Name:
Title:

HOLDINGS:

DRAGONFLY ENERGY HOLDINGS CORP.
(f/k/a Chardan NexTech Acquisition 2 Corp.)

By: _____
Name:
Title:

EXHIBIT G

FORM OF SOLVENCY CERTIFICATE

October 7, 2022

This Solvency Certificate (this “**Certificate**”) is being delivered on behalf of DRAGONFLY ENERGY CORP., a Nevada corporation (the “**Borrower**”) and DRAGONFLY ENERGY HOLDINGS CORP. (f/k/a Chardan Nextech Acquisition 2 Corp.) (“**Holdings**” and together with Borrower and each other Credit Party to the Loan Agreement, each, a “**Credit Party**” and collectively, the “**Credit Parties**”), pursuant to Sections 2.1(h) and 3.16 of that certain Term Loan, Guarantee and Security Agreement, dated as of the date hereof (the “**Loan Agreement**”), by and among the Borrower, Holdings, the Lenders from time to time party thereto and ALTER DOMUS (US) LLC, as agent (in such capacity, “**Agent**”). All capitalized terms used and not defined herein have the meanings herein as set forth in the Loan Agreement.

I, the undersigned, am the acting [] of the Borrower and Holdings, and I am familiar with the facts contained herein. By executing this Certificate I hereby certify, solely in my capacity as the [] of the Borrower and Holdings and not in any individual capacity, as of the date of this Certificate, that:

1. Both before and after giving effect to (a) the Loan, the issuance of the Guarantees of the Obligations and the pledge of assets as security therefor by all of the Grantors, (b) the disbursement of the proceeds of the Loan pursuant to the instructions of Borrower, (c) the consummation of the Transactions and (d) the payment and accrual of all transaction costs in connection with the foregoing, Holdings and its Subsidiaries taken as a whole are Solvent (as defined below).

“**Solvent**” means, with respect to any Person on a particular date, that on such date (a) the assets of such Person, at a fair valuation, exceed its liabilities, including contingent liabilities, (b) the remaining capital of such Person is not unreasonably small to conduct its business and (c) such Person will not have incurred debts, and does not have the present intent to incur debts, beyond its ability to pay such debts as they mature. For purposes of this definition, “debt” means any liability on a claim, and “claim” means any (i) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, or (ii) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured. In computing the amount of contingent liabilities of any Person on any date, such liabilities shall be computed at the amount that, in the judgment of the Agent in light of all facts and circumstances existing at such time, represents the amount of such liabilities that reasonably can be expected to become actual or matured liabilities.

[Signature Page Follows]

IN WITNESS WHEREOF, this Certificate has been duly executed as of the date first written above.

BORROWER:

DRAGONFLY ENERGY CORP.

By: _____
Name:
Title:

HOLDINGS:

DRAGONFLY ENERGY HOLDINGS CORP.

(f/k/a Chardan NexTech Acquisition 2 Corp.)

By: _____
Name:
Title:

EXHIBIT H

FORM OF JOINDER AGREEMENT

[DATE]

THIS JOINDER AGREEMENT (this “**Joinder**”), dated as of [DATE], is executed by [NAME OF NEW CREDIT PARTY], a [jurisdiction of organization] [type of organization] (“**New Credit Party**”) in favor of Agent for the benefit of the Lenders described below. All capitalized terms used and not defined herein have the meanings herein as set forth in the Loan Agreement (as defined below).

WITNESSETH:

WHEREAS, pursuant to that certain Term Loan, Guarantee and Security Agreement, dated as of October 7, 2022 (the “**Closing Date**”) (as amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), by and among DRAGONFLY ENERGY CORP. (“**Borrower**”), DRAGONFLY ENERGY HOLDINGS CORP. (f/k/a Chardan Nextech Acquisition 2 Corp.) (“**Holdings**”), each other Credit Party from time to time party thereto, the lenders from time to time party thereto (“**Lenders**”) and ALTER DOMUS (US) LLC, as agent (in such capacity, the “**Agent**”), the Lenders have, subject to the terms and conditions in the Loan Agreement, agreed to make the loans and other extensions of credit to Borrower.

WHEREAS, pursuant to Sections 1.12 and 3.27 of the Loan Agreement and subject to certain limitations and exceptions set forth therein, New Credit Party is a Subsidiary of [Name of Credit Party] and is required to become (or has been designated by the Borrower to become, if applicable) a Credit Party, Grantor and either a co-Borrower or Guarantor, as applicable, under the Loan Agreement and each of the other Loan Documents and, as such, derives benefits from the loans and other extensions of credit by the Lenders to Borrower; and

WHEREAS, New Credit Party desires to join the Loan Agreement and each of the other Loan Documents to which the Credit Parties entered into prior to the date hereof, as a Credit Party, Grantor, Pledgor (if applicable, and either a co-Borrower or Guarantor (as applicable), thereunder, and to be bound thereby;

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

1. DEFINED TERMS. All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Loan Agreement.
2. JOINDER; GRANT OF SECURITY INTEREST; GUARANTEE.

(a) Joinder. New Credit Party hereby joins the Loan Agreement and each of the other Loan Documents as a Credit Party, Grantor, Pledgor (if applicable) and [a co-Borrower] [Guarantor], and agrees to be bound by all of the terms thereof, and shall be as fully a party thereto as if New Credit Party were an original signatory thereto. New Credit Party hereby assumes all of the obligations of a Credit Party, Guarantor, Grantor and Pledgor, as applicable, under the Loan Documents to which it is hereby joining, and agrees to be bound by all of the terms, provisions and conditions contained in such Loan Documents applicable to a Credit Party, Guarantor, Grantor and Pledgor, as applicable. Each reference to a “Guarantor”, “Credit Party”, “Grantor” or “Pledgor” in the Loan Agreement or any other Loan Document heretofore, now or hereafter executed, shall be deemed to include New Credit Party.

(b) Grant of Security Interest. Without limiting the generality of Section 2(a) of this Joinder, New Credit Party hereby acknowledges, agrees and confirms the grant by New Credit Party as of the date of this Joinder of a continuing security interest, pledge and assignment to Agent of all of its right, title, and interest in all currently existing and hereafter acquired or arising Collateral in order to secure prompt repayment of any and all of the Obligations pursuant to Section 6 of the Loan Agreement. In furtherance of the foregoing, New Credit Party agrees to execute and/or deliver to Agent such Loan Documents, Collateral Documents and other documents, UCC and/or PPSA financing statements, officer's certificates as to the organization and incumbency and any other documents, instruments, certificates or agreements as Agent may reasonably request to give effect to this joinder of New Credit Party as a Credit Party.

3. REPRESENTATIONS AND WARRANTIES. New Credit Party hereby represents and warrants to Agent that (a) this Joinder has been duly authorized, executed and delivered by New Credit Party, (b) after giving effect to this Joinder, no Default or Event of Default has occurred and is continuing as of the date hereof, and (c) all of the representations and warranties applicable to New Credit Party in the Loan Documents are true and correct in all material respects (except to the extent such representations and warranties expressly relate to an earlier date, in which case they are true and correct in all material respects as of such earlier date (except in each case (whether the date hereof or such earlier date) to the extent that such representation or warranty is qualified by "Material Adverse Effect" or any other materiality qualifier, in which case it is true and correct in all respects)) on and as of the date of this Joinder after giving effect to this Joinder, including the updates attached hereto as Exhibit A.

4. LOAN DOCUMENTS. This Joinder shall be deemed a Loan Document for all purposes under the Loan Agreement. New Credit Party hereby confirms that it has received a copy as executed of the Loan Agreement, and all annexes, exhibits and schedules thereto.

5. SCHEDULES. The undersigned has attached hereto as Exhibit A, [supplemental schedules which supplement the][amended and restated] Schedules to the Loan Agreement in respect of [New Credit Party] [the Credit Parties (including New Credit Party)], and the undersigned hereby certifies, as of the date hereof, that it has caused such Schedules to have been prepared in substantially the form of the equivalent Schedules to the Loan Agreement, and such Schedules include all of the information required to be scheduled to the Loan Agreement in respect of New Credit Party and do not omit to state any material information with respect thereto.

6. SEVERABILITY. Any provision of this Joinder which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent permitted by applicable law, Additional Guarantor hereby waives any provision of law that renders any provision hereof prohibited or unenforceable in any respect; provided that Additional Guarantor does not waive the provisions of any applicable Debtor Relief Law.

7. **GOVERNING LAW.** THIS JOINDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATION LAWS OF NEW YORK.

8. **COUNTERPARTS.** This Joinder may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument. This Joinder may be authenticated by manual signature, facsimile or, if approved in writing by Agent, electronic means, all of which shall be equally valid. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Joinder. The words “execution,” “signed,” “signature,” and words of like import in this Joinder shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act, as the case may be.

9. **CONDITIONS TO EFFECTIVENESS OF JOINDER.** This Joinder shall not become effective unless and until (i) one or more counterparts of the same have been duly executed by New Credit Party and delivered to Agent, (ii) all of the conditions set forth in Section 1.12 of the Loan Agreement have been satisfied or waived by Agent and (iii) Borrower and the other Credit Parties shall have executed the attached Confirmation and delivered the same to the Agent.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, New Credit Party has caused this Joinder to be duly executed and delivered as of the day and year first above written.

[NEW CREDIT PARTY]

By: _____
Name:
Title:

CONFIRMATION

The undersigned Credit Parties hereby acknowledge the terms of the foregoing Joinder Agreement and agree and confirm that its obligations under each Loan Document to which it is a party will continue in full force and effect after giving effect to such Joinder Agreement, and nothing in such Joinder Agreement shall be deemed to constitute a novation or an accord and satisfaction of any of the Obligations or to modify, affect or impair the perfection or continuity of Agent’s security interests in, security titles to or other Liens on any Collateral.

BORROWER:

DRAGONFLY ENERGY CORP.

By: _____
Name: _____
Title: _____

HOLDINGS:

DRAGONFLY ENERGY HOLDINGS CORP.

(f/k/a Chardan Nextech Acquisition 2 Corp.)

By: _____
Name: _____
Title: _____

EXHIBIT I

FORM OF PERFECTION CERTIFICATE SUPPLEMENT

See attached.

EXHIBIT J

FORM OF ASSIGNMENT AGREEMENT

This Assignment and Assumption (this “**Assignment**”) is dated as of the Effective Date set forth below and is entered into by and between the Assignor identified in item 1 below (the “**Assignor**”) and the Assignee identified in item 2 below (the “**Assignee**”). Capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement identified below, receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by the Initial Lender as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the facility identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities, as applicable), and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as the “**Assigned Interest**”). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment, without representation or warranty by the Assignor.

Assignor(s): CCM Investments 5 LLC

Assignee(s): BP Holdings XVII LP

Borrower: DRAGONFLY ENERGY CORP., a Nevada corporation

Agent: ALTER DOMUS (US) LLC, as the Agent (in such capacity and together with its successors and permitted assigns, the “Agent”)

Loan Agreement: Term Loan, Guarantee and Security Agreement, dated as of October 7, 2022, among Borrower, Dragonfly Energy Holdings Corp. (f/k/a Chardan NexTech Acquisition 2 Corp.), a Delaware corporation (“Holdings”), the other Credit Parties from time to time party thereto, the Lenders from time to time party thereto and the Agent (as amended, restated or supplemented from time to time, the “Loan Agreement”; capitalized terms used herein without definition are used as defined in the Loan Agreement)

[Trade Date: _____, ____]

Effective Date: _____, ____

Assignor(s)	Assignee(s)	Facility Assigned	Aggregate Amount of Term Loan Commitment /Loans for all Lenders	Aggregate amount of Term Loan Commitments /Loans Assigned	Percentage Assigned
			\$ _____	\$ _____	_____%
			\$ _____	\$ _____	_____%
			\$ _____	\$ _____	_____%

[Remainder of Page Intentionally Left Blank]

The terms set forth in this Assignment are hereby agreed to:

ASSIGNOR

CCM INVESTMENTS 5 LLC

By: _____
Name: Jonas Grossman
Title: Manager

ASSIGNEE

BP HOLDINGS XVII LP

By: BPC AS Cayman LLC, its General Partner
By: BPC AS LLC, its Manager

By: _____
Name: Allan Schweitzer
Title: Portfolio Manager

[Address for Notices:

_____]

Accepted and Consented to:
ALTER DOMUS (US) LLC, as Agent

By: _____
Name: _____
Title: _____

ANNEX 1
STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

Section 1. Representations, Warranties and Covenants of Assignors. Each Assignor (a) represents and warrants to Assignee and Agent that (i) it has full power and authority, and has taken all actions necessary for it, to execute and deliver this Assignment and to consummate the transactions contemplated hereby, (ii) it is the legal and beneficial owner of its Assigned Interest and that such Assigned Interest is free and clear of any Lien and other adverse claims, (iii) it is not a Non-Funding Lender, and (iv) by executing, signing and delivering this assignment, the Person signing, executing and delivering this Assignment on behalf of such Assignor is an authorized signatory for such Assignor and is authorized to execute, sign and deliver this Agreement, (b) makes no other representation or warranty and assumes no responsibility, including with respect to the aggregate amount of the Loans and Term Loan Commitments, the percentage of the Loans and Term Loan Commitments represented by the amounts assigned, any statements, representations and warranties made in or in connection with any Loan Document or any other document or information furnished pursuant thereto, the execution, legality, validity, enforceability or genuineness of any Loan Document or any document or information provided in connection therewith and the existence, nature or value of any Collateral, (c) assumes no responsibility (and makes no representation or warranty) with respect to the financial condition of any Credit Party or the performance or nonperformance by any Credit Party of any obligation under any Loan Document or any document provided in connection therewith and (d) attaches any Notes held by it evidencing at least in part the Assigned Interest of such Assignor (or, if applicable, an affidavit of loss or similar affidavit therefor) and requests that the Agent exchange such Notes for new Notes.

Section 2. Representations, Warranties and Covenants of Assignees. Each Assignee (a) represents and warrants to Assignor and Agent that (i) it has full power and authority, and has taken all actions necessary for Assignee, to execute and deliver this Assignment and to consummate the transactions contemplated hereby, (ii) it meets all the requirements to be an assignee under Section 8(a) of the Loan Agreement, (iii) it is not a direct competitor of any Credit Party or an Affiliate of such direct competitor, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest assigned to it hereunder and either Assignee or the Person exercising discretion in making the decision for such assignment is experienced in acquiring assets of such type and (v) by executing, signing and delivering this Assignment, the Person signing, executing and delivering this Assignment on behalf of the Assignor is an authorized signatory for the Assignor and is authorized to execute, sign and deliver this Agreement, (b) appoints and authorizes Agent to take such action as agent on its behalf and to exercise such powers under the Loan Documents as are delegated to Agent by the terms thereof, together with such powers as are reasonably incidental thereto, (c) shall perform in accordance with their terms all obligations that, by the terms of the Loan Documents, are required to be performed by it as a Lender, (d) confirms it has received such documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and shall continue to make its own credit decisions in taking or not taking any action under any Loan Document independently and without reliance upon the Agent, any Lender or any other Indemnified Person and based on such documents and information as it shall deem appropriate at the time, (e) acknowledges and agrees that, as a Lender, it may receive material non-public information and confidential information concerning the Credit Parties and their Affiliates and their capital stock and agrees to use such information in accordance with the applicable confidentiality and use provisions of the Loan Agreement, (f) specifies as its applicable lending offices (and addresses for notices) the offices at the addresses set forth on the signature page to this Assignment, (g) shall pay to Agent an assignment fee in the amount of \$3,500 in accordance with Section 8(a) of the Loan Agreement and (h) if such assignee is not currently a Lender, such assignee shall have delivered to Agent an administrative questionnaire (in a form provided by Agent), a properly completed and duly executed IRS Form W-9 (or other applicable tax form) and all other documentation and other information about such assignee as required under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act and, if applicable, a portfolio interest exemption certificate.

Section 3. Distribution of Payments. On and after the Effective Date, Agent shall make all payments under the Loan Documents in respect of each Assigned Interest (a) in the case of amounts accrued to but excluding the Effective Date, to Assignor and (b) otherwise, to Assignee.

Section 4. Miscellaneous. (a) The parties hereto, to the extent permitted by law, waive all right to trial by jury in any action, suit, or proceeding arising out of, in connection with or relating to, this Assignment and any other transaction contemplated hereby. This waiver applies to any action, suit or proceeding whether sounding in tort, contract or otherwise.

- (b) On and after the Effective Date, this Assignment shall be binding upon, and inure to the benefit of, the Assignor, Assignee, Agent and their Related Persons and their successors and assigns.
- (c) This Assignment shall be governed by, and be construed and interpreted in accordance with, the law of the State of New York.
- (d) This Assignment may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
- (e) Delivery of an executed signature page of this Assignment by facsimile transmission or electronic transmission shall be as effective as delivery of a manually executed counterpart of this Assignment.

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EXHIBIT K

FORM OF WARRANT (\$10 PER SHARE)

See attached.

EXHIBIT L
FORM OF NOTICE OF BORROWING

See attached.

PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT (as defined below) is entered into as of October 7, 2022, by and among DRAGONFLY ENERGY HOLDINGS CORP. (f/k/a Chardan NexTech Acquisition 2 Corp.), a Delaware corporation (“**Holdings**”), and each other entity executing this Agreement from time to time as a “Pledgor” (Holdings, together with such entities, collectively the “**Pledgors**” and each individually a “**Pledgor**”) and ALTER DOMUS (US) LLC, as agent (in such capacity, the “**Agent**”) on behalf of the Secured Parties (as defined below).

WITNESSETH:

WHEREAS, Holdings has entered into that certain Term Loan, Guarantee and Security Agreement, dated as of even date herewith (the “**Loan Agreement**”), by and among Dragonfly Energy Corp., a Nevada corporation (“**Borrower**”), Holdings, the Agent, the Lenders (as defined in the Loan Agreement) from time to time party thereto, and the other Credit Parties (as defined in the Loan Agreement) from time to time party thereto; and

WHEREAS, as a condition precedent to the effectiveness of the Loan Agreement, the Pledgor is required to execute and deliver this Agreement; and

WHEREAS, to secure the due and punctual payment and performance of the Obligations (as defined in the Loan Agreement), each Pledgor wishes to pledge and assign to the Agent, on behalf of the Secured Parties (as defined below), its Pledged Collateral (as defined below) and grant to them a security interest in all of its right, title and interest in to and under such Pledged Collateral;

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

SECTION 1. DEFINITIONS.

(a) Terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement, or, if not defined therein, in the Code (as defined below), and the following terms shall have the following meanings as used in this Agreement:

“**Agent**” has the meaning assigned to such term in the preamble.

“**Agreement**” means this Pledge Agreement, together with all Schedules hereto.

“**Certificated Security**” means “certificated security” as defined in the Article 8 of the Code.

“**CFC Holdco**” means any direct or indirect Domestic Subsidiary if all of its assets (directly or through one or more disregarded entities) consist of Equity Interests in, and/or debt issued by, one or more (x) CFCs and/or (y) other CFC Holdcos.

“**Chattel Paper**” means “chattel paper” as defined in Article 9 of the Code, including “electronic chattel paper” or “tangible chattel paper”, as each term is defined in Article 9 of the Code.

“**Code**” shall mean the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of New York; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any Lien on any Pledged Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

“**Domestic Subsidiary**” means a Subsidiary that is organized under the laws of the United States or any state thereof or the District of Columbia.

“**Equity Interests**” means, with respect to any Person, shares of capital stock of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or other acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, whether preferred or common and whether voting or nonvoting, and securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or other acquisition from such Person of such shares (or such other interests), and other ownership or profit interests in such Person (including, without limitation, partnership, member or trust units or interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are authorized or otherwise existing on any date of determination.

“**Excluded Equity**” means solely if a Requirement of Law would result in an adverse tax consequence to the Credit Parties as reasonably determined by the Borrower, the Agent and the Required Lenders, (i) any voting stock of any direct Subsidiary of any Credit Party that is a controlled foreign corporation (as defined in Section 957 of the Internal Revenue Code (a “**CFC**”)) or CFC Holdco in excess of 65% of the total combined voting power of all classes of stock of such CFC that are entitled to vote (within the meaning of Treasury Regulations § 1.956-2(c)(2)), and (ii) any Equity Interest in any Subsidiary of any CFC.

“**Instruments**” means all “instruments” as defined in Article 9 of the Code.

“**Intercompany Obligations**” has the meaning assigned to such term in Section 9.

“**Issuer**” means any issuer of any of the Pledged Securities, including, without limitation, the Borrower.

“**Loan Agreement**” has the meaning assigned to such term in the recitals.

“**Pledged Collateral**” has the meaning assigned to such term in [Section 2](#).

“**Pledged Debt Securities**” has the meaning assigned to such term in [Section 2](#).

“**Pledged Equity Interests**” has the meaning assigned to such term in [Section 2](#).

“**Pledged Securities**” means any promissory notes, stock certificates or other securities now or hereafter included in the Pledged Collateral, including all certificates, Instruments or other documents representing or evidencing any Pledged Collateral.

“**Pledgor**” has the meaning assigned to such term in the preamble.

“**Proceeds**” means all “proceeds” as such term is defined in Article 9 of the Code and, in any event, shall include all dividends or other income from the Pledged Collateral, collections thereon or distributions or payments with respect thereto.

“**Secured Party**” shall mean any holder from time to time of any Obligations and shall include the Agent.

“**Security**” means “security” as defined in Article 8 of the Code.

“**Senior Obligations**” has the meaning assigned to such term in Section 9.

“**Uncertificated Security**” means “uncertificated security” as defined in the Article 8 of the Code.

(b) References in this Agreement to “Articles”, “Sections”, “Schedules” or “Exhibits” shall be to Articles, Sections, Schedules or Exhibits of or to this Agreement unless otherwise specifically provided. Any of the terms defined in this [Section 1](#) may, unless the context otherwise requires, be used in the singular or plural depending on the reference. The terms “include”, “includes” and “including” as used herein shall be deemed to be followed by the words “without limitation” whether or not they are in fact followed by such words or words of like import. The terms “writing”, “written” and comparable terms as used herein refer to printing, typing and other means of reproducing words in a visible form. References “from” or “through” any date herein mean, unless otherwise specified, “from and including” or “through and including”, respectively. References to any statute and related regulation herein shall include any amendments of the same and any successor statutes and regulations. Unless otherwise expressly provided herein, references herein to any agreement or contract herein are to such agreement or contract and any and all amendments, supplements, extensions, restatements, replacements, refinancings or other modifications thereof. References to any Person herein shall be deemed to include the successors and permitted assigns of such Person. The words “hereof”, “herein”, “hereto” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Any of the terms defined herein may be used in either the singular or the plural. The terms “payment in full”, “paid in full” and any other similar terms or phrases when used herein with respect to the Obligations means the payment in full, in immediately available funds, of all of the Obligations, as the case may be, in each case, unless otherwise specified, other than indemnification and other contingent obligations not then due and payable.

SECTION 2. PLEDGE OF EQUITY INTERESTS; DEBT SECURITIES; CHATTEL PAPER; INSTRUMENTS.

Each Pledgor, as security for the payment or performance, as the case may be, in full of all Obligations hereby assigns and pledges to the Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all such Pledgor's right, title and interest in, to and under all of the following property (collectively, the **"Pledged Collateral"**); *provided that* the pledge and security interest under this Agreement and any other Loan Document shall not extend to, and the term "Pledged Collateral", including the term "Pledged Equity Interests", shall not include any Excluded Equity, *provided that*, if any Excluded Equity would have otherwise constituted Pledged Collateral, if and when such property shall cease to be Excluded Equity, such property shall be deemed at all times from and after the date of its ceasing to be Excluded Equity to constitute Pledged Collateral);

- (a) (i) the Equity Interests now owned or hereafter issued to or acquired by such Pledgor, including those listed on Schedule 1 and (ii) the certificates representing all such Equity Interests (collectively, the **"Pledged Equity Interests"**);
- (b) (i) the debt securities now owned or hereafter issued to or acquired by any Pledgor, including those listed on Schedule 1 and (ii) the promissory notes and any other instruments evidencing such debt securities (collectively, the **"Pledged Debt Securities"**);
- (c) subject to Section 6, all payments of principal or interest, dividends, cash, Chattel Paper, Instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other Proceeds received in respect of, the securities referred to in clauses (a) and (b) above;
- (d) subject to Section 6, all rights and privileges of any Pledgor with respect to the Securities and other property referred to in clauses (a), (b) and (c) above; and
- (e) all Proceeds of any of the foregoing.

SECTION 3. DELIVERY OF PLEDGED SECURITIES.

- (a) Within five (5) Business Days of the Closing Date, each Pledgor will deliver to the Agent all Pledged Securities, Chattel Paper and Instruments constituting Pledged Collateral then owned by such Pledgor to the extent such items are required to be delivered by this Agreement. Each Pledgor agrees promptly (and in any event within ten (10) days after receipt thereof by such Pledgor) to deliver or cause to be delivered to the Agent any and all Pledged Equity Interests and Pledged Debt Securities acquired by such Pledgor after the Closing Date, to the extent such items are required to be delivered by this Agreement.
- (b) Each Pledgor will cause any Indebtedness for borrowed money owed to such Pledgor (other than Excluded Property) in a principal amount in excess of \$500,000 in the aggregate for all such Indebtedness that is evidenced by a duly executed promissory note to be pledged and delivered to the Agent pursuant to the terms hereof.
- (c) Upon the delivery thereof to the Agent, (i) any Pledged Collateral which is a Certificated Security shall be accompanied by stock powers duly executed in blank or other instruments of transfer satisfactory to the Agent and (ii) all other property comprising part of the Pledged Collateral shall be accompanied by proper instruments of assignment duly executed by the applicable Pledgor. Each delivery of Pledged Collateral after the date hereof shall be accompanied by a Supplement to Pledge Agreement in the form of Exhibit B hereto (a **"Supplement to Pledge Agreement"**), which Supplement to Pledge Agreement shall include a schedule describing the securities included therein, which schedule shall be attached hereto as part of Schedule 1 and made a part hereof, provided that failure to attach any such schedule hereto shall not affect the validity of such pledge of such Pledged Collateral. Each schedule so delivered shall supplement any prior schedules so delivered.

(d) If any Issuer of Pledged Equity Interests (whether on the date hereof or any time after the date hereof during the effectiveness of this Agreement) is a limited liability company or a limited partnership of which the majority of the voting Equity Interests are owned by a Pledgor, then (i) such Issuer shall include, and such Pledgor shall cause such Issuer to include, in its limited liability company agreement, operating agreement or limited partnership agreement provisions that any interests in such limited liability company or limited partnership shall constitute “securities” as defined under Article 8 of the Code (and such Issuer shall not, and such Pledgor shall cause such Issuer not to, opt-out of Article 8), (ii) such Pledged Securities shall be promptly certificated and each Pledgor agrees to deliver to Agent, promptly upon receipt and in due form for transfer (i.e., endorsed in blank or accompanied by membership interest or partnership interest transfer powers executed in blank), any Certificated Securities (other than dividends or distributions which such Pledgor is entitled to receive and retain pursuant to the Loan Agreement and Section 6 hereof) which may at any time or from time to time come into the possession or control of such Pledgor, and (iii) prior to the delivery thereof to Agent, such Certificated Securities shall be held by such Pledgor in express trust for Agent.

(e) If any Pledged Equity Interests of any Person are or shall become evidenced or represented by an Uncertificated Security, the Pledgors shall (i) cause such Issuer to promptly execute and deliver to the Agent a Notice of Pledge of the pledge of such Uncertificated Security, in the form of Exhibit A hereto, (ii) if necessary to perfect a security interest in such Uncertificated Security, cause such pledge to be promptly recorded on the equity holder register or the books of such Issuer, execute any customary pledge forms or other documents necessary or appropriate to complete the pledge and give the Agent the right to transfer such Uncertificated Security under the terms hereof, and (iii) after the occurrence and during the continuation of an Event of Default, upon request by the Agent, (A) cause the organizational documents of each such Issuer to be amended to provide that such Pledged Equity Interests shall be treated as “securities” for purposes of the UCC and (B) cause such Pledged Equity Interests to become certificated and delivered to the Agent in accordance with the provisions of Section 3(a).

SECTION 4. REPRESENTATIONS AND WARRANTIES.

Each Pledgor represents, warrants and covenants to and with the Agent, for the benefit of the Secured Parties, that:

(a) Schedule 1 correctly sets forth the percentage of the issued and outstanding units of each class of the Equity Interests of the Issuer thereof represented by the Pledged Equity Interests owned by such Pledgor and includes all of the Equity Interests and all of the debt securities and promissory notes or other evidences of indebtedness with a value in excess of \$250,000 held by the Pledgors. No such Equity Interests or debt securities are subject to prohibitions on assignment or encumbrance (in each case, other than non-consensual Permitted Liens that arise by operation of law and restrictions set forth in the Issuer’s Organizational Documents) or to agreements that require or purport to require consent of or notice to any party in connection with the grant of a security interest thereon (including the exercise of remedies by the Agent with respect thereto) except for such consents that have been obtained and such notices have been given.

- (b) In the case of Pledged Equity Interests and Pledged Debt Securities issued to such Pledgor, to the knowledge of the Pledgor in the case of Pledged Debt Securities issued by a Person who is not an Affiliate of such Pledgor, such Pledged Equity Interests and Pledged Debt Securities have been duly and validly authorized and issued by the Issuers thereof and (i) in the case of Pledged Equity Interests, are fully paid and (to the extent applicable) nonassessable and (ii) in the case of Pledged Debt Securities are legal, valid and binding obligations of the Issuers thereof, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.
- (c) Intentionally Omitted.
- (d) Except for the security interests granted hereunder or under the other Loan Documents, such Pledgor (i) is and, subject to any transfers made in compliance with the Loan Agreement or this Agreement, will continue to be the direct owner, beneficially and (subject to Agent's registration rights under Section 5 hereof) of record, of the Pledged Equity Interests indicated on Schedule 1 as owned by such Pledgor, (ii) holds the same free and clear of all Liens, other than Liens created by this Agreement or the other Loan Documents, non-consensual Permitted Liens that arise by operation of law (and restrictions set forth in the Issuer's Organizational Documents) and transfers made in compliance with the Loan Agreement, (iii) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral, other than Liens created by this Agreement or the other Loan Documents, non-consensual Permitted Liens that arise by operation of law and transfers made in compliance with the Loan Agreement, and (iv) will defend his, her or its title or interest thereto or therein against any and all Liens on the Pledged Collateral (other than the Lien created by this Agreement and the Loan Documents), however arising, of all persons whomsoever.
- (e) Except for restrictions and limitations imposed by this Agreement, the Loan Documents, the Issuer's Organizational Documents, or securities laws generally, such Pledgor's Pledged Collateral is and will continue to be freely transferable and assignable, and none of such Pledgor's Pledged Collateral is or will be subject to any option, right of first refusal, shareholders agreement, voting trust, charter or by-law provisions or contractual restriction of any nature that might prohibit, impair, delay or otherwise affect the pledge of such Pledgor's Pledged Collateral hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Agent of rights and remedies hereunder.
- (f) Each Pledgor, with respect to any legal entities, has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated.

(g) No consent or approval of any Governmental Authority, any securities exchange or any other Person was or is necessary to ensure the validity of the pledge of any of such Pledgor's Pledged Collateral (other than such as have been obtained and are in full force and effect).

(h) By virtue of the execution and delivery of this Agreement, the Agent has a first priority legal, valid and perfected Lien (subject to non-consensual Permitted Liens that arise by operation of law) upon and security interest in the Pledged Collateral as security for the payment and performance of the Obligations.

(i) If such Pledgor shall become entitled to receive or shall receive any stock or other ownership certificate (including any certificate representing a stock dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of such Pledgor's Pledged Equity Interests in any Credit Party or any of its Subsidiaries, whether in addition to, in substitution of, as a conversion of, or in exchange for, any shares of or other ownership interests in the Pledged Equity Interests, or otherwise in respect thereof, such Pledgor shall assign, pledge and grant such Pledgor's right, title and interest in and to the same to the Agent pursuant to Section 2(a) hereof, and deliver the same to the Agent in the exact form received, duly endorsed by such Pledgor to the Agent, if required, together with an undated stock power or similar instrument of transfer covering such certificate duly executed in blank by such Pledgor, to be held by such Pledgor, subject to the terms hereof, as additional collateral security for the Obligations. Except as otherwise provided in the Loan Agreement, any sums paid upon or in respect of the Pledged Equity Interests upon the liquidation or dissolution of any Credit Party or any of its Subsidiaries shall be paid over to the Agent to be held by it hereunder as additional collateral security for the Obligations, and in case any distribution of capital shall be made on or in respect of the Pledged Equity Interests or any property shall be distributed upon or with respect to the Pledged Equity Interests pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected security interest in favor of the Agent, be delivered to the Agent to be held by it hereunder as additional collateral security for the Obligations. If any sums of money or property so paid or distributed in respect of such Pledgor's Pledged Equity Interests shall be received by such Pledgor, such Pledgor shall, unless otherwise permitted by the Loan Agreement, until such money or property is paid or delivered to the Agent, hold such money or property in trust for the Secured Parties, segregated from other funds of such Pledgor, as additional collateral security for the Obligations.

SECTION 5. REGISTRATION IN NOMINEE NAME; DENOMINATIONS.

The Agent, on behalf of the Secured Parties, shall have the right (in its sole and absolute discretion) to hold the Pledged Collateral in its own name as pledgee, the name of its nominee (as pledgee or as sub-agent) or the name of the Pledgor, endorsed or assigned in blank or in favor of the Agent. To the extent not prohibited by any applicable Requirement of Law or contract, each Pledgor will promptly give to the Agent copies of any material notices or other material communications received by it with respect to Pledged Collateral registered in the name of such Pledgor. Upon the occurrence and during the continuation of an Event of Default, the Agent shall at all times have the right to exchange the certificates representing Pledged Collateral for certificates of smaller or larger denominations for any purpose consistent with this Agreement.

SECTION 6. VOTING RIGHTS; DIVIDENDS AND INTEREST.

(a) Unless and until an Event of Default shall have occurred and be continuing, each Pledgor shall be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose not inconsistent with the terms of this Agreement, the Loan Agreement and the other Loan Documents (and until an Event of Default shall have occurred and be continuing, Agent shall not be entitled to any of such rights), provided that such rights and powers shall not be exercised in any manner which would have the effect of materially and adversely impairing the rights and remedies of any of the Agent or the other Secured Parties under this Agreement, the Loan Agreement or any other Loan Document or the ability of the Secured Parties to exercise the same. Pledgor shall be entitled to collect and receive for such Pledgor's own use, and shall not be required to pledge, any cash dividends, proceeds or distributions paid in respect of the Pledged Collateral, except such dividends, proceeds or distributions as are prohibited under the Loan Agreement or any other Loan Document; provided, however, that until the Obligations are paid in full, all rights to any such permitted dividends, proceeds or distributions shall remain subject to the lien created by this Agreement and the mandatory prepayment provisions set forth in the Loan Agreement.

(b) Upon the occurrence and during the continuance of an Event of Default, at the option of the Agent (at the direction of the Required Lenders) in its sole discretion, all rights of the Pledgors to exercise the voting and consensual rights and powers they are entitled to exercise pursuant to Section 6(a) shall cease upon concurrent written notice from Agent, and all such rights shall thereupon become vested in the Agent, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers, provided that, the Agent shall have the right from time to time following and during the continuance of an Event of Default to permit the Pledgors to exercise such rights in Agent's sole and absolute discretion. Each Pledgor shall execute and deliver to the Agent, or cause to be executed and delivered to the Agent, all proxies, powers of attorney and other instruments as the Agent may request for the purpose of enabling the Agent to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to this Section 6.

SECTION 7. REMEDIES.

(a) Upon the occurrence and during the continuance of an Event of Default, the Agent, on behalf of the Secured Parties, may sell, transfer or otherwise dispose of the Pledged Collateral or any interest or right therein or any part thereof, in one or more parcels, at the same or different times, at a public or private sale, or may make any other commercially reasonable disposition of the Pledged Collateral or any portion thereof. The Secured Parties may purchase the Pledged Collateral or any portion thereof at any public or private foreclosure sale. Each purchaser at any sale or other disposition of the Pledged Collateral shall hold the Pledged Collateral sold absolutely free from any claim or right on the part of any Pledgor, and, to the extent permitted by any applicable Requirement of Law, each Pledgor hereby waives all rights of redemption, stay, valuation and appraisal such Pledgor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Proceeds of the sale or other disposition shall be applied to the Obligations in such order as set forth in the Loan Agreement. Any remaining Proceeds shall be paid over to the Pledgor or others as provided by any applicable Requirement of Law.

(b) To the extent that the Pledged Collateral is not registered under the various federal or state securities acts, the disposition thereof after the occurrence and during the continuance of an Event of Default may be restricted to one or more private (instead of public) sales in view of the lack of such registration; each Pledgor understands that, upon such disposition, the Agent, on behalf of the Secured Parties, may approach only a restricted number of potential purchasers and further understands that a sale under such circumstances may yield a lower price for the Pledged Collateral than if the Pledged Collateral were registered pursuant to federal and state securities legislation and sold on the open market. The Pledged Collateral is not, as of the date of this Agreement, registered under the various federal and state securities laws. Each Pledgor, therefore, agrees that:

(i) if the Agent, on behalf of the Secured Parties, shall, pursuant to the terms of this Agreement, sell or cause the Pledged Collateral or any portion thereof to be sold at a private sale, the Secured Parties shall have the right to rely upon the advice and opinion of any national brokerage or investment firm having recognized expertise and experience in connection with shares or obligations of companies or entities in the same or similar business as the issuing company or entity, which brokerage or investment firm shall have reviewed financial data and other information available to the Secured Parties pertaining to any Credit Party and any of its Subsidiaries (but shall not be obligated to seek such advice, and the failure to do so shall not be considered in determining the commercial reasonableness of the Agent's action) as to the best manner in which to expose the Pledged Collateral for sale and as to the best price reasonably obtainable at the private sale thereof; and

(ii) absent manifest error, such reliance shall be conclusive evidence that the Secured Parties have handled such disposition in a commercially reasonable manner.

(c) The Agent, on behalf of the Secured Parties, shall have such rights and remedies as are set forth in the Loan Documents, all the rights, powers and privileges of a secured party under the Code as in effect in the applicable jurisdiction, and all other rights and remedies available to the Agent, on behalf of any Secured Party, at law or in equity.

SECTION 8. SECURITY INTEREST ABSOLUTE; RIGHTS CUMULATIVE; PLEDGORS REMAIN LIABLE; FURTHER ASSURANCES.

(a) All rights of the Secured Parties and all security interests and all obligations of the Pledgors hereunder shall be continuing, absolute and unconditional irrespective of: (a) any lack of validity or enforceability of the Loan Agreement, the Notes, the Loan Documents, or any other documents executed and delivered in connection therewith; (b) any change in the time, manner or place of payment of, or any other term in respect of, all or any of the Obligations, or any other amendment or waiver of or consent to any departure from the Loan Agreement, the Notes, the Loan Documents or any other document executed or delivered in connection therewith; (c) any increase in, addition to, exchange or release of, or non-perfection of any Lien on or security interest in any other collateral or any release of, amendment of, waiver of, consent to or departure from any security document or guaranty, for all or any of the Obligations; (d) the failure of the Secured Parties to do any of the things or exercise any of the rights, interests, powers and authorities hereunder or (e) the absence of any action on the part of the Secured Parties to obtain payment or performance of the Obligations from any other Person. None of the Secured Parties shall in any way be responsible for any failure to do any or all of the things for which rights, interests, power and authority are herein granted.

(b) Each Pledgor agrees that the rights of the Secured Parties, under this Agreement, the Loan Agreement, the Loan Documents, any other document executed in connection therewith, or any other contract or agreement now or hereafter in existence among the Secured Parties, or any of them, and the Pledgors shall be cumulative, and that the Secured Parties, or any of them, may from time to time exercise such rights and such remedies as the Secured Parties, or any of them, may have thereunder and under the laws of the United States and any state, as applicable, in the manner and at the time that the Secured Parties in their sole discretion desire. Each Pledgor further expressly agrees that the Secured Parties shall not in any event be under any obligation to resort to any Pledged Collateral prior to exercising any other rights that the Secured Parties, or any of them, may have against any Pledgor or its property, or to resort to any other collateral for the Obligations prior to the exercise of remedies hereunder nor shall the rights and remedies of the Secured Parties be conditional or contingent on any attempt of the Secured Parties to exercise any of its or their rights under any other documents executed in connection herewith against such party or against any other Person.

(c) Notwithstanding anything herein to the contrary, (i) each Pledgor shall remain liable for all obligations under its Pledged Collateral and nothing contained herein is intended or shall be construed as a delegation of duties to the Agent or any other Secured Party and (ii) the exercise by the Agent of any of its rights hereunder shall not release any Pledgor from any of its duties or obligations under its Pledged Collateral.

(d) This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Pledgor for liquidation or reorganization, should any Pledgor become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of any Pledgor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by Agent or any Secured Party, whether as a "voidable preference," "fraudulent conveyance," "fraudulent assignment" or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(e) Each Pledgor agrees to make, execute, deliver or cause to be done, executed and delivered, from time to time, all such further acts, documents and things as the Agent, on behalf of any Secured Party, may reasonably require for the purpose of perfecting or protecting its or their rights hereunder or otherwise giving effect to this Agreement (other than Excluded Perfection Actions), all promptly upon request therefor, including, but not limited to, delivery of updated schedules describing the Pledged Collateral in form and substance reasonably satisfactory to the Agent. Each Pledgor shall take or cause to be performed such acts and actions as shall be necessary or appropriate to assure that the security interest in and to the Pledged Collateral shall not become subordinate or junior to the security interests, liens or claims of any other Person except for non-consensual Permitted Liens that arise by operation of law.

SECTION 9. SUBORDINATION.

(a) Each Pledgor executing this Agreement covenants and agrees that the payment of all Indebtedness and any principal or interest (including interest which accrues after the commencement of any case or proceeding in bankruptcy, or for the reorganization of any Credit Party) thereon, owing by any Credit Party or any of its Subsidiaries to such Pledgor, including any intercompany trade payables or royalty or licensing fees (collectively, the “**Intercompany Obligations**”), is subordinated, to the extent and in the manner provided in this Section 9, to the prior payment in full of all Obligations (other than contingent indemnification Obligations to the extent no claim giving rise thereto has been asserted) (herein, the “**Senior Obligations**”) and that the subordination is for the benefit of Agent and the other Secured Parties, and Agent may enforce such provisions directly.

(b) Each Pledgor executing this Agreement hereby (i) authorizes Agent to demand specific performance of the terms of this Section 9, whether or not any other Pledgor shall have complied with any of the provisions hereof applicable to it, at any time when an Event of Default has occurred and is continuing and (ii) irrevocably waives (to the maximum extent permitted by any Requirement of Law) any defense based on the adequacy of a remedy at law, which might be asserted as a bar to such remedy of specific performance.

(c) Upon any distribution of assets of any Credit Party in any dissolution, winding up, liquidation or reorganization (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or otherwise):

(i) Agent and other Secured Parties shall first be entitled to receive payment in full in cash of the Senior Obligations before any Pledgor is entitled to receive any payment on account of the Intercompany Obligations, unless otherwise permitted by the Loan Agreement.

(ii) Any payment or distribution of assets of any Pledgor of any kind or character, whether in cash, property or securities, to which any other Pledgor would be entitled except for the provisions of this Section 9(c), shall be paid by the liquidating trustee or agent or other Person making such payment or distribution directly to Agent, to the extent necessary to make payment in full of all Senior Obligations (other than contingent indemnification obligations as to which no claim has been asserted) remaining unpaid after giving effect to any concurrent payment or distribution or provisions therefore to Agent and the other Secured Parties.

(iii) In the event that notwithstanding the foregoing provisions of this Section 9(c), any payment or distribution of assets of any Credit Party or any of its Subsidiaries of any kind or character, whether in cash, property or securities, shall be received by any Pledgor on account of the Intercompany Obligations before all Senior Obligations (other than contingent indemnification obligations as to which no claim has been asserted) are paid in full, such payment or distribution shall be received and held in trust for and shall be paid over to Agent for application to the payment of the Senior Obligations (other than contingent indemnification obligations as to which no claim has been asserted) until all of the Senior Obligations (other than contingent indemnification obligations as to which no claim has been asserted) shall have been paid in full, after giving effect to any concurrent payment or distribution or provision therefore to Agent and other Secured Parties.

(d) No right of Agent and the other Secured Parties or any other present or future holders of any Senior Obligations to enforce the subordination provisions herein shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Pledgor or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by any Pledgor with the terms hereof, regardless of any knowledge thereof which any such holder may have or be otherwise charged with.

SECTION 10. POWER OF ATTORNEY.

(a) Each Pledgor hereby appoints the Agent its attorney-in-fact, effective upon the occurrence and during the continuance of an Event of Default, with power of substitution, to take such action, execute such documents, and perform such work, as the Agent may deem reasonably appropriate to protect the Pledged Collateral or exercise the rights and remedies granted the Agent herein including the authority (i) to receive, open and dispose of in an appropriate manner all mail addressed to such Pledgor, and to notify the postal authorities to change the address for delivery of mail addressed to such Pledgor to such address as the Agent may designate, (ii) to endorse the name of such Pledgor on any note, acceptance, check, draft, money order or other evidence of debt from any Credit Party or any of its Subsidiaries to such Pledgor or of payment by any Credit Party or any of its Subsidiaries to such Pledgor which may come into the possession of any Secured Party, (iii) to compromise and settle or to sell, assign or transfer or to ask, collect, receive or issue any and all claims in respect of the Pledged Collateral possessed by such Pledgor all in the name of such Pledgor and (iv) generally to do such other things and acts in the name of such Pledgor as are necessary or appropriate to protect the Pledged Collateral or exercise the rights and remedies granted the Agent herein.

(b) Each Pledgor ratifies its authorization for the Agent to file the financing statements on or after the date hereof covering the Pledged Collateral, if any.

(c) The power of attorney granted herein is coupled with an interest and shall be irrevocable until the Termination Date.

SECTION 11. ASSIGNMENT.

(a) The Pledgors agree that this Agreement and rights of any Secured Party hereunder may in the discretion of such Secured Party be assigned in whole or in part by such Secured Party in accordance with the terms of the Loan Agreement. The Agent may also appoint sub-agents in accordance with the terms of the Loan Agreement. The Pledgors agree that the rights of any and all assignees shall be independent of any claims the Pledgors may have against the assignor or assignors. In the event this Agreement is so assigned by any of the Secured Parties, the terms “Agent,” “Secured Parties,” and “Secured Party” wherever used herein shall be deemed to refer to and include any such permitted assignee or assignees, as appropriate and in accordance with the terms of the Loan Agreement. This Agreement may be assigned by the Pledgors only with the written consent of the Agent.

- (b) This Agreement shall apply to and bind the Pledgors and the respective successors and assigns of the Pledgors and inure to the benefit of the respective successors and permitted assigns of the Secured Parties.

SECTION 12. INDEMNITY AND EXPENSES.

- (a) Each Pledgor agrees to indemnify each Secured Party in accordance with the terms of the Loan Agreement including, without limitation, the indemnification provisions set forth in Section 1.10 of the Credit Agreement.
- (b) Each Pledgor will pay to the Agent all reasonable and documented out-of-pocket expenses in connection with the negotiation, administration and enforcement of this Agreement, in accordance with Section 10.2 of the Loan Agreement
- (c) Any amounts payable as provided hereunder shall constitute additional Obligations and shall survive the termination of this Agreement.

SECTION 13. MISCELLANEOUS.

- (a) Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be given in a manner prescribed for notices in the Loan Agreement and shall be effective as to any Pledgor if sent to such Pledgor in care of the Borrower at the address of the Borrower set forth in the Loan Agreement.

(B) GOVERNING LAW. THE PROVISIONS OF THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED, AND ALL RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO DETERMINED, IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

- (c) Binding Agreement. This Agreement, together with all documents referred to herein, constitutes the entire Agreement among the Pledgors and the Secured Parties, or any of them, with respect to the matters addressed herein. In the event that a provision of this Agreement is in direct conflict with a provision of the Loan Agreement, the Loan Agreement shall govern.

- (d) Amendment and Waiver. This Agreement may not be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Agent and Pledgors. None of the Secured Parties shall by any act, delay, omission or otherwise, be deemed to have waived any of its or their rights or remedies hereunder, unless such waiver is in writing and signed by the Agent or one or more of the Agent or the Lenders in accordance with the Loan Agreement and then only to the extent therein set forth. A waiver by the Secured Parties, of any right or remedy on any occasion shall not be construed as a bar to the exercise of any such right or remedy which any such Person would otherwise have had on any other occasion.

(e) Severability. If any paragraph or part thereof shall for any reason be held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such paragraph or part thereof so adjudicated invalid, illegal or unenforceable shall be deemed separate, distinct and independent, and the remainder of this Agreement shall remain in full force and effect and shall not be affected by such holding or adjudication.

(f) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument. This Agreement may be authenticated by manual signature, facsimile or, if approved in writing by Agent, electronic means, all of which shall be equally valid. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act, as the case may be.

(g) Time is of the Essence. Time is of the essence with regard to each Pledgor's performance of its obligations hereunder.

(h) Termination. Upon the Termination Date, this Agreement and the security interests granted and evidenced hereby shall be terminated and, at Pledgor's expense, Agent shall return the Certificated Securities and other Collateral to Pledgor and execute such further documents or authorize the filing of such terminations as Pledgor may reasonably request to evidence such termination.

(i) Jurisdiction and Venue. If any action or proceeding shall be brought by the Agent in order to enforce any right or remedy under this Agreement, each Pledgor hereby consents to the jurisdiction of any state or federal court of competent jurisdiction sitting within the area comprising the State of New York, County of New York on the date of this Agreement. Each Pledgor hereby agrees, to the extent permitted by applicable Requirement of Law that service of the summons and complaint and all other process which may be served in any such suit, action or proceeding may be effected by mailing by registered mail a copy of such process to the offices of such Pledgor, as set forth in or otherwise provided pursuant to Section 10.6 of the Loan Agreement, and that personal service of process shall not be required. Nothing herein shall be construed to prohibit service of process by any other method permitted by law, or the bringing of any suit, action or proceeding in any other jurisdiction. Each Pledgor agrees that final judgment in such suit, action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by applicable Requirement of Law.

(j) **WAIVER OF JURY TRIAL. EACH OF THE AGENT, THE OTHER SECURED PARTIES AND EACH PLEDGOR WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING ARISING UNDER OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT.**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

PLEDGOR:

DRAGONFLY ENERGY HOLDINGS CORP.

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

SIGNATURE PAGE
PLEDGE AGREEMENT

AGENT:

ALTER DOMUS (US) LLC,
as Agent for the Secured Parties

By: /s/ Pinju Chiu
Name: Pinju Chiu
Title: Associate Counsel

Acknowledgement of Issuer

The undersigned Credit Party agrees to be bound by the terms of the foregoing Pledge Agreement and agrees not take, or omit to take, any action in contravention thereof.

ACKNOWLEDGED AND AGREED TO:

ISSUER:

DRAGONFLY ENERGY CORP.

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

SIGNATURE PAGE
PLEDGE AGREEMENT

SCHEDULE 1
to
Pledge Agreement

Equity Interests

<u>Pledgor</u>	<u>Issuer</u>	<u>Pledged Equity Description</u>	<u>Percentage of Interests or Shares and Number of Voting Shares or Units in Issuer</u>	<u>Certificate Number</u>
Dragonfly Energy Holdings Corp.	Dragonfly Energy Corp.	Common stock	100 shares	A-1

Debt Securities

None.

Other Securities

None.

EXHIBIT A
to
Pledge Agreement
NOTICE OF PLEDGE

[_____], 20[__]

TO: **[NAME OF ISSUER]**, a [State] [Entity Type] ("Company")

Notice is hereby given that, pursuant to that certain Pledge Agreement dated as of October 7, 2022 (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement"), by and among the undersigned Pledgor (the "Pledgor"), the other Pledgors from time to time party thereto and ALTER DOMUS (US) LLC, as agent (in such capacity, "Agent") for itself and for the other Secured Parties, in connection with financing arrangements in effect among, *inter alia*, Borrower, Agent, Holdings, the Lenders, and the other Credit Parties, Pledgor has pledged to Agent for itself and for the other Secured Parties, and granted to Agent for itself and for the other Secured Parties, a continuing security interest in the Pledged Collateral. All capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to the Agreement, Company is hereby authorized and directed to:

- (i) register on its books Pledgor's pledge to Agent of the Pledged Collateral; and
- (ii) upon the occurrence and during the continuance of an Event of Default make direct payment to Agent of any amounts due or to become due to Pledgor that are attributable, directly or indirectly, to Pledgor's ownership of the Pledged Collateral in accordance with the terms of the Agreement.

Company acknowledges and agrees that upon the delivery of any certificates representing the Pledged Collateral issued by Company endorsed to Agent or in blank, or to the extent the Pledged Collateral are not represented by certificates, upon the execution and delivery of this Notice of Pledge (this "Notice"), Agent shall have control (as such term is used in Sections 9-314, 9-106 and 8-106 and any successor sections of the UCC) over the Pledged Collateral.

Notwithstanding anything contained herein to the contrary, Company shall not issue or deliver to any Person at any time, unless requested to do so in writing by Agent, any certificates representing the Pledged Collateral.

Pledgor hereby requests Company to indicate its acceptance of this Notice and consent to and confirmation of its terms and provisions by signing a copy of this Notice where indicated below and returning it to Agent.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PLEDGOR:

[NAME OF PLEDGOR]

By: _____
Name: _____
Title: _____

SIGNATURE PAGE
NOTICE OF PLEDGE

Acknowledged and agreed to as of the date first written above by Company:

COMPANY:

[NAME OF ISSUER]

By: _____
Name: _____
Title: _____

SIGNATURE PAGE
NOTICE OF PLEDGE

EXHIBIT B
to
Pledge Agreement

SUPPLEMENT TO PLEDGE AGREEMENT

THIS SUPPLEMENT TO PLEDGE AGREEMENT, dated as of [____], 20[___] (this “Pledge Supplement”), supplements that certain Pledge Agreement, dated as of October 7, 2022, by and among DRAGONFLY ENERGY HOLDINGS CORP. (f/k/a Chardan NexTech Acquisition 2 Corp.), a Delaware corporation (“Holdings”), the other Pledgors from time to time party thereto and ALTER DOMUS (US) LLC, as agent (in such capacity, “Agent”) for itself and for the other Secured Parties (as amended, restated, supplemented or otherwise modified from time to time, the “Pledge Agreement”). Capitalized terms used herein without definition are used as defined in the Pledge Agreement.

Each of the undersigned (each individually a “Pledgor” and collectively, the “Pledgors”) hereby agrees that (i) this Pledge Supplement shall be attached to the Pledge Agreement and that the Securities listed below shall be and become part of the Securities referred to in the Pledge Agreement and shall secure all Obligations of the undersigned under the Loan Agreement and (ii) the information set forth below is hereby added to the information set forth in Schedule I to the Pledge Agreement. Each of the undersigned hereby represents and warrants that each of the representations and warranties contained in the Pledge Agreement applicable to it is true and correct in all material respects on and as the date hereof as if made on and as of such date. Each of the Pledgors further acknowledges and agrees that the terms and provisions of the Pledge Agreement are hereby ratified and confirmed and shall continue in full force and effect, such Pledgor hereby agreeing that the Pledge Agreement continues to be validly existing and enforceable in accordance with its terms, as supplemented hereby.

IDENTIFICATION OF PLEDGED EQUITY INTERESTS

<u>Pledgor</u>	<u>Issuer and Organization</u>	<u>Pledged Equity Description</u>	<u>Percentage of Interests or Shares and Number of Voting Shares or Units in Issuer</u>	<u>Certificate Number</u>

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has caused this Pledge Supplement to be duly executed and delivered as of the date first above written.

PLEDGOR:

[NAME OF PLEDGOR]

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED
as of the date first above written:

ALTER DOMUS (US) LLC, as Agent

By _____
Name:
Title:

Employment Agreement

This Employment Agreement (the “**Agreement**”) is made and entered into as of January 1, 2022, by and between Denis Phares (the “**Executive**”) and Dragonfly Energy Corp., a Nevada corporation (the “**Company**”).

WHEREAS, the Company desires to employ the Executive on the terms and conditions set forth herein; and

WHEREAS, the Executive desires to be employed by the Company on such terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and obligations set forth herein, the parties agree as follows:

1. **Term.** Subject to Section 5 of this Agreement, the Executive’s initial term of employment hereunder shall be from the period beginning on January 1, 2022 (the “Effective Date”) through December 31, 2022 (the “Initial Term”). Thereafter, the Agreement shall be deemed to be automatically extended, upon the same terms and conditions, for successive periods of one year, unless either party provides written notice of its intention not to extend the term at least 90 days prior to the end of the Initial Term or one-year extension thereof. The period during which the Executive is employed by the Company hereunder is hereinafter referred to as the “Employment Term.”

2. **Position and Duties.**

2.1 **Position.** During the Employment Term, the Executive shall serve as the Chief Executive Officer of the Company, reporting to Board of Directors. In such position, the Executive shall have such duties, authority, and responsibilities as are consistent with the Executive’s position.

2.2 **Duties.** During the Employment Term, the Executive shall devote substantially all of his business time and attention to the performance of the Executive’s duties hereunder and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the Board.

3. **Place of Performance.** The principal place of Executive’s employment shall be the Company’s principal executive office currently located in Reno, Nevada; provided that, the Executive may be required to travel on Company business during the Employment Term.

4. **Compensation.**

4.1 **Base Salary.** The Company shall pay the Executive an annual rate of base salary of \$800,000 in periodic installments in accordance with the Company’s customary payroll practices and applicable wage payment laws, but no less frequently than monthly. The Executive’s base salary shall be reviewed at least annually by the Board and the Board may increase or decrease the Executive’s base salary during the Employment Term. The Executive’s annual base salary, as in effect from time to time, is hereinafter referred to as “**Base Salary**.”

4.2 Annual Bonus.

(a) For each complete calendar year of the Employment Term, the Executive shall be eligible to receive an annual bonus (the “**Annual Bonus**”). As of the Effective Date, the Executive’s annual target bonus opportunity shall be equal to 100% of Base Salary (the “**Target Bonus**”), based on the achievement of Company performance goals established by the Compensation Committee of the Board (the “**Compensation Committee**”); provided that the maximum Annual Bonus that may be paid to the Executive is 100% of Base Salary. The Annual Bonus for the 2022 calendar year shall be pro-rated based on the number of days employed during the year.

(b) The Annual Bonus, if any, will be paid within two and a half (2 1/2) months after the end of the applicable calendar year.

(c) Except as otherwise provided in Section 5, in order to be eligible to receive an Annual Bonus, the Executive must be employed by the Company on the date that Annual Bonuses are paid.

4.3 Equity Awards. With respect to each calendar year of the Company ending during the Employment Term, the Executive shall be eligible to receive an annual long-term incentive award of outstanding shares each year vested over 12 months. All terms and conditions applicable to each such award shall be determined by the Compensation Committee.

4.4 Fringe Benefits and Perquisites. During the Employment Term, the Executive shall be entitled to fringe benefits and perquisites consistent with those provided to similarly situated executives of the Company.

4.5 Employee Benefits. During the Employment Term, the Executive shall be entitled to participate in all employee benefit plans, practices, and programs maintained by the Company, as in effect from time to time (collectively, “**Employee Benefit Plans**”), on a basis which is no less favorable than is provided to other similarly situated executives of the Company, to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. The Company reserves the right to amend or terminate any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plan and applicable law.

4.6 Vacation; Paid Time Off. During the Employment Term, the Executive shall be entitled to 40 of paid vacation days per calendar year (prorated for partial years) in accordance with the Company’s vacation policies, as in effect from time to time. The Executive shall receive other paid time off in accordance with the Company’s policies for executive officers as such policies may exist from time to time and as required by applicable law.

4.7 Business Expenses. The Executive shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment, and travel expenses incurred by the Executive in connection with the performance of the Executive's duties hereunder in accordance with the Company's expense reimbursement policies and procedures.

4.8 Legal Fees Incurred in Negotiating the Agreement. The Company shall pay or the Executive shall be reimbursed for the Executive's reasonable legal fees incurred in negotiating and drafting this Agreement up to a maximum of \$10,000, provided that any such payment shall be made on or before March 15 of the calendar year immediately following the Effective Date.

4.9 Indemnification. The Company shall indemnify and hold the Executive harmless to the maximum extent permitted under applicable law and the Company's bylaws for acts and omissions in the Executive's capacity as an officer, director, or employee of the Company.

4.10 Clawback Provisions. Any amounts payable under this Agreement are subject to any policy (whether in existence as of the Effective Date or later adopted) established by the Company providing for clawback or recovery of amounts that were paid to the Executive. The Company will make any determination for clawback or recovery in its sole discretion and in accordance with any applicable law or regulation.

5. Termination of Employment. The Employment Term and the Executive's employment hereunder may be terminated by either the Company or the Executive at any time and for any reason or for no particular reason; provided that, unless otherwise provided herein, either party shall be required to give the other party at least 90 days advance written notice of any termination of the Executive's employment. Upon termination of the Executive's employment during the Employment Term, the Executive shall be entitled to the compensation and benefits described in this Section 5 and shall have no further rights to any compensation or any other benefits from the Company or any of its affiliates.

5.1 Non-Renewal by the Executive, For Cause, or Without Good Reason.

(a) The Executive's employment hereunder may be terminated upon the Executive's failure to renew the Agreement in accordance with Section 1, by the Company for Cause, or by the Executive without Good Reason and the Executive shall be entitled to receive:

- (i) any accrued but unpaid Base Salary and accrued but unused paid time off which shall be paid within one (1) week following the date of the Executive's termination;
- (ii) reimbursement for unreimbursed business expenses properly incurred by the Executive, which shall be subject to and paid in accordance with the Company's expense reimbursement policy; and

(iii) such employee benefits (including equity compensation), if any, to which the Executive may be entitled under the Company's employee benefit plans as of the date of the Executive's termination; provided that, in no event shall the Executive be entitled to any payments in the nature of severance or termination payments except as specifically provided herein.

Items 5.1(a)(i) through 5.1(a)(iv) are referred to herein collectively as the "**Accrued Amounts.**"

(b) For purposes of this Agreement, "**Cause**" shall mean:

- (i) the Executive's willful engagement in dishonesty, illegal conduct, or gross misconduct, which is, in each case, materially injurious to the Company or its affiliates;
- (ii) the Executive's embezzlement, misappropriation, or fraud, whether or not related to the Executive's employment with the Company;
- (iii) the Executive's conviction of or plea of guilty or nolo contendere to a crime that constitutes a felony (or state law equivalent) or a crime that constitutes a misdemeanor involving moral turpitude; or
- (iv) the Executive's material breach of any material obligation under this Agreement or any other written agreement between the Executive and the Company.

For purposes of this provision, none of the Executive's acts or failures to act shall be considered "willful" unless the Executive acts, or fails to act, in bad faith or without reasonable belief that the action or failure to act was in the best interests of the Company. The Executive's actions, or failures to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the advice of counsel for the Company shall be conclusively presumed to be in good faith and in the best interests of the Company.

Except for a failure, breach, or refusal which, by its nature, cannot reasonably be expected to be cured, the Executive shall have 10 business days from the delivery of written notice by the Company within which to cure any acts constituting Cause.

(c) For purposes of this Agreement, "**Good Reason**" shall mean the occurrence of any of the following, in each case during the Employment Term without the Executive's prior written consent:

- (i) any material breach by the Company of any material provision of this Agreement; or
- (ii) the Company's failure to obtain an agreement from any successor to the Company to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no succession had taken place, except where such assumption occurs by operation of law.

To terminate his employment for Good Reason, the Executive must provide written notice to the Company of the existence of the circumstances providing grounds for termination for Good Reason within 30 days of the initial existence of such grounds and the Company must have at least 30 days from the date on which such notice is provided to cure such circumstances. If the Executive does not terminate his employment for Good Reason within 30 days after the first occurrence of the applicable grounds, then the Executive will be deemed to have waived his right to terminate for Good Reason with respect to such grounds.

5.2 Non-Renewal by the Company, Without Cause or for Good Reason. The Employment Term and the Executive's employment hereunder may be terminated by the Executive for Good Reason or by the Company without Cause or on account of the Company's failure to renew the Agreement in accordance with Section 1. In the event of such termination, the Executive shall be entitled to receive the Accrued Amounts and subject to the Executive's compliance with Section 6 of this Agreement and the agreements referenced therein and his execution, within 21 days following receipt, of a release of claims in favor of the Company, its affiliates and their respective officers and directors in a form provided by the Company (the "**Release**") (such 21-day period, the "**Release Execution Period**"), and the Release becoming effective according to its terms, the Executive shall be entitled to receive the following:

(a) equal installment payments payable in accordance with the Company's normal payroll practices, but no less frequently than monthly, which are in the aggregate equal to four (4) times the Executive's Base Salary for the year that includes the date of the Executive's termination, which shall begin within 30 days following the date of the Executive's termination and continue until the 2nd anniversary of the Executive's date of termination; provided that, if the Release Execution Period begins in one taxable year and ends in another taxable year, payments shall not begin until the beginning of the second taxable year; provided further that, the first installment payment shall include all amounts that would otherwise have been paid to the Executive during the period beginning on the date of the Executive's termination and ending on the first payment date if no delay had been imposed;

(b) a payment equal to the product of (i) the Target Bonus and (ii) a fraction, the numerator of which is the number of days the Executive was employed by the Company during the year of termination and the denominator of which is the number of days in such year (the "**Pro Rata Bonus**"). This amount shall be paid on the date that annual bonuses are paid to similarly situated executives, but in no event later than two-and-a-half (2 1/2) months following the end of the calendar year that includes the date of the Executive's termination;

(c) If the Executive timely and properly elects health continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("**COBRA**"), the Company shall reimburse the Executive for the monthly COBRA premium paid by the Executive for himself and his dependents. Such reimbursement shall be paid to the Executive on the first of the month immediately following the month in which the Executive timely remits the premium payment. The Executive shall be eligible to receive such reimbursement until the earliest of: (i) the eighteen-month anniversary of the date of the Executive's termination; (ii) the date the Executive is no longer eligible to receive COBRA continuation coverage; and (iii) the date on which the Executive receives substantially similar coverage from another employer or other source. Notwithstanding the foregoing, if the Company's making payments under this Section 5.2(c) would violate the nondiscrimination rules applicable to non-grandfathered, insured group health plans under the Affordable Care Act (the "**ACA**"), or result in the imposition of penalties under the ACA and the related regulations and guidance promulgated thereunder, the parties agree to reform this Section 5.2(c) in a manner as is necessary to comply with the ACA.

- (d) The treatment of any outstanding equity awards shall be determined in accordance with the terms of the 2019 Stock Incentive Plan and 2021 Stock Incentive Plan and the applicable award agreements.

5.3 Death or Disability.

(a) The Executive's employment hereunder shall terminate automatically upon the Executive's death during the Employment Term, and the Company may terminate the Executive's employment on account of the Executive's Disability.

(b) If the Executive's employment is terminated during the Employment Term on account of the Executive's death or Disability, the Executive (or the Executive's estate and/or beneficiaries, as the case may be) shall be entitled to receive the following:

(i) the Accrued Amounts; and

(ii) a lump sum payment equal to the Pro-Rata Bonus, which shall be payable on the date that annual bonuses are paid to the Company's similarly situated executives, but in no event later than two-and-a-half (2 1/2) months following the end of the calendar year that includes the date of the Executive's termination.

Notwithstanding any other provision contained herein, all payments made in connection with the Executive's Disability shall be provided in a manner which is consistent with federal and state law.

(c) For purposes of this Agreement, "**Disability**" shall mean the Executive is entitled to receive long-term disability benefits under the Company's long-term disability plan. Any question as to the existence of the Executive's Disability as to which the Executive and the Company cannot agree shall be determined in writing by a qualified independent physician mutually acceptable to the Executive and the Company. The determination of Disability made in writing to the Company and the Executive shall be final and conclusive for all purposes of this Agreement.

5.4 Notice of Termination. Any termination of the Executive's employment hereunder by the Company or by the Executive during the Employment Term (other than termination pursuant to Section 5.3(a) on account of the Executive's death) shall be communicated by written notice of termination ("**Notice of Termination**") to the other party hereto in accordance with Section 15. The Notice of Termination shall specify:

- (a) the termination provision of this Agreement relied upon;
- (b) to the extent applicable, the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated; and
- (c) the applicable date of termination, which shall be no less than 30 days following the date on which the Notice of Termination is delivered if the Company terminates the Executive's employment without Cause, or no less than 90 days following the date on which the Notice of Termination is delivered if the Executive terminates his employment with or without Good Reason.

5.5 Resignation of All Other Positions. Upon termination of the Executive's employment hereunder for any reason, the Executive shall be deemed to have resigned from all positions that the Executive holds as an officer or member of the Board (or a committee thereof) of the Company or any of its affiliates.

6. Confidential Information and Restrictive Covenants. As a condition of the Executive's employment with the Company, the Executive shall enter into and abide by the Company's Employee Non-Compete Agreement.

7. Governing Law, Jurisdiction, and Venue. This Agreement, for all purposes, shall be construed in accordance with the laws of Nevada without regard to conflicts of law principles. Any action or proceeding by either of the parties to enforce this Agreement shall be brought only in a state or federal court located in the state of Nevada, county of Washoe. The parties hereby irrevocably submit to the exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.

8. Entire Agreement. Unless specifically provided herein, this Agreement, together with the Employee Non-Compete Agreement, contains all of the understandings and representations between the Executive and the Company pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

9. Modification and Waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by the Executive and by the Compensation Committee of the Board of Directors of the Company. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time.

10. Severability. Should any provisions of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.

11. Captions. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

12. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

13. Section 409A.

13.1 General Compliance. This Agreement is intended to comply with Section 409A or an exemption thereunder and shall be construed and administered in accordance with such intent. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Any nonqualified deferred compensation payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from service or as a short-term deferral shall be excluded from Section 409A to the maximum extent possible. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made upon a "separation from service" under Section 409A. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement comply with Section 409A, and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by the Executive on account of non-compliance with Section 409A.

13.2 Specified Employees. Notwithstanding any other provision of this Agreement, if any payment or benefit provided to the Executive in connection with his termination of employment is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A and the Executive is determined to be a "specified employee" as defined in Section 409A(a)(2)(b)(i), then such payment or benefit shall not be paid until the first payroll date to occur following the six-month anniversary of the date of the Executive's termination or, if earlier, on the Executive's death (the "**Specified Employee Payment Date**"). The aggregate of any payments that would otherwise have been paid before the Specified Employee Payment Date shall be paid to the Executive in a lump sum on the Specified Employee Payment Date and thereafter, any remaining payments shall be paid without delay in accordance with their original schedule.

13.3 Reimbursements. To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

- (a) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;
- (b) any reimbursement of an eligible expense shall be paid to the Executive on or before the last day of the calendar year following the calendar year in which the expense was incurred; and
- (c) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

14. Successors and Assigns. This Agreement is personal to the Executive and shall not be assigned by the Executive. Any purported assignment by the Executive shall be null and void from the initial date of the purported assignment. The Company may assign this Agreement to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of the Company. This Agreement shall inure to the benefit of the Company and permitted successors and assigns.

15. Notice. Notices and all other communications provided for in this Agreement shall be given in writing by personal delivery, electronic delivery, or by registered mail to the parties at the addresses set forth below (or such other addresses as specified by the parties by like notice):

If to the Company:

Dragonfly Energy Corp.
1190 Trademark Drive, #108
Reno, NV 89521
Attn: General Counsel

If to the Executive:

Denis Phares
14245 Powder River Court
Reno, NV 89511

16. Representations of the Executive. The Executive represents and warrants to the Company that:

The Executive's acceptance of employment with the Company and the performance of his duties hereunder will not conflict with or result in a violation of, a breach of, or a default under any contract, agreement, or understanding to which he is a party or is otherwise bound.

The Executive's acceptance of employment with the Company and the performance of his duties hereunder will not violate any non-solicitation, non-competition, or other similar covenant or agreement of a prior employer or third-party.

17. Withholding. The Company shall have the right to withhold from any amount payable hereunder any Federal, state, and local taxes in order for the Company to satisfy any withholding tax obligation it may have under any applicable law or regulation.

18. Survival. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the parties under this Agreement.

19. Acknowledgement of Full Understanding. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS FULLY READ, UNDERSTANDS AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF HIS CHOICE BEFORE SIGNING THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

DRAGONFLY ENERGY CORP.

/s/ Luisa Ingargiola
Luisa Ingargiola
Compensation Committee Chair

EXECUTIVE

Signature: /s/ Denis Phares
Print Name: Denis Phares

May 15, 2022

Denis Phares

RE: Amendment of Employment Agreement

Dear Denis Phares:

This letter agreement (this "**Letter Agreement**") is entered into by and between you and Dragonfly Energy Corp., a Nevada corporation (the "**Company**"). Reference is made to the Agreement and Plan of Merger, dated as of May 15, 2021 (the "**Merger Agreement**"), 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 the Company, and to that certain Employment Agreement, dated as of January 1, 2022, by and between you and the Company (the "**Employment Agreement**"). You and the Company are collectively referred to herein as the "**Parties**." Capitalized terms used herein but not defined shall have the meanings provided in the Employment Agreement.

You and the Company hereby agree as follows:

1. Section 4.1 of your Employment Agreement is hereby deleted in its entirety and replaced with the following, effective as of the date of this Letter Agreement:

"4.1 **Base Salary.** The Company shall pay the Executive an annual rate of base salary of \$600,000 in periodic installments in accordance with the Company's customary payroll practices and applicable wage payment laws, but no less frequently than monthly. The Executive's base salary shall be reviewed at least annually beginning in 2023 by the Board for increase or decrease. The Executive's annual base salary, as in effect from time to time, is hereinafter referred to as "**Base Salary**.""

2. You and the Company each agree and covenant that, within the three (3)-month period following the Closing (as defined in the Merger Agreement), the Parties will work together in good faith to further amend your Employment Agreement (as amended by this Agreement) to align the terms thereof (and compensation paid thereunder) with market standards for executives at similarly-situated companies, subject to approval of such amendments by the Board as then-constituted (with such approval not to be unreasonably withheld or delayed).
 3. If the Merger Agreement terminates without Closing, or if your employment with the Company terminates before the Closing Date under any circumstances, this Letter Agreement shall thereupon automatically be null and void and without effect.
 4. All of the terms and conditions of your Employment Agreement that are not expressly changed by this Letter Agreement shall remain in full force and effect in accordance with their terms; provided that in the event of any conflict between your Employment Agreement and this Letter Agreement, the terms and conditions of this Letter Agreement shall control.
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5. This Letter Agreement shall be governed by and construed in accordance with Nevada law and the parties hereto irrevocably agree that the courts of Nevada are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Letter Agreement. You hereby irrevocably waive and covenant not to assert or plead, any objection which you might otherwise have to such jurisdiction.
6. This Letter Agreement is binding upon and shall inure to the benefit of your heirs, executors and legal representatives in the event of your death, and to the benefit of any successors of the Company, including Acquiror. Any such successor of the Company will be deemed substituted for the Company under any terms of this Letter Agreement for purposes of enforcing the rights of the Company hereunder.
7. This Letter Agreement is irrevocable and may not be amended or otherwise modified without prior written consent from both you and the Company. The Parties acknowledge and agree that Acquiror is an intended third-party beneficiary of this Letter Agreement, and that Acquiror may enforce the terms of this Letter Agreement, and that, notwithstanding Section 6, no amendment, waiver or modification of this Letter Agreement (or of any of the terms hereof) shall be effective without the prior written consent of Acquiror. The Parties further acknowledge and agree that Acquiror is relying on the agreements, representations, warranties and covenants made by each of the Parties in this Letter Agreement, and that such agreements, representations, warranties and covenants constitute a material inducement to Acquiror entering into the Merger Agreement and consummating the transactions contemplated therein.
8. You hereby authorize the Company to deliver a copy of this Letter Agreement to Acquiror and hereby agree that the Company and Acquiror may rely upon such delivery as conclusively evidencing the covenants referred to in Sections 1 and 2 for purposes of all agreements and instruments to which such covenants are applicable or relevant.
9. This Letter Agreement may be executed in counterparts, each of which shall be deemed an original and when taken together shall constitute one and the same document. Delivery of an executed counterpart's signature page of this Letter Agreement, by facsimile, electronic mail in portable document format (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Letter Agreement.

[Signature page follows]

Sincerely,

Dragonfly Energy Corp.

/s/ Luisa Ingargiola

By: Luisa Ingargiola

Title: Compensation Committee Chair

Date: May 15, 2022

AGREED TO AND ACCEPTED BY:

/s/ Denis Phares

Name: Denis Phares

Date: May 15, 2022

Employment Agreement

This Employment Agreement (the “**Agreement**”) is made and entered into as of January 1, 2022, by and between Sean Nichols (the “**Executive**”) and Dragonfly Energy Corp., a Nevada corporation (the “**Company**”).

WHEREAS, the Company desires to employ the Executive on the terms and conditions set forth herein; and

WHEREAS, the Executive desires to be employed by the Company on such terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and obligations set forth herein, the parties agree as follows:

1. **Term.** Subject to Section 5 of this Agreement, the Executive's initial term of employment hereunder shall be from the period beginning on January 1, 2022 (the “Effective Date”) through December 31, 2022 (the “Initial Term”). Thereafter, the Agreement shall be deemed to be automatically extended, upon the same terms and conditions, for successive periods of one year, unless either party provides written notice of its intention not to extend the term at least 90 days prior to the end of the Initial Term or one-year extension thereof. The period during which the Executive is employed by the Company hereunder is hereinafter referred to as the “Employment Term.”

2. **Position and Duties.**

2.1 **Position.** During the Employment Term, the Executive shall serve as the Chief Operations Officer of the Company, reporting to the Chief Executive Officer. In such position, the Executive shall have such duties, authority, and responsibilities as are consistent with the Executive's position.

2.2 **Duties.** During the Employment Term, the Executive shall devote substantially all of his business time and attention to the performance of the Executive's duties hereunder and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the Board.

3. **Place of Performance.** The principal place of Executive's employment shall be the Company's principal executive office currently located in Reno, Nevada; provided that, the Executive may be required to travel on Company business during the Employment Term.

4. **Compensation.**

4.1 **Base Salary.** The Company shall pay the Executive an annual rate of base salary of \$800,000 in periodic installments in accordance with the Company's customary payroll practices and applicable wage payment laws, but no less frequently than monthly. The Executive's base salary shall be reviewed at least annually by the Board and the Board may increase or decrease the Executive's base salary during the Employment Term. The Executive's annual base salary, as in effect from time to time, is hereinafter referred to as “**Base Salary**.”

4.2 Annual Bonus.

(a) For each complete calendar year of the Employment Term, the Executive shall be eligible to receive an annual bonus (the “**Annual Bonus**”). As of the Effective Date, the Executive’s annual target bonus opportunity shall be equal to 100% of Base Salary (the “**Target Bonus**”), based on the achievement of Company performance goals established by the Compensation Committee of the Board (the “**Compensation Committee**”); provided that the maximum Annual Bonus that may be paid to the Executive is 100% of Base Salary. The Annual Bonus for the 2022 calendar year shall be pro-rated based on the number of days employed during the year.

(b) The Annual Bonus, if any, will be paid within two and a half (2 1/2) months after the end of the applicable calendar year.

(c) Except as otherwise provided in Section 5, in order to be eligible to receive an Annual Bonus, the Executive must be employed by the Company on the date that Annual Bonuses are paid.

4.3 Equity Awards. With respect to each calendar year of the Company ending during the Employment Term, the Executive shall be eligible to receive an annual long-term incentive award of outstanding shares each year vested over 12 months. All terms and conditions applicable to each such award shall be determined by the Compensation Committee.

4.4 Fringe Benefits and Perquisites. During the Employment Term, the Executive shall be entitled to fringe benefits and perquisites consistent with those provided to similarly situated executives of the Company.

4.5 Employee Benefits. During the Employment Term, the Executive shall be entitled to participate in all employee benefit plans, practices, and programs maintained by the Company, as in effect from time to time (collectively, “**Employee Benefit Plans**”), on a basis which is no less favorable than is provided to other similarly situated executives of the Company, to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. The Company reserves the right to amend or terminate any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plan and applicable law.

4.6 Vacation; Paid Time Off. During the Employment Term, the Executive shall be entitled to 40 paid vacation days per calendar year (prorated for partial years) in accordance with the Company’s vacation policies, as in effect from time to time. The Executive shall receive other paid time off in accordance with the Company’s policies for executive officers as such policies may exist from time to time and as required by applicable law.

4.7 Business Expenses. The Executive shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment, and travel expenses incurred by the Executive in connection with the performance of the Executive's duties hereunder in accordance with the Company's expense reimbursement policies and procedures.

4.8 Legal Fees Incurred in Negotiating the Agreement. The Company shall pay or the Executive shall be reimbursed for the Executive's reasonable legal fees incurred in negotiating and drafting this Agreement up to a maximum of \$10,000, provided that any such payment shall be made on or before March 15 of the calendar year immediately following the Effective Date.

4.9 Indemnification. The Company shall indemnify and hold the Executive harmless to the maximum extent permitted under applicable law and the Company's bylaws for acts and omissions in the Executive's capacity as an officer, director, or employee of the Company.

4.10 Clawback Provisions. Any amounts payable under this Agreement are subject to any policy (whether in existence as of the Effective Date or later adopted) established by the Company providing for clawback or recovery of amounts that were paid to the Executive. The Company will make any determination for clawback or recovery in its sole discretion and in accordance with any applicable law or regulation.

5. Termination of Employment. The Employment Term and the Executive's employment hereunder may be terminated by either the Company or the Executive at any time and for any reason or for no particular reason; provided that, unless otherwise provided herein, either party shall be required to give the other party at least 90 days advance written notice of any termination of the Executive's employment. Upon termination of the Executive's employment during the Employment Term, the Executive shall be entitled to the compensation and benefits described in this Section 5 and shall have no further rights to any compensation or any other benefits from the Company or any of its affiliates.

5.1 Non-Renewal by the Executive. For Cause, or Without Good Reason.

(a) The Executive's employment hereunder may be terminated upon the Executive's failure to renew the Agreement in accordance with Section 1, by the Company for Cause, or by the Executive without Good Reason and the Executive shall be entitled to receive:

- (i) any accrued but unpaid Base Salary and accrued but unused paid time off which shall be paid within one (1) week following the date of the Executive's termination;
 - (ii) reimbursement for unreimbursed business expenses properly incurred by the Executive, which shall be subject to and paid in accordance with the Company's expense reimbursement policy;
- and

(iii) such employee benefits (including equity compensation), if any, to which the Executive may be entitled under the Company's employee benefit plans as of the date of the Executive's termination; provided that, in no event shall the Executive be entitled to any payments in the nature of severance or termination payments except as specifically provided herein.

Items 5.1(a)(i) through 5.1(a)(iv) are referred to herein collectively as the "**Accrued Amounts.**"

(b) For purposes of this Agreement, "**Cause**" shall mean:

- (i) the Executive's willful engagement in dishonesty, illegal conduct, or gross misconduct, which is, in each case, materially injurious to the Company or its affiliates;
- (ii) the Executive's embezzlement, misappropriation, or fraud, whether or not related to the Executive's employment with the Company;
- (iii) the Executive's conviction of or plea of guilty or nolo contendere to a crime that constitutes a felony (or state law equivalent) or a crime that constitutes a misdemeanor involving moral turpitude; or
- (iv) the Executive's material breach of any material obligation under this Agreement or any other written agreement between the Executive and the Company.

For purposes of this provision, none of the Executive's acts or failures to act shall be considered "willful" unless the Executive acts, or fails to act, in bad faith or without reasonable belief that the action or failure to act was in the best interests of the Company. The Executive's actions, or failures to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the advice of counsel for the Company shall be conclusively presumed to be in good faith and in the best interests of the Company.

Except for a failure, breach, or refusal which, by its nature, cannot reasonably be expected to be cured, the Executive shall have 10 business days from the delivery of written notice by the Company within which to cure any acts constituting Cause.

(c) For purposes of this Agreement, "**Good Reason**" shall mean the occurrence of any of the following, in each case during the Employment Term without the Executive's prior written consent:

- (i) any material breach by the Company of any material provision of this Agreement; or
- (ii) the Company's failure to obtain an agreement from any successor to the Company to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no succession had taken place, except where such assumption occurs by operation of law.

To terminate his employment for Good Reason, the Executive must provide written notice to the Company of the existence of the circumstances providing grounds for termination for Good Reason within 30 days of the initial existence of such grounds and the Company must have at least 30 days from the date on which such notice is provided to cure such circumstances. If the Executive does not terminate his employment for Good Reason within 30 days after the first occurrence of the applicable grounds, then the Executive will be deemed to have waived his right to terminate for Good Reason with respect to such grounds.

5.2 Non-Renewal by the Company, Without Cause or for Good Reason. The Employment Term and the Executive's employment hereunder may be terminated by the Executive for Good Reason or by the Company without Cause or on account of the Company's failure to renew the Agreement in accordance with Section 1. In the event of such termination, the Executive shall be entitled to receive the Accrued Amounts and subject to the Executive's compliance with Section 6 of this Agreement and the agreements referenced therein and his execution, within 21 days following receipt, of a release of claims in favor of the Company, its affiliates and their respective officers and directors in a form provided by the Company (the "**Release**") (such 21-day period, the "**Release Execution Period**"), and the Release becoming effective according to its terms, the Executive shall be entitled to receive the following:

(a) equal installment payments payable in accordance with the Company's normal payroll practices, but no less frequently than monthly, which are in the aggregate equal to four (4) times the Executive's Base Salary for the year that includes the date of the Executive's termination, which shall begin within 30 days following the date of the Executive's termination and continue until the 2nd anniversary of the Executive's date of termination; provided that, if the Release Execution Period begins in one taxable year and ends in another taxable year, payments shall not begin until the beginning of the second taxable year; provided further that, the first installment payment shall include all amounts that would otherwise have been paid to the Executive during the period beginning on the date of the Executive's termination and ending on the first payment date if no delay had been imposed;

(b) a payment equal to the product of (i) the Target Bonus and (ii) a fraction, the numerator of which is the number of days the Executive was employed by the Company during the year of termination and the denominator of which is the number of days in such year (the "**Pro Rata Bonus**"). This amount shall be paid on the date that annual bonuses are paid to similarly situated executives, but in no event later than two-and-a-half (2 1/2) months following the end of the calendar year that includes the date of the Executive's termination;

(c) If the Executive timely and properly elects health continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Company shall reimburse the Executive for the monthly COBRA premium paid by the Executive for himself and his dependents. Such reimbursement shall be paid to the Executive on the first of the month immediately following the month in which the Executive timely remits the premium payment. The Executive shall be eligible to receive such reimbursement until the earliest of: (i) the eighteen-month anniversary of the date of the Executive's termination; (ii) the date the Executive is no longer eligible to receive COBRA continuation coverage; and (iii) the date on which the Executive receives substantially similar coverage from another employer or other source. Notwithstanding the foregoing, if the Company's making payments under this Section 5.2(c) would violate the nondiscrimination rules applicable to non-grandfathered, insured group health plans under the Affordable Care Act (the "ACA"), or result in the imposition of penalties under the ACA and the related regulations and guidance promulgated thereunder, the parties agree to reform this Section 5.2(c) in a manner as is necessary to comply with the ACA.

(d) The treatment of any outstanding equity awards shall be determined in accordance with the terms of the 2019 Stock Incentive Plan and 2021 Stock Incentive Plan and the applicable award agreements.

5.3 Death or Disability.

(a) The Executive's employment hereunder shall terminate automatically upon the Executive's death during the Employment Term, and the Company may terminate the Executive's employment on account of the Executive's Disability.

(b) If the Executive's employment is terminated during the Employment Term on account of the Executive's death or Disability, the Executive (or the Executive's estate and/or beneficiaries, as the case may be) shall be entitled to receive the following:

(i) the Accrued Amounts; and

(ii) a lump sum payment equal to the Pro-Rata Bonus, which shall be payable on the date that annual bonuses are paid to the Company's similarly situated executives, but in no event later than two-and-a-half (2 1/2) months following the end of the calendar year that includes the date of the Executive's termination.

Notwithstanding any other provision contained herein, all payments made in connection with the Executive's Disability shall be provided in a manner which is consistent with federal and state law.

(c) For purposes of this Agreement, "**Disability**" shall mean the Executive is entitled to receive long-term disability benefits under the Company's long-term disability plan. Any question as to the existence of the Executive's Disability as to which the Executive and the Company cannot agree shall be determined in writing by a qualified independent physician mutually acceptable to the Executive and the Company. The determination of Disability made in writing to the Company and the Executive shall be final and conclusive for all purposes of this Agreement.

5.4 Notice of Termination. Any termination of the Executive's employment hereunder by the Company or by the Executive during the Employment Term (other than termination pursuant to Section 5.3(a) on account of the Executive's death) shall be communicated by written notice of termination ("**Notice of Termination**") to the other party hereto in accordance with Section 15. The Notice of Termination shall specify:

- (a) the termination provision of this Agreement relied upon;
- (b) to the extent applicable, the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated; and
- (c) the applicable date of termination, which shall be no less than 30 days following the date on which the Notice of Termination is delivered if the Company terminates the Executive's employment without Cause, or no less than 90 days following the date on which the Notice of Termination is delivered if the Executive terminates his employment with or without Good Reason.

5.5 Resignation of All Other Positions. Upon termination of the Executive's employment hereunder for any reason, the Executive shall be deemed to have resigned from all positions that the Executive holds as an officer or member of the Board (or a committee thereof) of the Company or any of its affiliates.

6. Confidential Information and Restrictive Covenants. As a condition of the Executive's employment with the Company, the Executive shall enter into and abide by the Company's Employee Non-Compete Agreement.

7. Governing Law, Jurisdiction, and Venue. This Agreement, for all purposes, shall be construed in accordance with the laws of Nevada without regard to conflicts of law principles. Any action or proceeding by either of the parties to enforce this Agreement shall be brought only in a state or federal court located in the state of Nevada, county of Washoe. The parties hereby irrevocably submit to the exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.

8. Entire Agreement. Unless specifically provided herein, this Agreement, together with the Employee Non-Compete Agreement, contains all of the understandings and representations between the Executive and the Company pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

9. Modification and Waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by the Executive and by the Compensation Committee of the Board of Directors of the Company. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time.

10. Severability. Should any provisions of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.

11. Captions. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

12. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

13. Section 409A.

13.1 General Compliance. This Agreement is intended to comply with Section 409A or an exemption thereunder and shall be construed and administered in accordance with such intent. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Any nonqualified deferred compensation payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from service or as a short-term deferral shall be excluded from Section 409A to the maximum extent possible. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made upon a "separation from service" under Section 409A. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement comply with Section 409A, and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by the Executive on account of non-compliance with Section 409A.

13.2 Specified Employees. Notwithstanding any other provision of this Agreement, if any payment or benefit provided to the Executive in connection with his termination of employment is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A and the Executive is determined to be a "specified employee" as defined in Section 409A(a)(2)(b)(i), then such payment or benefit shall not be paid until the first payroll date to occur following the six-month anniversary of the date of the Executive's termination or, if earlier, on the Executive's death (the "**Specified Employee Payment Date**"). The aggregate of any payments that would otherwise have been paid before the Specified Employee Payment Date shall be paid to the Executive in a lump sum on the Specified Employee Payment Date and thereafter, any remaining payments shall be paid without delay in accordance with their original schedule.

13.3 Reimbursements. To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

- (a) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;
- (b) any reimbursement of an eligible expense shall be paid to the Executive on or before the last day of the calendar year following the calendar year in which the expense was incurred; and
- (c) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

14. Successors and Assigns. This Agreement is personal to the Executive and shall not be assigned by the Executive. Any purported assignment by the Executive shall be null and void from the initial date of the purported assignment. The Company may assign this Agreement to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of the Company. This Agreement shall inure to the benefit of the Company and permitted successors and assigns.

15. Notice. Notices and all other communications provided for in this Agreement shall be given in writing by personal delivery, electronic delivery, or by registered mail to the parties at the addresses set forth below (or such other addresses as specified by the parties by like notice):

If to the Company:

Dragonfly Energy Corp.
1190 Trademark Drive, #108
Reno, NV 89521
Attn: General Counsel

If to the Executive:

Sean Nichols
1945 South Marsh Avenue
Reno, Nevada 89509

16. Representations of the Executive. The Executive represents and warrants to the Company that:

The Executive's acceptance of employment with the Company and the performance of his duties hereunder will not conflict with or result in a violation of, a breach of, or a default under any contract, agreement, or understanding to which he is a party or is otherwise bound.

The Executive's acceptance of employment with the Company and the performance of his duties hereunder will not violate any non-solicitation, non-competition, or other similar covenant or agreement of a prior employer or third-party.

17. Withholding. The Company shall have the right to withhold from any amount payable hereunder any Federal, state, and local taxes in order for the Company to satisfy any withholding tax obligation it may have under any applicable law or regulation.

18. Survival. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the parties under this Agreement.

19. Acknowledgement of Full Understanding. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS FULLY READ, UNDERSTANDS AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF HIS CHOICE BEFORE SIGNING THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

DRAGONFLY ENERGY CORP.

/s/ Luisa Ingargiola
Luisa Ingargiola
Compensation Committee Chair

EXECUTIVE

Signature: /s/ Sean Nichols
Print Name: Sean Nichols

May 15, 2022

Sean Nichols

RE: Amendment of Employment Agreement

Dear Sean Nichols:

This letter agreement (this "**Letter Agreement**") is entered into by and between you and Dragonfly Energy Corp., a Nevada corporation (the "**Company**"). Reference is made to the Agreement and Plan of Merger, dated as of May 15, 2021 (the "**Merger Agreement**"), 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 the Company, and to that certain Employment Agreement, dated as of January 1, 2022, by and between you and the Company (the "**Employment Agreement**"). You and the Company are collectively referred to herein as the "**Parties**." Capitalized terms used herein but not defined shall have the meanings provided in the Employment Agreement.

You and the Company hereby agree as follows:

1. Section 4.1 of your Employment Agreement is hereby deleted in its entirety and replaced with the following, effective as of the date of this Letter Agreement:

"4.1 **Base Salary.** The Company shall pay the Executive an annual rate of base salary of \$600,000 in periodic installments in accordance with the Company's customary payroll practices and applicable wage payment laws, but no less frequently than monthly. The Executive's base salary shall be reviewed at least annually beginning in 2023 by the Board for increase or decrease. The Executive's annual base salary, as in effect from time to time, is hereinafter referred to as "**Base Salary**.""

2. You and the Company each agree and covenant that, within the three (3)-month period following the Closing (as defined in the Merger Agreement), the Parties will work together in good faith to further amend your Employment Agreement (as amended by this Agreement) to align the terms thereof (and compensation paid thereunder) with market standards for executives at similarly-situated companies, subject to approval of such amendments by the Board as then-constituted (with such approval not to be unreasonably withheld or delayed).
 3. If the Merger Agreement terminates without Closing, or if your employment with the Company terminates before the Closing Date under any circumstances, this Letter Agreement shall thereupon automatically be null and void and without effect.
 4. All of the terms and conditions of your Employment Agreement that are not expressly changed by this Letter Agreement shall remain in full force and effect in accordance with their terms; provided that in the event of any conflict between your Employment Agreement and this Letter Agreement, the terms and conditions of this Letter Agreement shall control.
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5. This Letter Agreement shall be governed by and construed in accordance with Nevada law and the parties hereto irrevocably agree that the courts of Nevada are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Letter Agreement. You hereby irrevocably waive and covenant not to assert or plead, any objection which you might otherwise have to such jurisdiction.
6. This Letter Agreement is binding upon and shall inure to the benefit of your heirs, executors and legal representatives in the event of your death, and to the benefit of any successors of the Company, including Acquiror. Any such successor of the Company will be deemed substituted for the Company under any terms of this Letter Agreement for purposes of enforcing the rights of the Company hereunder.
7. This Letter Agreement is irrevocable and may not be amended or otherwise modified without prior written consent from both you and the Company. The Parties acknowledge and agree that Acquiror is an intended third-party beneficiary of this Letter Agreement, and that Acquiror may enforce the terms of this Letter Agreement, and that, notwithstanding Section 6, no amendment, waiver or modification of this Letter Agreement (or of any of the terms hereof) shall be effective without the prior written consent of Acquiror. The Parties further acknowledge and agree that Acquiror is relying on the agreements, representations, warranties and covenants made by each of the Parties in this Letter Agreement, and that such agreements, representations, warranties and covenants constitute a material inducement to Acquiror entering into the Merger Agreement and consummating the transactions contemplated therein.
8. You hereby authorize the Company to deliver a copy of this Letter Agreement to Acquiror and hereby agree that the Company and Acquiror may rely upon such delivery as conclusively evidencing the covenants referred to in Sections 1 and 2 for purposes of all agreements and instruments to which such covenants are applicable or relevant.
9. This Letter Agreement may be executed in counterparts, each of which shall be deemed an original and when taken together shall constitute one and the same document. Delivery of an executed counterpart's signature page of this Letter Agreement, by facsimile, electronic mail in portable document format (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Letter Agreement.

[Signature page follows]

Sincerely,

Dragonfly Energy Corp.

/s/ Luisa Ingargiola

By: Luisa Ingargiola

Title: Compensation Committee Chair

Date: May 15, 2022

AGREED TO AND ACCEPTED BY:

/s/ Sean Nichols

Name: Sean Nichols

Date: May 15, 2022

Dragonfly Energy Corp, Inc.
Employment Agreement for Chief Financial Officer

This AGREEMENT, made and entered into as of AUG 17, 2021 by and between Dragonfly Energy Corp, a Nevada corporation (together with its successors and assigns permitted under this Agreement, the "Company"), and John Marchetti (the "Executive" or the "Employee").

W I T N E S S E T H :

WHEREAS, the Company desires to employ the Executive pursuant to an agreement embodying the terms of such employment (this "Agreement") and the Executive desires to enter into this Agreement and to accept such employment, subject to the terms and provisions of this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein and for other good and valuable consideration, the receipt of which is mutually acknowledged, the Company and the Executive (individually a Party and together the Parties) agree as follows:

1. Definitions.
 - (a) Dragonfly Energy Corp 2019 Stock Incentive Plan shall have the meaning set forth in SECTION 6 below.
 - (b) Base Salary shall have the meaning set forth in SECTION 4 below.
 - (c) Board shall mean the Board of Directors of the Company.
 - (d) Cause shall have the meaning set forth in SECTION 10(b) below.
 - (e) Change in Control shall be deemed to have occurred as of the first day that any one or more of the following conditions is satisfied:

(i) Any person or group (within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the Exchange Act)), other than the Company, any subsidiary of the Company, the Executive, or any of their respective Affiliates (each, an Affiliated Entity), becomes the beneficial owner (as that term is defined in Rule 13d-3 under the Exchange Act) of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities ordinarily (and apart from rights accruing under special circumstances) having the right to vote in the election of directors;

(ii) any one of the following occurs: (A) any merger or consolidation of the Company with or into another entity (other than an Affiliated Entity), except a merger or consolidation (x) in which persons who were stockholders of the Company immediately prior to the merger or consolidation own, immediately thereafter, directly or indirectly, more than 20% of the combined voting power ordinarily (and apart from rights accruing under special circumstances) having the right to vote in the election of directors of the continuing or surviving entity or (y) in which the directors of the Company immediately prior to such merger or consolidation would, immediately thereafter, constitute at least a majority of the directors of the continuing or surviving entity; (B) any sale, exchange, lease, transfer or other disposition (in a single transaction or a series of related transactions) of all or substantially all of the assets of the Company on a consolidated basis to any person or group other than an Affiliated Entity; or (C) any complete liquidation or dissolution of the Company; or

(iii) individuals who, during any period of 12 consecutive months, are members of the Board of Directors of the Company at the beginning of such period (the Existing Directors), cease, for any reason, to constitute a majority of the number of directors of the Company as determined in the manner prescribed in the Company's Certificate of Incorporation and Bylaws; provided, however, that if the election or nomination for election of any new director was approved by a vote of at least 50% of the Existing Directors, such new director shall be considered an Existing Director.

- (f) Confidential Information shall have the meaning set forth in SECTION 11 below.
 - (g) Constructive Termination Without Cause shall have the meaning set forth in SECTION 10(C) below.
 - (h) Effective Date shall have the meaning set forth in SECTION 2 below.
 - (i) MIP shall have the meaning set forth in SECTION 5 below.
 - (j) Restriction Period shall have the meaning set forth in SECTION 12 below.
 - (k) Severance Period shall have the meaning set forth in SECTION 10(C)(II) below.
 - (l) Subsidiary shall have the meaning set forth in SECTION 11 below.
 - (m) Term of Employment shall have the meaning set forth in SECTION 2 below.
 - (n) Termination Without Cause shall have the meaning set forth in SECTION 10(C) below.
2. Term of Employment.

(a) The term of the Executive's employment under this Agreement shall commence on August____, 2021 (the "Effective Date") and end on the third anniversary of such date, unless Executive's employment ceases earlier pursuant to the terms of this Agreement (the Term of Employment).

(b) Notwithstanding anything in this Agreement to the contrary, at least 90 days prior to the expiration of the Term of Employment, the Parties shall meet to discuss this Agreement and attempt to negotiate a mutually acceptable new employment agreement or amendment to this Agreement, governing the period subsequent to the Term of Employment. Nothing in this SUBPARAGRAPH 2(B) shall obligate Company or Executive to enter into a new employment agreement or an amendment of this Agreement.

3. Position, Duties and Responsibilities.

(a) Generally, Executive shall serve as President of the Company's Chief Financial Officer reporting to the Company's Chief Executive Officer at the Company's office located at 1190 Trademark Dr Suite 108, Reno, NV 89521. Executive shall have and perform such duties, responsibilities, and authorities as shall be reasonably assigned by the Company from time to time and as are consistent with the above-mentioned position, which may be modified as the Company and Executive deem necessary in their reasonable discretion. Executive shall devote substantially all of Executive's business time and attention (except for periods of vacation or absence due to illness), and Executive's best efforts, abilities, experience, and talent to Executive's position and the businesses of the Company in accordance with all Company policies.

(b) Other Activities. Anything herein to the contrary notwithstanding, nothing in this Agreement shall preclude the Executive from (i) engaging in reasonable charitable activities and community affairs and (ii) managing Executive's personal investments and affairs, provided that such activities do not materially interfere with the proper performance of Executive's duties and responsibilities under this Agreement and not otherwise detrimental to the interests of the Company. Unless approved in writing by the Board of the Company, such approval not to be unreasonably withheld, the Executive may not serve on the board of directors of any corporation or the board of any association and/or charitable organization.

4. Base Salary.

The Executive shall be paid an annualized salary, payable in accordance with the regular payroll practices of the Company, of not less than \$300,000 annually, less applicable withholdings, subject to annual review thereafter at the start of each fiscal year for increase at the discretion of the Compensation Committee of the Board ("Base Salary"). Executive's first annual review is expected to occur on or about August 1, 2022. Base Salary at any time shall not be reduced by more than ten percent (10%).

5. Annual Incentive Awards.

(a) Subject to the terms and conditions of the plan that shall govern eligibility and participation, Executive shall participate in the Company's Management Incentive Plan each year during the Term of Employment (the MIP) with a target annual incentive award opportunity of no less than \$75,000 each quarter. Payment of quarterly incentive awards shall be made at the same time that other participants in the MIP receive their incentive awards.

6. Long-Term Stock Incentive Programs.

(b) General/Options. Subject to the terms and conditions of the Dragonfly Energy Corp, Inc. 2019 Stock Incentive Plan governing eligibility and participation, Executive shall be eligible to participate in and to receive stock incentive awards under the 2019 Stock Incentive Plan and any successor plan. Executive shall also receive an initial stock option grant of 200,000 stock options at an exercise price equal to the most recent 409A Valuation on the day of the Effective Date. Such stock options shall vest in four equal installments on each of the 1st, 2nd, 3rd and 4th anniversaries of the Effective Date.

7. Employee Benefit Programs; Relocation.

(c) During the Term of Employment, the Executive shall be entitled to participate in such employee pension and welfare benefit plans and programs of the Company as are made available to the Company's employees generally, as such plans or programs may be in effect or modified from time to time, including, without limitation, health, medical, dental, long-term disability, life insurance, 401(k) with Company match and employee discounts. Executive will be eligible for four (4) weeks paid vacation as well as Company observed holidays, five (5) sick days and three (3) personal days in accordance with Company policy. The terms of the Company's official plan documents shall govern the terms of Executive's eligibility and participation in Company's benefit plans.

8. Disability.

(a) During the Term of Employment, and subject to the terms and conditions on eligibility and participation as set forth in the Company's Long-Term Disability Plan documents, the Executive shall be entitled to disability coverage as described in this SECTION 8(A). In the event the Executive becomes disabled, as that term is currently defined under the Company's LONG-TERM DISABILITY PLAN the Executive shall be entitled to receive benefits pursuant to the Company's LONG-TERM DISABILITY PLAN, in place of Executive's Base Salary and any other employee benefits other than for disabled employees in an amount pursuant to the Company's LONG-TERM DISABILITY PLAN in effect at the commencement date of the disability ("Commencement Date") for a period beginning on the Commencement Date and ending with the Executive's attainment of age 65. If (i) the Executive ceases to be disabled (as determined in accordance with the terms of the LONG-TERM DISABILITY PLAN) during the Term of Employment, (ii) Executive's position or another senior executive position is then vacant and (iii) the Company requests in writing that Executive resume such position, Executive may elect to resume such position by written notice to the Company within 15 days after the Company delivers its request. If Executive resumes such position, Executive shall thereafter be entitled to Executive's Base Salary at the annual rate in effect at the Commencement Date and, for the year Executive resumes Executive's position, a pro rata annual incentive award and to participate in any other employee benefit programs outlined in SECTION 6 AND 7 of this Agreement that are then in effect. If Executive ceases to be disabled and does not resume Executive's position in accordance with the preceding sentence, Executive shall be treated as if Executive voluntarily terminated Executive's employment pursuant to SECTION 10(E) as of the date the Executive ceases to be disabled. If the Executive is not offered Executive's position or another executive position after Executive ceases to be disabled during the Term of Employment, Executive shall be treated as if Executive's employment was terminated without Cause pursuant to SECTION 10(C) as of the date the Executive ceases to be disabled.

(b) Subject to the applicable plan documents, during the period the Executive is receiving disability benefits pursuant to SECTION 8(a) above, Executive shall continue to be treated as an employee for purposes of all employee benefits and entitlements in which Executive was participating on the Commencement Date, including without limitation, the benefits and entitlements referred to in SECTIONS 6 AND 7 above, except that the Executive shall not be entitled to receive any annual salary increases or any new stock incentive awards following the Commencement Date.

9. Reimbursement of Business and Other Expenses.

The Executive is authorized to incur reasonable expenses in carrying out Executive's duties and responsibilities under this Agreement, and the Company shall promptly reimburse Executive for all business expenses incurred in connection therewith, subject to documentation in accordance with the Company's travel and expense reimbursement policy.

10. Termination of Employment.

(a) Termination Due to Death. In the event the Executive's employment with the Company is terminated due to Executive's death, Executive's estate or Executive's beneficiaries, as the case may be, shall be entitled to and their sole contractual remedies under this Agreement shall be:

- (i) Base Salary through the date of death, which shall be paid in a single lump sum not later than 15 days following the Executive's death;
- (ii) the right to exercise all outstanding stock options that are vested as of the date of death for a period of one year following death or for the remainder of the exercise period, if less;
- (iii) the restrictions shall lapse on all shares of restricted stock awarded where restrictions have not yet lapsed; and
- (iv) other or additional benefits then due or earned in accordance with applicable plans and programs of the Company.

(b) Termination by the Company for Cause.

(i) "Cause" shall mean:

(A) Executive's conviction of, entrance of a plea of guilty or nolo contendere to, a felony unless the Executive's conduct is so plainly severe or the threat to the Company's reputation that in the Company's reasonable business judgment requires the Company to terminate the Executive immediately in its reasonable discretion or business judgment; or

(B) fraudulent conduct by Executive in connection with the business affairs of the Company; or

(C) theft, embezzlement, or other criminal misappropriation of funds by Executive from the Company (other than good faith expense account disputes); or

(D) Executive's willful misconduct, which has, or would if generally known, material adversely affect the goodwill, business, or reputation of the Company; or

(E) Executive's material breach of this Agreement that is not cured within fifteen (15) days of receipt of written notice from the Company detailing such alleged material breach.

For purposes of this Agreement, an act or failure to act on Executive's part shall be considered "willful" if it was done or omitted to be done by Executive not in good faith, and shall not include any act or failure to act resulting from any incapacity of Executive.

(ii) In the event the Company terminates the Executive's employment for Cause, Executive shall be entitled to and Executive's sole remedies under this Agreement shall be:

(A) Base Salary through the date of the termination of Executive's employment for Cause, which shall be paid in a single lump sum not later than 15 days following the Executive's termination of employment; and

(B) other or additional benefits, to the extent then due or earned in accordance with applicable plans or programs of the Company.

(c) Termination Without Cause or Constructive Termination Without Cause. In the event the Executive's employment with the Company is terminated without Cause (which termination shall be effective as of the date specified by the Company in a written notice to the Executive), other than due to death, or in the event there is a Constructive Termination Without Cause (as defined below), the Executive shall be entitled to and Executive's sole remedies under this Agreement shall be:

(i) Base Salary through the date of termination of the Executive's employment, which shall be paid in a single lump sum not later than 15 days following the Executive's termination of employment;

(ii) Base Salary, at the annualized rate in effect immediately prior to the date of communication (verbal or otherwise) from Company to Executive of termination of the Executive's employment (or in the event a reduction in Base Salary is the basis for a Constructive Termination Without Cause, then the Base Salary in effect immediately prior to such reduction), for a period of 6 months following such termination to be paid, less applicable withholdings, in accordance with the Company's standard payroll cycle (the Initial Severance Period) to the extent that such payment is non-qualified deferred compensation as defined in Code Section 409A (as defined below) such payments to commence on the sixtieth (60th) day following the Executive's termination of employment; provided that if and only if for the seventh (7th) month through the end of the twelfth (12th) month after termination or the portion thereof that Executive does not engage in Competition with the Company as defined in SECTION 12 below (the "Secondary Severance Period"), then Executive shall receive Base Salary for the Secondary Severance Period in the same manner as paid for the Initial Severance Period; provided further that the salary continuation payment under this Section 10(c)(ii) shall be in lieu of any salary continuation arrangements under any other severance program of the Company or any other agreement between the Executive and the Company;

(iii) (A) all unvested stock options shall vest as of the date of termination and (B) the right to exercise all outstanding stock options that are vested as of the date of termination during the 90-day period following termination or for the remainder of the exercise period, if less;

(iv) continued participation in all medical, and dental plans at the same benefit and rate level at which Executive was participating on the date of the termination of Executive's employment, subject to the terms and conditions of the official plan documents, until the and the end of the Severance Period with the continuation under this section being provided through COBRA;

(v) if the termination occurs within seven (7) days of the payment of a quarterly bonus, the MIP Payment to be paid in a single lump sum not later than fifteen (15) days after termination; and

(vi) other or additional benefits then due or earned in accordance with applicable plans and programs of the Company.

“Termination Without Cause” shall mean the Executive’s employment is terminated by the Company for any reason other than Cause (as defined in SECTION 10 (B)) or due to death.

“Constructive Termination Without Cause” shall mean a termination of the Executive’s employment at Executive’s initiative as provided in this SECTION 10(C) following the occurrence, without the Executive’s written consent, of one or more of the following events (except as a result of a prior termination):

(A) a material diminution in Executive’s authority, duties or job responsibilities;

(B) a material diminution in annual Base Salary; or

(C) a change in the geographic location in which the Executive performs the functions set forth in SECTION 3(A) above by more than 50 miles from 1190 Trademark Dr Suite 108, Reno, NV 89521; or

(D) a failure by the Company to perform any material obligation under, or breach by the Company of any material provision of, this Agreement that is not cured within 30 days of receipt of written notice from Executive, including, but not limited to, the provisions of SECTIONS 3(A) AND 5(A) and the last sentence of SECTION 4.

The Executive must provide notice to the Company of the condition described in (A), (B), (C) or (D) above within a period not to exceed 120 days of the initial existence of the condition, upon the notice of which the Company shall be provided 30 days during which it may remedy the condition and not be required to pay any amount pursuant to SECTION 10(C). In addition, the Executive must terminate employment with the Company within 120 days after the initial existence of the condition.

(d) Change in Control. In the event the Executive’s employment with the Company is terminated without Cause (which termination shall be effective as of the date specified by the Company in a written notice to the Executive), other than due to death, or in the event there is a Constructive Termination Without Cause (as defined above), in either case within one (1) year following a Change in Control, the Executive shall be entitled to and Executive’s sole remedies under this Agreement shall be:

(i) Base Salary through the date of termination of the Executive’s employment, which shall be paid in a single lump sum not later than 15 days following the Executive’s termination of employment;

(ii) Base Salary, at the annualized rate in effect immediately prior to the date of communication (verbal or otherwise) from Company to Executive of termination of the Executive’s employment (or in the event a reduction in Base Salary is the basis for a Constructive Termination Without Cause, then the Base Salary in effect immediately prior to such reduction), for a period of 6 months following such termination to be paid, less applicable withholdings, in accordance with the Company’s standard payroll cycle (the Initial SECTION 10 (D) Severance Period); provided that if and only if for the Secondary Severance Period Executive does not engage in Competition with the Company as defined in Section 12 below, then Executive shall receive Base Salary for the Secondary Severance Period in the same manner as paid for the Initial SECTION 10(D) Severance Period; provided further that the salary continuation payment under this SECTION 10(D)(II) shall be in lieu of any salary continuation arrangements under any other severance program of the Company or any other agreement between the Executive and the Company;

(iii) (A) all unvested options shall vest as of the date of termination; and (B) the right to exercise all outstanding stock options that are vested as of the date of termination during the ninety (90) day period following termination or for the remainder of the exercise period if less;

(iv) continued participation in all medical, and dental plans at the same benefit and rate level at which Executive was participating on the date of the termination of Executive's employment, subject to the terms and conditions of the official plan documents, until the end of the Section 10 (d) Severance Period with the continuation under this section being provided through COBRA;

(v) if the termination occurs within seven (7) days prior to an MIP Payment to be paid in a single lump sum not later than fifteen (15) days after termination; and

(vi) other or additional benefits then due or earned in accordance with applicable plans and programs of the Company.

(e) Voluntary Termination.

(i) In the event of a termination of employment by the Executive on Executive's own initiative after delivery of 60 days advance written notice, other than a termination due to death or Constructive Termination Without Cause, the Executive shall have the same entitlements as provided in SECTION 10(B)(II) above for a termination for Cause. Notwithstanding any implication to the contrary, the Executive shall not have the right to terminate Executive's employment with the Company during the Term of Employment except in the event of a Constructive Termination Without Cause. Any voluntary termination of employment during the Term of Employment shall entitle the Executive to the same entitlements as provided in SECTION 10(B)(II) above for a termination for Cause. In the event the Executive becomes disabled, as that term is defined under the Company's Long Term Disability Plan, the Executive's termination of employment shall be governed by the terms of SECTION 8 of this Agreement.

(f) No Mitigation; No Offset. In the event of any termination of employment under this Section 10, the Executive shall not be obligated to seek other employment; amounts due the Executive under this Agreement shall not be offset by any remuneration attributable to any subsequent employment that Executive may obtain.

(g) Nature of Payments. Any amounts due under this SECTION 10 are in the nature of severance payments considered to be reasonable by the Company and are not in the nature of a penalty.

(h) Exclusivity of Severance Payments; Remedies Under this Agreement. Upon termination of the Executive's employment during the Term of Employment, other than amounts due as provided in this SECTION 10, Executive shall not be entitled to any severance payments or severance benefits from the Company. Should Executive accept such severance payments, such payment shall be in lieu of any payments by the Company on account of any claim by Executive of wrongful termination, including, but not limited to, claims under any federal, state or local human and civil rights or labor laws. The parties agree that the phrase "sole remedies under this Agreement" as used in this Agreement does not include any statutory or common law remedies as to which Executive is be entitled to pursue provided Executive does not accept any payment under this SECTION 10.

(i) Release of Employment Claims. The Executive agrees, as a condition to receipt of the termination payments and benefits provided for in this SECTION 10, that Executive will execute (and not revoke) a release agreement within the time period required by the Company and applicable law, in a form reasonably satisfactory to the Company and the Executive, releasing any and all claims arising out of the Executive's employment (other than enforcement of this Agreement).

11. Confidentiality; Cooperation with Regard to Litigation.

(a) During the Term of Employment and thereafter, the Executive shall not, without the prior written consent of the Company, disclose to anyone or make use of any Confidential Information, except when required to do so in the normal course of conducting business on behalf of the Company, by legal process, by any governmental agency having supervisory authority over the business of the Company or by any administrative or legislative body (including a committee thereof) that requires Executive to divulge, disclose or make accessible such information. In the event that the Executive is so ordered, Executive shall give prompt prior written notice to the Company in order to allow the Company the opportunity to object to or otherwise resist such order and consents and will not object to the Company's standing to consent or seek protection relating to any such order.

(b) During the Term of Employment and thereafter, Executive shall not disclose the existence or contents of this Agreement beyond what is disclosed in the proxy statement or documents filed with the government unless and to the extent such disclosure is required by law, by a governmental agency, or in a document required by law to be filed with a governmental agency or in connection with enforcement of her rights under this Agreement. In the event that disclosure is so required, the Executive shall give prompt prior written notice to the Company in order to allow the Company the opportunity to object to or otherwise resist such requirement. This restriction shall not apply to such disclosure by Executive to members of Executive's immediate family, Executive's tax, legal or financial advisors, any lender or tax authorities or to potential future employers to the extent necessary, each of whom shall be advised not to disclose such information. Similarly, Executive acknowledges that the Company shall have the right to advise potential or actual future employers of Executive of her post-employment obligations under this Agreement.

(c) "Confidential Information" shall mean all information that is not known or available to the public concerning the business of the Company or any Subsidiary relating to any of their products, product development, designs, costing, marketing plans and strategies, expansion plans and strategies, trade secrets, customers, suppliers, finances, and business plans and strategies. For this purpose, information known or available generally within the trade or industry of the Company or any Subsidiary shall be deemed to be known or available to the public. Confidential Information shall include information that is, or becomes, known to the public as a result of a breach by the Executive of the provisions of Section 11(a) above.

- (d) “Subsidiary” shall mean any corporation controlled directly or indirectly by the Company and any affiliate of the Company.
- (e) At any time during the Term of Employment when requested by the Company, or immediately upon Executive's cessation of employment with the Company, Executive shall return all Company property to the Company, including, without limitation all Company issued computers, laptops, PDAs, Blackberries or other Company property or Confidential Information.
- (f) The Executive agrees to cooperate with the Company, during the Term of Employment and thereafter (including following the Executive's termination of employment for any reason), by making herself available to testify on behalf of the Company or any Subsidiary or affiliate of the Company, in any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and to assist the Company, or any Subsidiary or affiliate of the Company, in any such action, suit, or proceeding, by providing information and meeting and consulting with the Board or its representatives or counsel, or representatives or counsel to the Company, or any Subsidiary or affiliate of the Company, requesting Executive's provision of testimony or assistance. Notwithstanding anything to the contrary herein, Executive shall only be obligated to comply with this SECTION 11(F) if such cooperation or assistance does not materially interfere with her professional or personal obligations and the Company secures at its own cost, reasonable travel and lodging expenses to be incurred by Executive in providing such cooperation and assistance.

12. Non-competition.

- (a) During the Restriction Period (as defined in SECTION 12(B) below) and in consideration for any payments pursuant to SECTION 10, the Executive shall not engage in Competition with the Company or any Subsidiary. “Competition” shall mean engaging in any activity, except as provided below, for a Competitor of the Company or any Subsidiary, whether as an employee, consultant, principal, agent, officer, director, partner, shareholder (except as a less than one percent shareholder of a publicly traded company) or otherwise. A “Competitor” shall mean any other lithium battery manufacturer or retailer which principally markets or sells in the United States (a “Competitive Business”). If the Executive commences employment or becomes a consultant, principal, agent, officer, director, partner, or shareholder of any entity that is not a Competitor at the time the Executive initially becomes employed or becomes a consultant, principal, agent, officer, director, partner, or shareholder of the entity, future activities of such entity shall not result in a violation of this provision unless (x) such activities were contemplated at the time the Executive initially became employed or becomes a consultant, principal, agent, officer, director, partner, or shareholder of the entity (and the contemplation of such activities was known to the Executive) or (y) the Executive commences directly or indirectly overseeing or managing the activities which are competitive with the activities of the Company or Subsidiary.
- (b) For the purposes of this SECTION 12 and SECTION 13 below, “Restriction Period” shall mean the period beginning with the Effective Date and ending twelve (12) months after termination.
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13. Non-solicitation

(a) Employees. During the Restriction Period, Executive shall not induce and/or solicit employees of the Company or any Subsidiary to terminate their employment. During the portion of the Restriction Period following the termination of the Executive's employment, the Executive shall not directly or indirectly hire any employee of the Company or any Subsidiary or any person who was employed by the Company or any Subsidiary within 180 days of such hiring.

(b) Vendors/Business Partners. Executive promises and agrees that during the Restriction Period, Executive will not influence or attempt to influence vendors, or business partners of the Company or any of its present or future subsidiaries, either directly or indirectly, to divert from the Company their business to any individual, partnership, firm, corporation or other entity then in competition with the business of the Company or any subsidiary or the Company.

14. Remedies.

In addition to whatever other rights and remedies the Company may have at equity or in law, if the Executive breaches any of the provisions contained in SECTIONS 11, 12 OR 13 above or any other obligations of Executive to the Company under this Agreement, the Company (a) shall have the right to immediately terminate all payments and benefits due under this Agreement (b) shall have the right to seek injunctive relief without the necessity for posting a bond and (c) shall have the right to seek attorneys' fees and costs associated with enforcing its rights under this Agreement. The Executive acknowledges that such a breach would cause irreparable injury and that money damages would not provide an adequate remedy for the Company and that the Company retains its rights to seek all other available relief in addition to the relief set forth in this Section.

15. Resolution of Disputes.

Any disputes arising under or in connection with this Agreement shall be submitted to the federal or state courts in the State of Nevada, Washoe County. Pending the resolution of any court proceeding, the Company shall continue payment of all amounts and benefits due the Executive under this Agreement.

16. Indemnification.

(a) Company Indemnity. The Company agrees that if the Executive is made a party, or is threatened to be made a party, to any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that Executive is or was a director, officer or employee of the Company or any Subsidiary or is or was serving at the request of the Company or any Subsidiary as a director, officer, member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether or not the basis of such Proceeding is the Executive's alleged action in an official capacity while serving as a director, officer, member, employee or agent, the Executive shall be defended in the first instance at the Company's sole cost and expense, indemnified and held harmless by the Company to the fullest extent legally permitted or authorized by the Company's certificate of incorporation or bylaws or resolutions of the Company's Board of Directors or, if greater, by the laws of the State of Delaware, against all cost, expense, liability and loss (including, without limitation, attorney's fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by the Executive in connection therewith, and such indemnification shall continue as to the Executive even if Executive has ceased to be a director, member, officer, employee or agent of the Company or other entity and shall inure to the benefit of the Executive's heirs, executors and administrators.

(b) No Presumption Regarding Standard of Conduct. Neither the failure of the Company (including its board of directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of any proceeding concerning payment of amounts claimed by the Executive under Section 16(a) above that indemnification of the Executive is proper because Executive has met the applicable standard of conduct, nor a determination by the Company (including its board of directors, independent legal counsel or stockholders) that the Executive has not met such applicable standard of conduct, shall create a presumption that the Executive has not met the applicable standard of conduct.

(c) Liability Insurance. The Company agrees to continue and maintain a directors and officers liability insurance policy covering the Executive to the extent the Company provides such coverage for its other executive officers.

17. Effect of Agreement on Other Benefits.

Except as specifically provided in this Agreement, the existence of this Agreement shall not be interpreted to preclude, prohibit or restrict the Executive’s participation in any other employee benefit or other plans or programs in which Executive currently participates.

18. Assignability; Binding Nature.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, heirs (in the case of the Executive) and permitted assigns. No rights or obligations of the Company under this Agreement may be assigned or transferred by the Company except that such rights or obligations may be assigned or transferred to a subsidiary of the Company or in connection with the sale or transfer of all or substantially all of the assets of the Company, provided that the assignee or transferee is the successor to all or substantially all of the assets of the Company and such assignee or transferee assumes the liabilities, obligations and duties of the Company, as contained in this Agreement, either contractually or as a matter of law. The Company further agrees that, in the event of a sale or transfer of assets as described in the preceding sentence, it shall use reasonable efforts in order to cause such assignee or transferee to expressly assume the liabilities, obligations and duties of the Company hereunder. No rights or obligations of the Executive under this Agreement may be assigned or transferred by the Executive other than Executive’s rights to compensation and benefits, which may be transferred only by will or operation of law, except as provided in SECTION 24 below.

19. Representation.

Each Party represents and warrants that it is fully authorized and empowered to enter into this Agreement and that the performance of its obligations under this Agreement will not violate any agreement between it and any other person, firm or organization.

20. Entire Agreement.

This Agreement contains the entire understanding and agreement between the Parties concerning the subject matter hereof and supersedes all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, between the Parties with respect thereto.

21. Amendment or Waiver.

No provision in this Agreement may be amended unless such amendment is agreed to in writing and signed by the Executive and an authorized officer of the Company. No waiver by either Party of any breach by the other Party of any condition or provision contained in this Agreement to be performed by such other Party shall be deemed a waiver of a similar or dissimilar condition or provision at the same or any prior or subsequent time. Any waiver must be in writing and signed by the Executive or an authorized officer of the Company, as the case may be.

22. Severability and Modification.

In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, in whole or in part, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law. In the event that a court or other tribunal determines that the restraints in SECTIONS 11, 12 AND 13 are in any way overbroad or unenforceable, the Parties acknowledge and agree that the court or tribunal shall have the right to modify or sever the restraints in order to enforce them to the fullest extent permitted by applicable law.

23. Survivorship.

The respective rights and obligations of the Parties hereunder shall survive any termination of the Executive's employment to the extent necessary to the intended preservation of such rights and obligations.

24. Beneficiaries/References.

The Executive shall be entitled, to the extent permitted under any applicable law, to select and change a beneficiary or beneficiaries to receive any compensation or benefit payable hereunder following the Executive's death by giving the Company written notice thereof. In the event of the Executive's death or a judicial determination of Executive's incompetence, reference in this Agreement to the Executive shall be deemed, where appropriate, to refer to Executive's beneficiary, estate or other legal representative.

25. Governing Law/Jurisdiction.

This Agreement shall be governed by and construed and interpreted in accordance with the laws of Nevada without reference to principles of conflict of laws. Subject to SECTION 15, the Company and the Executive hereby consent to the exclusive jurisdiction of any or all of the following courts for purposes of resolving any dispute under this Agreement: (i) the United States District Court for the District of Nevada and (ii) the Second Judicial District Court of the State of Nevada, Washoe County. The Company and the Executive hereby waive, to the fullest extent permitted by applicable law, any objection which it or he may now or hereafter have to such jurisdiction and any defense of inconvenient forum.

26. Notices.

Any notice given to a Party shall be in writing and shall be deemed to have been given when delivered personally or sent by certified or registered mail, postage prepaid, return receipt requested, or via nationally recognized overnight courier prepaid, duly addressed to the Party concerned at the address indicated below or to such changed address as such Party may subsequently give such notice of:

If to the Company:

Dragonfly Energy Corp., Inc.
Attn: Denis Phares
1190 Trademark Dr Suite 108
Reno, NV 89521

If to the Executive:

John Marchetti

27. Headings.

The headings of the sections contained in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

28. Counterparts

This Agreement may be executed in two or more counterparts.

29. Tax Matters

(a) Tax Withholding. The Company shall withhold from any amounts payable under this Agreement such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

(b) Section 409A Compliance. The intent of the parties is that payments and benefits under this Agreement comply with Internal Revenue Code Section 409A and the regulations and guidelines promulgated thereunder (collectively “Code Section 409A”) and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted to be in compliance therewith. If Executive notifies the Company (with specificity as to the reason therefore) that Executive believes that any provision of this Agreement (or of any award of compensation, including equity compensation or benefits) would cause Executive to incur any additional tax or interest under Code Section 409A, the Company shall, after consulting with Executive, reform such provision to try to comply with Code Section 409A through good faith modifications to the minimum extent reasonably appropriate to conform with Code Section 409A. To the extent that any provision hereof is modified in order to comply with Code Section 409A, such modification shall be made in good faith and shall, to the maximum extent reasonably possible, maintain the original intent and notifies the Company (with specificity as to the reason therefore) that Executive believes that any provision of this Agreement (or of any award of compensation, including equity compensation or benefits) would cause Executive to incur any additional tax or interest under Code Section 409A, the Company shall, after consulting with Executive, reform such provision to try to comply with Code Section 409 A through good faith modifications to the minimum extent reasonably appropriate to conform with Code Section 409A. To the extent that any provision hereof is modified in order to comply with Code Section 409A, such modification shall be made in good faith and shall, to the maximum extent reasonably possible, maintain the original intent and economic benefit to Executive and the Company of the applicable provision without violating the provision of Code Section 409A.

(c) Special Section 409A Rules. This paragraph shall apply to all or any portion of any payment or benefit payable under the Agreement as a result of termination of Executive's employment that is not exempted from Code Section 409A ("409A Severance Compensation").

(i) Separation from Service. If the termination of the Employee's employment does not qualify as a "separation from service" within the meaning of Treasury Regulation section 1.409A-1(h) from the "Company's Controlled Group", then any 409A Severance Compensation will not commence until a "separation from service" occurs or, if earlier, the earliest other date as is permitted under Code Section 409A. For this purpose, the "Company's Controlled Group" means the Company (i) any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Company and (ii) any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Company.

(ii) Six-Month Delay for "Specified Employees". Notwithstanding any provisions to the contrary in this Agreement, if the Executive is deemed on the date of termination to be a "specified employee" within the meaning of that term under Code Section 409A (a)(2)(B), then with regard to any payment or the provision of any benefit that is specified as subject to this Section, such payment or benefit shall not be made or provided prior to the earlier of (i) the expiration of six (6)-month period measured from the date of Executive's "separation from service" (as such term is defined under Code Section 409A), and (ii) the date of Executive's death (the "Delay Period"). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this SECTION 30(C) (whether they would have otherwise been payable in a single sum or in installments in absence of such delay) shall be reimbursed to the Executive in a lump sum, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

Dragonfly Energy Corp., a Nevada corporation

John Marchetti

By /s/ Denis Phares
Name: Denis Phares
Title: CEO

By /s/ John Marchetti

**DRAGONFLY ENERGY CORP.
2019 STOCK INCENTIVE PLAN**

1. Purpose. The purposes of this 2019 Stock Incentive Plan (this “**Plan**”) of Dragonfly Energy Corp., a Nevada corporation (the “**Company**”) are to provide incentives to attract, retain and motivate Employees, Consultants, and Directors who can make significant contributions to the success of the Company, and to provide incentives that align their interests with those of the Company’s shareholders. This Plan provides for Awards by the Company of (a) grants of Incentive Stock Options, (b) grants of Nonstatutory Stock Options, and (c) grants and sales of Restricted Stock.
2. Definitions. Certain capitalized terms used and not otherwise defined in this Plan have the meanings set forth in Appendix A.
3. Plan Administration.
 - (a) The Administrator.
 - (i) This Plan shall be administered by the Company’s board of directors (the “**Board**”), a committee or subcommittee of the Board (comprised of at least two members of the Board) appointed by the Board to administer the Plan (a “**Committee**”), or a combination thereof, as determined by the Board (as applicable, the “**Administrator**”). This Plan may be administered by different Administrators with respect to different activities and/or different classes of Participants.
 - (ii) If a Committee has been appointed, the Committee shall continue to serve in the capacity determined by the Board until the Board determines otherwise. The Board may change the size of the Committee, appoint additional members, remove members (with or without cause), appoint substitute members, fill vacancies (however caused), and dissolve the Committee and thereafter directly administer this Plan, all to the extent permitted by Applicable Laws and in the case of a Committee administering this Plan in accordance with the requirements of Rule 16b-1 of the Exchange Act or Section 162(m) of the Code, to the extent permitted by such provisions.
 - (iii) To the extent permitted by Applicable Laws, the Administrator may delegate its authority under this Plan to one or more officers of the Company within parameters set by the Administrator. Any authority so granted shall be in addition to, and not in lieu of, the authority of the Administrator under this Plan.
 - (b) Powers of the Administrator.
 - (i) Subject to the terms and conditions expressly set forth in this Plan and to the extent permitted by Applicable Laws (and in the case of a Committee, subject to the resolutions of the Board and to the extent of the specific duties delegated by the Board), the Administrator shall have full power and exclusive authority, in its sole discretion to:
 - (1) select the Employees, Consultants, and Directors to whom Awards may be granted from time to time;
 - (2) determine the type or types of Awards to be granted to each Participant;
 - (3) determine the number of Shares subject to each Award;
 - (4) determine Fair Market Value, provided that such determination shall be applied consistently with respect to Participants under this Plan;

(5) determine the terms and conditions of any Award, including without limitation the exercise or purchase price, the time or times when Awards may vest and/or be exercised (which may be based on length of Continuous Service, performance criteria, and/or other factors), the circumstances (if any) when vesting will be accelerated or forfeiture restrictions will be waived, and any restriction or limitation regarding any Award, Optioned Stock, or Restricted Stock;

(6) approve the forms of notice or agreement for making Awards under this Plan;

(7) amend any outstanding Award or agreement related to any Optioned Stock or Restricted Stock, including any amendment adjusting vesting (e.g., in connection with a change in the terms or conditions under which such person is providing services to the Company), provided that no amendment shall be made that would materially and adversely affect the rights of any Participant without such Participant's consent;

(8) determine whether, to what extent, and under what circumstances Awards may be settled in cash, Shares, or other property;

(9) determine whether, to what extent, and under what circumstances Awards may be settled, suspended, or canceled;

(10) subject to Applicable Laws, to implement an Option Exchange Program and establish the terms and conditions of such Option Exchange Program without consent of the holders of capital stock of the Company, provided that no amendment or adjustment to an Option that would materially and adversely affect the rights of any Participant shall be made without such Participant's consent;

(11) approve addenda pursuant to Section 15(g) below or grant Awards to, or modify the terms of, any outstanding Award Agreement or any agreement related to any Optioned Stock or Restricted Stock held by Participants who are foreign nationals or employed outside of the United States with such terms and conditions as the Administrator deems necessary or appropriate to accommodate differences in local law, tax policy, or custom that deviate from the terms and conditions set forth in this Plan to the extent necessary or appropriate to accommodate such differences;

(12) construe and interpret this Plan and any instrument constituting, evidencing, or relating to an Award, Option Agreement, Optioned Stock, Restricted Stock, notice, or agreement executed or entered into under this Plan;

(13) promulgate, amend, and rescind such rules, regulations, and procedures as the Administrator deems necessary or appropriate for the proper administration of this Plan;

(14) delegate ministerial duties to such of the Company's officers and employees as the Administrator so determines; and

(15) make any other determination and take any other action that the Administrator deems necessary or appropriate for the proper administration of this Plan.

(ii) Decisions of the Administrator shall be final, conclusive, and binding on all persons, including the Company, Participants, and their respective legal representative, their successors in interest and permitted assigns and upon all other persons claiming by, under, or against any of them.

(c) Indemnification. To the maximum extent permitted by Applicable Laws, each member of the Board and the Committee, if applicable, shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such person in connection with or resulting from any claim, action, suit, or proceeding to which such person may be a party or in which such person may be involved by reason of any action taken or failure to act under this Plan and against and from any and all amounts paid by such person in settlement thereof (provided such settlement has been approved by the Company), or paid by such person in satisfaction of any judgment in any such claim, action, suit, or proceeding against such person, unless such loss, cost, liability, or expense is a result of such person's own willful misconduct or except as expressly provided by statute; provided, however, that within 60 days after institution of any such action, suit, or proceeding, such person shall offer in writing the Company an opportunity, at its own expense, to handle and defend such action, suit, or proceeding. The foregoing right of indemnification shall be in addition to any other rights of indemnification to which such person may be entitled under the Company's articles of incorporation, bylaws, written agreement, as a matter of law or otherwise, or of any power that the Company may have to indemnify or hold harmless.

4. Term of Plan. This Plan shall become effective upon its adoption by the Board and shall continue in effect for a term of 10 years unless earlier terminated under Section 9 or Section 10. No future Awards may be granted after the term of this Plan, but Awards granted during the term of this Plan shall remain outstanding in accordance with the applicable terms and conditions of such Awards and of this Plan.

5. Shares Subject to this Plan.

(a) Authorized Number of Shares. A maximum of 3,000,000 Shares shall be available for issuance under this Plan, subject to adjustment from time to time as provided in Section 9(a), and except as otherwise provided in Section 5(b). Shares issued under this Plan may be drawn from authorized and unissued Shares or Shares reacquired by the Company.

(b) Share Reavailability. If any Award lapses, expires, terminates, or is canceled prior to the issuance of Shares thereunder, or if Shares are issued under this Plan to a Participant and thereafter are forfeited to or otherwise reacquired by the Company, the Shares subject to such Awards and the forfeited or reacquired Shares shall again be available for issuance under this Plan. Any Shares tendered by a Participant or retained by the Company as full or partial payment to the Company for the purchase price of an Award or to satisfy tax withholding obligations in connection with an Award shall be available for Awards under this Plan. If Shares issued under this Plan are later (i) forfeited to the Company due to a failure to vest or (ii) reacquired by the Company at or less than the original purchase price paid to the Company for the Shares (including, without limitation, upon forfeiture to or repurchase by the Company), then such Shares shall again be available for future issuance under this Plan. The number of Shares available for issuance under this Plan shall not be reduced to reflect any dividends or dividend equivalents that are reinvested into additional Shares or credited as additional Shares subject or paid with respect to an Award.

6. Eligibility.

(a) In General. Nonstatutory Stock Options and Restricted Stock may be granted to natural persons (not entities) who are Employees, Directors, and Consultants. Incentive Stock Options may be granted only to ISO-Eligible Employees.

(b) Ten Percent Shareholders. An ISO-Eligible Employee who is also a Ten Percent Shareholder shall not be granted an Incentive Stock Option unless the Option exercise price is at least 110% of the Fair Market Value of the Shares at the Award Date and the Option is not exercisable after the expiration of five (5) years from the Award Date.

(c) Assumed Awards; Substitute Awards. Notwithstanding any other provision of this Plan to the contrary, the Administrator may, from time to time, cause the Company to assume outstanding awards granted by an Acquired Entity (an “**Assumed Award**”), by either (i) granting an Award under the Plan in replacement of or in substitution for the Assumed Award, or (ii) treating the Assumed Award as if it had been granted under the Plan if the terms of such Assumed Award could be applied to an Award granted under the Plan (in the case of either clause (i) or (ii) above, a “**Substitute Award**”). A Substitute Award shall be allowed if the holder of the Assumed Award would have been eligible to be granted an Award under this Plan if the Acquired Entity had applied the requirements of this Plan to such Assumed Award at the time the Assumed Award’s original grant. The Administrator may also grant Awards under the Plan in settlement of or in substitution for outstanding awards or obligations to make future awards in connection with the acquisition of an Acquired Entity, or an additional interest in an Affiliate.

7. Options.

(a) Grant of Options. The grant of any Option shall exclusively be evidenced by an executed Option Agreement between the Company and the applicable Employee, Consultant, or Director. Any such Option may be subject to vesting and other restrictions determined by the Administrator. The terms and conditions of Option Agreements may differ among individual Awards and Participants.

(b) Types of Options. Each Option shall be designated in the applicable Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. Notwithstanding the foregoing, the Company shall have no liability to any Participant or any other person if an Option designated as an Incentive Stock Option fails to qualify as such at any time or if an Option is determined to constitute “nonqualified deferred compensation” within the meaning of Section 409A of the Code and the terms of such Option do not satisfy the requirements of Section 409A of the Code.

(i) Non-Designation. If the Option Agreement fails to designate an Option as an Incentive Stock Option or a Nonstatutory Stock Option, the Option shall be deemed a Nonstatutory Stock Option.

(ii) Non-ISO-Eligible Employees; Non-Qualification. Notwithstanding any designation described in Section 7(b), (A) any Option granted to a non-ISO-Eligible Employee shall be deemed a Nonstatutory Stock Option, and (B) to the extent any Option does not qualify as an Incentive Stock Option, it shall be deemed a Nonstatutory Stock Option. Further, an Option originally granted as an Incentive Stock Option to an ISO-Eligible Employee shall, without any further action by the Company, convert to a Nonstatutory Stock Option three (3) months following the date the Participant ceases to be an ISO-Eligible Employee but continues to provide Continuous Service in a non-ISO-Eligible Employee capacity.

(iii) ISO \$100,000 Limitation. Notwithstanding any designation described in Section 7(a), to the extent that the aggregate Fair Market Value of stock with respect to which Incentive Stock Options are exercisable for the first time by a Participant during any calendar year (including Options designated as Incentive Stock Options under this Plan and all other options granted to the Participant by the Company, its Parent, or its Subsidiaries under other plans) exceeds \$100,000, such excess options shall be deemed and treated as Nonstatutory Stock Options. For purposes of this Section 7(b)(iii), Options designated as Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Optioned Stock subject to an option shall be determined as of the date of the grant of such Option.

(iv) Shareholder Approval. If the shareholders of the Company do not approve this Plan within 12 months before or after the Board's adoption of this Plan (or the Board's adoption of any amendment to this Plan that constitutes the adoption of a new plan for purposes of Section 422 of the Code), then any Options designated as Incentive Stock Options shall be deemed Nonstatutory Stock Options.

(c) Option Term. Subject to earlier termination in accordance with the terms of this Plan and the Option Agreement, the term of an Option (the "**Option Term**") shall not exceed ten (10) years from the Award Date; provided however that the maximum term of an Incentive Stock Option granted to a Ten Percent Shareholder shall not exceed five (5) years from the Award Date.

(d) Option Exercise Price. The exercise price per share for Optioned Stock subject to an Option shall be determined by the Administrator. Except as otherwise provided in this Plan with respect to Substitute Awards satisfying the provisions of Section 424(a) of the Code, the exercise price per share for an Option shall not be less than 100% of the Fair Market Value of the Optioned Stock on the Award Date; provided however that (i) the exercise price per share for an Incentive Stock Option granted to a Ten Percent Shareholder shall not be less than 110% of the Fair Market Value of the Optioned Stock on the Award Date and (ii) the exercise price per share for an Incentive Stock Option may be lower than 100% of the Fair Market Value of the Optioned Stock only if such Incentive Stock Option is a Substitute Award for an Assumed Award in a manner complying with Section 424(a) of the Code.

(e) Exercise of Options.

(i) In General. Any Option granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator, consistent with the terms of this Plan and the applicable Option Agreement. The exercise of an Option shall result in a decrease in the number of Shares that thereafter may be available, both for purposes of this Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(ii) Procedures for Exercise. An Option shall be deemed exercised when (A) written notice of such exercise has been received by the Company in accordance with the terms of the Option Agreement by the person entitled to exercise the Option (the "**Exercise Notice**") and further executed by the Participant and the Company confirming the additional documents thereafter constituting the Restricted Stock Agreement; (B) if so requested by the Company, the person exercising the Option has executed and delivered a new Restricted Stock Agreement supplied by the Company (including further customary restrictions and covenants determined by the Administrator in its sole discretion) with respect to the Optioned Stock for which the Option is exercised; and (C) the Company has received full payment for the Optioned Stock for which the Option is exercised and Participant has paid, or made arrangements to satisfy, any applicable taxes, withholding, required deductions or other required payments in accordance with Section 11, all of which as evidenced by the Company's countersignature of the Exercise Notice or the new Restricted Stock Agreement, as applicable.

(iii) Exercise of Unvested Options. Unless otherwise expressly provided in the Option Agreement or approved in writing by the Administrator, Options shall only be exercisable to the extent vested at such time or times. If the Option Agreement (or the Administrator) so permits the Participant to exercise an Option as to unvested portions thereof, (A) the Optioned Stock issued upon such exercise shall be unvested (subject to continued vesting consistent with the vesting schedule of the exercised Option and subject to forfeiture to the extent not vested upon a Termination of Service), (B) the Optioned Stock issued upon such exercise shall be Restricted Stock for purposes of this Plan, and (C) the Participant shall be required to enter into a Restricted Stock Agreement provided by the Company as a condition to exercise of such Option.

(iv) Minimum Exercise Requirements. An Option may not be exercised for a fraction of a Share. The Administrator may require that an Option be exercised as to a minimum number of Shares, provided that such requirement shall not prevent a Participant from exercising the full number of Shares as to which an Option is then exercisable.

(f) Payment of Exercise Price. The exercise price for Optioned Stock purchased under an Option shall be paid in full to the Company by delivery of consideration equal to the product of the Option exercise price per share and the number of Shares so purchased. Such consideration must be paid before the Company will issue the Optioned Stock being purchased and must be in a permitted form. The exercise price shall be paid, to the extent permitted by Applicable Laws, either (i) in cash, check, or wire transfer at the time the Option is exercised, or (ii) one of the following methods to the extent approved in the discretion of the Administrator from time to time, upon such terms as the Administrator shall approve: (A) cancellation of indebtedness; (B) to the extent permitted under, and in accordance with, Applicable Laws, delivery of a promissory note with full recourse and such interest, security and redemption provisions as the Administrator determines to be appropriate (subject to the provisions of Section 78.211 of the Nevada Revised Statutes); (C) delivery of other previously owned Shares that have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which this Option is exercised; (D) through a “cashless exercise program” established with a broker; (E) by a “net exercise” or other similar procedure effected by withholding or reducing the Optioned Stock otherwise deliverable upon exercise this Option by an amount of the exercised Optioned Stock having a Fair Market Value equal to the aggregate exercise price at the time of exercise and applicable tax withholding obligations; (F) any combination of the foregoing methods; and/or (G) such other consideration and method of payment permitted under Applicable Laws. In making its determination as to the type of consideration to accept, the Administrator shall consider if acceptance of such consideration may be reasonably expected to benefit the Company and the Administrator may, in its sole discretion, refuse to accept a particular form of consideration at the time of any Option exercise.

(g) Vesting. The Administrator shall establish and set forth in each Option Agreement to what extent such Option is vested or unvested on the Award Date, and the terms and conditions by which unvested portions of an Option may vest, any of which provisions may be waived or modified by the Administrator at any time. If not otherwise established in the Option Agreement, the Option shall initially be 100% unvested on the Award Date and shall vest according to the following schedule, which may be waived or modified by the Administrator at any time:

Period of Participant’s Continuous Service from the Vesting Commencement Date	Portion of Total Option That Is Vested
After 1 year	1/4 th
After each additional one-month period of such Continuous Service completed after 1 year	An additional 1/48 th

(h) Effect of Termination of Service. The Administrator shall establish and set forth in each Option Agreement whether the Option shall continue to be exercisable, if at all, following termination of a Participant's Continuous Service, which provisions may be waived or modified by the Administrator at any time; provided however that:

- (1) all Option Agreements shall provide for a period of at least 30 days after a Termination of Service within which they may be exercised as to any vested Options; further provided that
- (2) if the Termination of Service is caused by death or Disability, Option Agreements shall provide for a period of at least six (6) months after a Termination of Service within which they may be exercised as to any vested Options; further provided that
- (3) under no circumstances may any Incentive Stock Option be exercised (A) more than three (3) months after the Termination of Service for a reason other than death or Disability, or (B) more than twelve (12) months after the Termination of Service for death or Disability; and further provided that
- (4) under no circumstances may any Option be exercised after the Option Expiration Date set forth in the Option Agreement.

If the Option Agreement does not establish the terms and conditions upon which an Option shall terminate upon termination of the Participant's Continuous Service, the following shall apply:

- (i) Unvested or Non-Exercisable Options. Any portion of an Option that is unvested or non-exercisable on the date of a Participant's Termination of Service shall immediately expire, terminate, and be forfeited as of the date of the Termination of Service.
- (ii) Vested Options – In General. If the Participant (or other person entitled to exercise the Option) does not exercise the vested Option to the extent so entitled within the applicable time specified below, then the Option shall expire unexercised and terminate, and the Optioned Stock underlying the unexercised portion of the Option shall revert to this Plan. Under no circumstances may any Option be exercised after the Option Expiration Date set forth in the Option Agreement.
- (iii) Vested Options – General Termination (Not for Disability, Death or Cause). In the event of a Participant's Termination of Service other than under the circumstances set forth in the subsections (iv) through (vi) below, any vested Option held by the Participant shall expire unexercised and terminate upon the earlier of (A) the Option Expiration Date, or (B) three (3) months after the Termination of Service.
- (iv) Vested Options – Disability. In the event of a Participant's Termination of Service as a result of the Participant's Disability, any vested Option held by the Participant shall expire unexercised and terminate upon the earlier of (A) the Option Expiration Date, or (B) one (1) year after the Termination of Service.
- (v) Vested Options – Death. In the event of the death of the Participant during the period of Continuous Service since the Award Date, or within three (3) months following such Participant's Termination of Service, any vested Option held by any beneficiaries designated in accordance with Section 12, or if there are no such beneficiaries, by the Participant's estate, or by a person who acquired the right to exercise the vested Option by bequest or inheritance, shall expire unexercised and terminate upon the earlier of (A) the Option Expiration Date, or (B) one (1) year after the Termination of Service.
- (vi) Vested Options – Termination for Cause. In the event of a Termination of Service for Cause, any outstanding vested Option granted to or held by such Participant shall immediately terminate in its entirety upon first notification to the Participant of the Termination of Service for Cause. If a Participant's Continuous Service is suspended pending an investigation of whether the Participant's Continuous Service will be terminated for Cause, all the Participant's rights under any vested Option, including the right to exercise the Option, shall be suspended during the investigation period. Additionally, if any facts establishing the existence of Cause with respect to a Participant are discovered after the Participant's Termination of Service, any vested Option then held by the Participant may be immediately terminated by the Administrator, in its sole discretion. For clarity, nothing in this Section Z(h)(vi) shall in any way limit any right of the Company to repurchase unvested Shares issued upon exercise of an Option.

(i) Taxation of Incentive Stock Options. To obtain certain tax benefits afforded to Incentive Stock Options under Section 422 of the Code, the Participant must have been providing Continuous Service as an ISO-Eligible Employee within three (3) months of the date of exercise (or if Termination of Service occurs as a result of the Participant's Disability, then within one (1) year of the date of exercise) and must hold the shares acquired upon the exercise of an Incentive Stock Option until the later of: (A) two (2) years after the Award Date and (B) one (1) year after the date of exercise. A Participant may be subject to the alternative minimum tax at the time of exercise of an Incentive Stock Option. The Participant shall give the Company prompt notice of any disposition of (and the price realized from) shares acquired on the exercise of an Incentive Stock Option prior to the expiration of such holding periods.

(j) No Rights as a Shareholder. No holder of any Option, nor any person claiming under or through such holder will be, or have any of the rights or privileges (regarding dividends, voting or otherwise) of, a shareholder of the Company in respect of any Optioned Stock issuable upon the exercise of the Option, unless and until the Option is properly exercised in accordance with this Plan and the Option Agreement.

(k) Buyout Provisions. The Administrator may at any time offer to buy out for a payment in cash or Shares any Option previously granted under this Plan based on such terms and conditions as the Administrator shall establish and communicate to the Participant at the time that such offer is made.

(1) Option Transfer Restrictions.

(i) Incentive Stock Options. An Incentive Stock Option (or any rights of such Option) may not be sold, pledged, encumbered, assigned, hypothecated, disposed of, or otherwise transferred in any manner other than by will or by the laws of descent and distribution.

(ii) Nonstatutory Stock Options. To the extent provided in the Award Agreement, a Nonstatutory Stock Option may be transferable to a Family Member or such other transferees as may be permitted by the Administrator in its sole discretion. If the Nonstatutory Stock Option does not provide for transferability, then the Nonstatutory Stock Option shall not be sold, pledged, encumbered, assigned, hypothecated, disposed of, or otherwise transferred in any manner other than by will or by the laws of descent and distribution.

(iii) General. During the lifetime of the holder of an Option, an Option may be exercised only by such holder. The terms of any Option shall be binding upon the executors, administrators, heirs, successors, and assigns of the holder of an Option. The designation of a beneficiary by a Participant in accordance with Section 12 shall not constitute a transfer in violation of this Section 7(f). Any purported transfer of an Option in violation of this Section 7(f) shall be null and void.

8. Restricted Stock.

(a) Restricted Stock Agreement.

(i) The grant or sale of any Restricted Stock (including upon the exercise of any Option) under this Plan shall exclusively be evidenced by an executed Restricted Stock Agreement between the Company and the applicable Employee, Consultant, or Director. Any such Restricted Stock may be subject to vesting and other restrictions determined by the Administrator and set forth in the Restricted Stock Agreement. The Restricted Stock Agreement shall contain such other terms, provisions, and conditions not inconsistent with this Plan as may be determined by the Administrator in its sole discretion. The terms and conditions of Restricted Stock Agreements may differ among individual Awards and Participants.

(ii) The permissible consideration for a sale of Restricted Stock shall be determined by the Administrator, and may be the same methods as are set forth in Section 7(f) with respect to exercise of Options.

(b) Vesting of Restricted Stock. The Administrator shall establish and set forth in each Restricted Stock Agreement the extent to which such Restricted Stock is initially vested or unvested, and the terms and conditions by which unvested portions of the Restricted Stock may vest. Such provisions may be waived or modified by the Administrator at any time. If not otherwise established in the Restricted Stock Agreement, the Restricted Stock shall initially be 100% unvested and shall vest according to the following schedule, which may be waived or modified by the Administrator at any time:

Period of Participant's Continuous Service from the Vesting Commencement Date	Portion of Total Award That Is Vested
After 1 year	1/4 th
After each additional three-month period of such Continuous Service completed after 1 year	An additional 1/16 th

(c) Repurchase or Forfeiture of Restricted Stock. If not otherwise provided in the applicable Restricted Stock Agreement, any Restricted Stock issued, granted, or sold under this Plan shall be subject to each of the following repurchase options and/or forfeiture provisions, as applicable:

(i) Repurchase/Forfeiture of Unvested Restricted Stock. In the event a Termination of Service occurs for any reason, whether voluntary or involuntary (including death or Disability), with or without cause, the Company shall have an irrevocable option to purchase all or any portion of the unvested Restricted Stock (the “**Unvested Share Option**”) during the 120-day period following the Termination of Service (with respect to the Unvested Share Option, the “**Option Period**”). The purchase price applicable to an exercise of the Unvested Share Option (for purposes of this Unvested Share Option, the “**Repurchase Price**”) for each share of Restricted Stock shall be the lesser of (A) the purchase price per share paid by the Participant for such unvested Restricted Stock or (B) the Fair Market Value of such unvested Restricted Stock as of the end of the calendar month in which the Termination of Service occurs. In the event a Participant is granted unvested Restricted Stock without payment of a purchase price, any such Restricted Stock that is unvested upon a Termination of Service shall be immediately and automatically forfeited by the Participant.

(ii) Repurchase/Forfeiture for Cause Event. In the event the Company discovers any Cause with respect to a Participant, the Company shall have an irrevocable option to purchase all or any portion of the Shares (the “**Cause Option**”), during the 180-day period following such discovery of the Cause (with respect to the Cause Option, the “**Option Period**”). The purchase price applicable to an exercise of the Cause Option (for purposes of this Cause Option, the “**Repurchase Price**”) for each share of vested Restricted Stock shall be the lesser of (A) the purchase price per share paid by the Participant for such share of Restricted Stock, or (B) the Fair Market Value per share of the Restricted Stock as of the end of the calendar month in which the Cause occurs. In the event a Participant was granted Restricted Stock without payment of a purchase price, any such Restricted Stock shall be immediately and automatically forfeited by the Participant upon the Company's discovery of any Cause.

(iii) FMV Repurchase Option upon Termination of Service. In the event of a Termination of Service occurs for any reason, whether voluntary or involuntary (including death or Disability), with or without cause, the Company shall have an irrevocable option to purchase all or any portion of the Restricted Stock (the “**FMV Repurchase Option**”) during the 120-day period following the Termination of Service (with respect to the FMV Repurchase Option, the “**Option Period**”). The purchase price applicable to an exercise of the FMV Repurchase Option (for purposes of this FMV Repurchase Option, the “**Repurchase Price**”) shall be the Fair Market Value per share of the Restricted Stock.

(d) Exercise of Repurchase Option.

(i) A repurchase option under the Plan or a Restricted Stock Agreement (as applicable, a “**Repurchase Option**”) may be exercised by written notice to the Participant of such exercise during the applicable Option Period. Additionally, except to extent the Company notifies the Participant in writing during the applicable Option Period that the Company elects not to exercise its Unvested Share Option or Cause Option with respect to some or all of the applicable Restricted Stock, the Unvested Share Option or Cause Option, as applicable, shall be deemed automatically exercised by the Company with respect to all applicable Restricted Stock on the last day of the applicable Option Period.

(ii) The Company, at its sole discretion, may satisfy the Repurchase Price by (A) payment in the amount of the Repurchase Price, or (B) cancellation of indebtedness equal to the Repurchase Price, or (C) by a combination of (A) and (B) with the combined payment and amount of indebtedness cancelled equaling the Repurchase Price. In the event of any deemed automatic exercise of a Repurchase Option pursuant to this Section 8(d) in which the Participant is indebted to the Company, such indebtedness equal to the Repurchase Price shall be deemed automatically canceled as of the end of the Option Period unless the Company otherwise satisfies its payment obligations.

(iii) The Company may assign all or any portion of a Repurchase Option to one or more designees at its sole discretion. If the Participant transfers any Restricted Stock, then the Repurchase Option shall apply to the transferee to the same extent as if the Restricted Stock was still held by the Participant.

(e) No Purchase Obligation. Except to the extent the Company has exercised a Repurchase Option, the Company has no obligation, either now or in the future, to repurchase any Restricted Stock at any time. The Repurchase Price may be less than the price originally paid by the Participant and the Participant bears any risk associated with the potential loss in value.

(f) Stock Certificates. To the extent this Plan or any instrument evidencing an Award provides for issuance of stock certificates to reflect the issuance of Shares, the issuance may be effected on a noncertificated basis, to the extent not prohibited by Applicable Laws or the applicable rules of any stock exchange. Unless the Administrator determines otherwise, any certificates evidencing Restricted Stock shall remain in the possession of the Company until the Restricted Stock is no longer subject to repurchase or forfeiture subject to this Plan, and the Participant shall be required, as a condition of the Award of Restricted Stock, to deliver to the Company a stock power endorsed in blank and such other instruments of transfer as the Administrator may determine in its sole discretion.

(g) Rights as a Holder of Capital Stock. After Restricted Stock is acquired in accordance with this Plan and the Restricted Stock Agreement (including the payment of any consideration contemplated by the Option Agreement), the Participant shall have the rights equivalent to those of a holder of capital stock, and shall be a record holder when such Participant’s acquisition and the issuance of the Restricted Stock is entered upon the records of the Company or its duly authorized transfer agent; provided that (i) the applicable Award Agreement may (but is not required to) specify to what extent Shares of Restricted Stock may exercise any voting rights or receive credit for dividends and distributions, and (ii) the Administrator may apply any restrictions that the Administrator deems advisable to the crediting and payment of dividends and other distributions. No adjustment will be made for a dividend or other right for which the record date is prior to the date on which the Participant becomes the record holder of the Restricted Stock, except as provided in this Section 8.

(h) Restricted Stock Transfer Restrictions.

(i) In General. Except to the extent complying with this Section 8 and the terms of the applicable Restricted Stock Agreement, Shares (or any rights of such Shares) may not be sold, pledged, encumbered, assigned, hypothecated, disposed of, or otherwise transferred in any manner. Any purported transfer effected in violation of this Section 8 or the applicable Restricted Stock Agreement shall be null and void and shall have no force or effect, and the Company shall not be required (A) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Plan or the applicable Restricted Stock Agreement, or (B) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been purportedly transferred.

(ii) Transfer of Unvested Shares. The Participant shall not transfer, assign, encumber, or otherwise dispose of any unvested Shares without the Company's prior written approval in its sole and absolute discretion, except that the Participant may, transfer unvested Shares (A) by beneficiary designation, will, or intestate succession or (B) to the Participant's Family Members or to a trust established by the Participant for the benefit of the Participant or the Participant's Family Members.

(iii) Securities Law Restrictions. The Shares may not be transferred except in accordance with the Securities Act, any applicable securities laws of any state, and any other applicable law. Regardless of whether the offering and sale of the Restricted Stock have been registered under the Securities Act, or have been registered or qualified under the securities laws of any state, the Company at its discretion may impose restrictions upon the sale, pledge, gift, assignment, hypothecation, disposal of, or other transfer of the Shares (including the placement of appropriate legends on certificates or the imposition of stop-transfer instructions) if, in the judgment of the Company, such restrictions are necessary or desirable to achieve compliance with the Securities Act, the securities laws of any state or any other law.

(iv) Notice of Certain Transfers. To the extent a Participant holds Restricted Stock as a result of the exercise of an Option that has been designated as an Incentive Stock Option, to obtain certain tax benefits afforded to Incentive Stock Options, the Participant must hold such Restricted Stock issued upon the exercise of the Incentive Stock Option until the later of: (A) two (2) years after the Award Date for such Incentive Stock Option and (B) one (1) year after the date of exercise of such Incentive Stock Option.

(v) Transferee Requirements. A transfer, assignment, encumbrance, or other disposition of Shares otherwise complying with the requirements of this Plan and the Restricted Stock Agreement shall only be effective if and when (A) the Transferee agrees in writing on a form prescribed by the Company to be bound by all provisions of the Plan and the applicable Restricted Stock Agreement, including without limitation any applicable Unvested Share Option and this Section 8(h), and the Transferee agrees to enter into any Further Stockholder Agreement (with the Transferee having the designation, rights, and obligations generally applicable to a shareholder that only holds Common Stock, but not the designation, rights and obligations that are specific to an "Investor" or other similar class of designation).

(vi) Rights of Company.

(1) Upon the Company's request in connection with any proposed Transfer, the Participant shall provide, at the Participant's expense, an opinion of legal counsel (such counsel being reasonably satisfactory to the Company) addressed to the Company that the proposed transfer will not violate any applicable federal or state securities laws.

(2) Any Transfer not made in compliance with the requirements of this Plan and the applicable Restricted Stock Agreement shall be null and void ab initio, shall not be recorded on the books of the Company or its transfer agent, and shall not be recognized by the Company. The Company shall not be required (A) to transfer any Shares on the Company's books that have not transferred in full compliance with the terms of this Plan and any applicable Award Agreement, or (B) with respect to any transferee to whom Shares have been transferred in any manner not fully complying with the terms of this Plan, to treat such transferee as the owner of Shares, or as otherwise holding any corresponding voting, dividend, or liquidation rights with respect to Shares.

(3) The Participant unconditionally and irrevocably acknowledges and agrees that any breach of this Plan or the applicable Award Agreement would result in substantial harm to the Company for which monetary damages would not adequately compensate the Company, and that the provisions of this Plan shall be specifically enforceable, and that any breach or threatened breach of this Plan shall be the proper subject of a restraining or other protective order, temporary or permanent injunction, or other remedies available in equity (including, without limitation, seeking specific performance or the rescission of purchases, sales, and other transfers of Shares not made in strict compliance with this Plan and the applicable Restricted Stock Agreement. Further, the Participant unconditionally and irrevocably waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach.

(4) For the absence of doubt, in the event of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares, or other change affecting the Company's Common Stock as a class without the Company's receipt of consideration, any new, substituted, or additional securities distributed with respect to the Shares shall be immediately subject to the provisions of this Section 8, to the same extent as the Shares immediately prior to such event or change.

(i) Market Stand-Off. In connection with the initial underwritten public offering by the Company of its equity securities pursuant to an effective registration statement filed under the Securities Act (the "**IPO**"), a Participant shall not, without the prior written consent of the Company's managing underwriter, during the 180-day period following the effective date of the registration statement (or such longer period as the underwriters or the Company shall request in order to facilitate compliance with FINRA Rule 2241 or NYSE Member Rule 472 or any successor or similar rule or regulation) (the "**Lock Up Period**"), (i) lend, offer, assign, pledge, encumber, hypothecate, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right, or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Restricted Stock or any securities convertible into or exercisable or exchangeable for Restricted Stock (whether such shares or any such securities are then owned by the Participant or are thereafter acquired), or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Restricted Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Restricted Stock or such other securities, in cash or otherwise. In order to enforce this Section 8(i), the Company may impose stop-transfer instructions during the Lock Up Period. The underwriters in connection with the IPO are intended third-party beneficiaries of this Section 8(i) and shall have the right, power, and authority to enforce the provisions hereof as though they were a party hereto. The Participant further agrees to execute such agreements as may be reasonably requested by the underwriters in the IPO that are consistent with this Section 8(i) or that are necessary to give further effect thereto. For the absence of doubt, nothing in this Section 8(i) shall restrict the repurchase of Restricted Stock by the Company during the Lock Up Period.

(j) Company's Right of First Refusal. The Participant acknowledges that all of the Restricted Stock is subject to a right of first refusal and certain other transfer restrictions set forth in the Company's bylaws, a copy of which is on file at the principal office of the Company. The Participant agrees to fully comply with the terms of such right of first refusal and other transfer restrictions.

9. Corporate Transactions.

(a) Adjustments. Subject to any action required under Applicable Laws by the holders of capital stock of the Company, in the event of a stock split, reverse stock split, stock dividend, combination, consolidation, reclassification of the Shares, or subdivision of the Shares after the Award Date of any Award (i) the numbers and class of the Shares (A) available for future Awards under Section 5, and (B) subject to each outstanding Award; (ii) the exercise price per Share of each such outstanding Option; and (iii) any repurchase price per Share applicable to Shares issued pursuant to any Award, shall be equitably adjusted by the Administrator to the extent necessary to preserve the economic intent of such Award. Any such adjustment by the Administrator shall be made in the Administrator's sole and absolute discretion and shall be final, binding, and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class (nor any resulting dilution of the percentage interest in the Company represented by any Shares), shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares subject to an Award. If, by reason of a transaction described in this Section 9(a) or an adjustment pursuant to this Section 9(a), an Option Agreement or Restricted Stock Agreement covers additional or different shares of stock or securities, then such additional or different shares shall be subject to all of the terms, conditions, and restrictions which were applicable to the Award, Optioned Stock, and/or Shares, applicable, subject to the Option Agreement or Restricted Stock Agreement prior to such adjustment.

(b) Dissolution or Liquidation. Unless otherwise determined by the Administrator in its sole discretion, (i) Options shall terminate immediately prior to the dissolution or liquidation of the Company; and (ii) to the extent a forfeiture provision or repurchase right is applicable to any Restricted Stock with respect to any unvested status, and has not been waived by the Administrator, the Restricted Stock shall be forfeited immediately prior to the consummation of the dissolution or liquidation.

(c) Change in Control.

(i) In the event of a Change in Control, the Administrator may, but shall not be obligated to:

(1) provide for the continuation of Awards; or

(2) accelerate, vest, or cause the lapse of restrictions with respect to all or any portion of any Award; or

(3) cancel Awards and cause to be paid to the holders of vested Awards the Fair Market Values of such Awards, if any, as determined by the Administrator, in its sole discretion; provided that in the case of an Option having an Option Exercise Price equal to or exceeding the price paid for a Share in connection with the Change in Control, the Administrator may cancel the Option without the payment of consideration therefor; or

(4) provide for the issuance of substitute Awards or the assumption or replacement of such Awards by the Successor Company; or

(5) provide written notice to Participants of a ten (10) or more day period prior to the Change in Control during which such Options shall be exercisable, to the extent otherwise vested and exercisable, upon the occurrence of the Change in Control. Any Options not exercised under such circumstances within such designated period shall terminate and be of no further force and effect upon the Change in Control.

(ii) The obligations of the Company under the Plan shall be binding upon any successor entity resulting from the Change in Control, or upon any Successor Company succeeding to all or substantially all of the assets and business of the Company and its Affiliates, taken as a whole.

(iii) For the avoidance of doubt, nothing in this Section 9(c) requires all outstanding Awards to be treated similarly.

(d) Company's Drag-Along Right. Upon a Change in Control, the Company shall also have the right (the **"Drag-Along Right"**), but not the obligation, to cause a Participant to (i) exercise any vested and unexercised Option, and (ii) tender for purchase any or all Restricted Stock (including any Restricted Stock acquired pursuant to clause (i) of this sentence), in the same proportion, for the same consideration, at the same price and on the same terms and conditions as apply to the Company's other holders of Common Stock. The Drag-Along Right shall apply to the Participant's vested Option and Restricted Stock. If the Company elects to exercise the Drag-Along Right, the Company shall notify the Participant in writing (the **"Drag-Along Notice"**). Such Drag-Along Notice shall set forth the name and address of the proposed purchaser, the proposed amount and form of consideration, and other terms and conditions of transfer offered by the proposed purchaser, the amount of the Participant's Restricted Stock proposed to be purchased by such purchaser, and a calculation of the proposed purchase price applicable to the Participant. Upon the receipt of the Drag-Along Notice, the Participant shall be obligated to transfer the applicable Restricted Stock free and clear of any encumbrances to the proposed purchaser on the terms and price consistent with the Drag-Along Notice.

(e) No Limitations. The grant of Awards shall in no way affect the Company's right to adjust, reclassify, reorganize, or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate, or sell or transfer all or any part of its business or assets.

(f) Fractional Shares. In the event of any adjustment in the number of shares subject to any Award, each such Award shall cover only the number of full shares resulting from such adjustment, and any fractional shares resulting from such adjustment shall be disregarded.

(g) Section 409A. Notwithstanding any other provision of this Plan to the contrary, (i) any adjustments made pursuant to this Section 9 to Awards that are considered "deferred compensation" within the meaning of Section 409A shall be made in compliance with the requirements of Section 409A, and (ii) any adjustments made pursuant to this Section 9 to Awards that are not considered "deferred compensation" subject to Section 409A shall be made in such a manner as to ensure that after such adjustment the Awards either (A) continue not to be subject to Section 409A, or (B) comply with the requirements of Section 409A.

10. Amendment of this Plan and the Awards.

(a) Amendment of the Plan. The Board at any time, and from time to time, may amend or terminate this Plan; provided, however, except as provided in Section 9(a) and Section 10(c), no amendment shall be effective unless approved by the shareholders of the Company to the extent shareholder approval is necessary to satisfy any Applicable Laws. At the time of such amendment, the Board shall determine, upon advice from counsel, whether such amendment will be contingent on shareholder approval.

(b) Shareholder Approval. The Board may, in its sole discretion, submit any other amendment to this Plan for shareholder approval.

(c) Contemplated Amendments. It is expressly contemplated that the Board may amend this Plan in any respect the Board deems necessary or advisable to provide eligible Employees, Consultants, and Directors with the maximum benefits provided or to be provided under the provisions of the Code and the regulations promulgated thereunder.

(d) No Impairment of Rights. Rights under any Award granted before amendment of this Plan shall not be impaired by any amendment of this Plan unless the applicable Participant consents in writing.

(e) Amendment of Awards. The Administrator at any time, and from time to time, may amend the terms of any one or more Awards; provided, however, that the Administrator may not make any amendment that would otherwise constitute an impairment of the rights under any Award unless the applicable Participant consents in writing.

11. Withholding Obligations.

(a) The Company shall require the payment of, and the Participant shall pay to the Company or a Related Entity, as applicable, the amount of (i) any taxes that the Company or a Related Entity is required by applicable federal, state, local, or foreign law to withhold with respect to the grant, vesting, or exercise of an Award ("**tax withholding obligations**") and (ii) any amounts due from the Participant to the Company or to any Related Entity ("**other obligations**"). Notwithstanding any other provision of this Plan to the contrary, the Company shall not be required to issue any Shares or otherwise settle an Award under this Plan until such tax withholding obligations and other obligations are satisfied.

(b) The Administrator, in its sole discretion, may permit or require a Participant to satisfy all or part of the Participant's applicable tax withholding obligations and other obligations by (i) paying cash to the Company or a Related Entity, as applicable, (ii) having the Company or a Related Entity, as applicable, withhold an amount from any cash amounts otherwise due or to become due from the Company to the Participant, (iii) having the Company withhold a number of Shares that would otherwise be issued to the Participant (or become vested, in the case of Restricted Stock) having a Fair Market Value equal to the tax withholding obligations and other obligations, and/or (iv) surrendering a number of Shares the Participant already owns having a value equal to the tax withholding obligations and other obligations. The Company also has the right to withhold any tax withholding obligations from any compensation otherwise payable to a Participant by the Company or a Related Entity. The value of the Shares so withheld or tendered may not exceed the employer's applicable minimum required tax withholding rate or such other applicable rate as is necessary to avoid adverse treatment for financial accounting purposes, as determined by the Administrator in its sole discretion.

12. Beneficiaries. If permitted by the Company, a Participant may designate one or more beneficiaries with respect to an Award by timely filing the prescribed form with the Company. A beneficiary designation may be changed by filing the prescribed form with the Company at any time before the Participant's death. Except as otherwise provided in the applicable Option Agreement or Restricted Stock Agreement, if no beneficiary was designated or if no designated beneficiary survives the Participant, then after a Participant's death, any vested Award(s) shall be transferred or distributed to the Participant's estate or to any person who has the right to acquire the Award by bequest or inheritance.

13. Termination, Clawback, and Forfeiture of Awards for Cause. Notwithstanding anything to the contrary contained herein, the Administrator may, in its sole discretion, cancel an Award if any Cause is discovered with respect to the corresponding Participant. Unless otherwise agreed in writing by the Administrator with knowledge of the instance of Cause, all outstanding Options (whether or not vested) of a Participant shall immediately terminate and cease to be exercisable on the date on which the Cause occurs. In the event of Cause with respect to a Participant, (a) the Participant shall forfeit any gain realized on the vesting, exercise, or settlement of any Award, and must repay the gain to the Company, and (b) if the Participant receives any amount in excess of what the Participant should have received under the terms of the Award for any reason (including, without limitation, by reason of a financial restatement, mistake in calculations, or other administrative error), then the Participant shall be required to repay any such excess amount to the Company. Without limiting the foregoing, all Awards shall be subject to reduction, cancellation, forfeiture, or recoupment to the extent necessary to comply with Applicable Laws.

14. Further Stockholder Agreements. In connection with the grant, vesting, and/or exercise of any Award under this Plan, or at any other time determined by the Administrator, the Administrator may require a Participant to execute and become a party to a Further Stockholder Agreement as a condition of such grant, vesting, and/or exercise.

15. General.

(a) No Right to Employment or Uniform Treatment. No individual or Participant shall have any claim to be granted any Award under this Plan, and the Company has no obligation for uniformity of terms or treatment of Participants under this Plan. Furthermore, nothing in this Plan or any Award granted under this Plan shall be deemed to constitute an employment contract or confer or be deemed to confer on any Participant any right to continue in the employ of, or to continue any other relationship with, the Company or any Related Entity or limit in any way the right of the Company or any Related Entity to terminate a Participant's employment or other relationship at any time, with or without cause. EXCEPT AS THE COMPANY AND A PARTICIPANT MAY OTHERWISE AGREE IN WRITING, ANY EMPLOYMENT OR OTHER RELATIONSHIP BETWEEN THE PARTICIPANT AND THE COMPANY OR RELATED ENTITY SHALL BE TERMINABLE BY THE COMPANY OR RELATED ENTITY, AT WILL, WITH OR WITHOUT CAUSE, FOR ANY REASON OR FOR NO REASON.

(b) No Obligation to Register. The Company shall be under no obligation to any Participant to register for offering or resale or to qualify for exemption under the Securities Act, or to register or qualify under the laws of any state or foreign jurisdiction, any Share, security or interest in a security paid or issued under, or created by, this Plan, or to continue in effect any such registrations or qualifications if made.

(c) Compliance with Laws and Regulations.

(i) Section 422. In interpreting and applying the provisions of this Plan, any Option granted as an Incentive Stock Option pursuant to this Plan shall, to the extent permitted by law, be construed as an "incentive stock option" within the meaning of Section 422 of the Code.

(ii) Section 409A. This Plan and Awards granted under this Plan are intended to be exempt from the requirements of Section 409A to the maximum extent possible, whether pursuant to the transfer of property rules provided under Section 83 of the Code or the short-term deferral exception described in Treasury Regulation Section 1.409A-1(b)(4), the exclusion applicable to stock options and certain other equity-based compensation under Treasury Regulation Section 1.409A-1(b)(5), or otherwise. To the extent Section 409A is applicable to this Plan or any Award granted under this Plan, it is intended that this Plan and any Awards granted under this Plan shall comply with the deferral, payout, plan termination, and other limitations and restrictions imposed under Section 409A. Notwithstanding any other provision of this Plan or any Award granted under this Plan to the contrary, this Plan and any Award granted under this Plan shall be interpreted, operated, and administered in a manner consistent with such intentions; provided, however, that the Administrator makes no representations that Awards granted under this Plan shall be exempt from or comply with Section 409A and makes no undertaking to preclude Section 409A from applying to Awards granted under this Plan. Without limiting the generality of the foregoing, and notwithstanding any other provision of this Plan or any Award granted under this Plan to the contrary, with respect to any payments and benefits under this Plan or any Award granted under this Plan to which Section 409A applies, all references in this Plan or any Award granted under this Plan to the termination of the Participant's employment or service are intended to mean the Participant's "separation from service," within the meaning of Section 409A(a)(2)(A)(i) to the extent necessary to avoid subjecting the Participant to the imposition of any additional tax under Section 409A. In addition, if the Participant is a "specified employee," within the meaning of Section 409A, and amounts payable hereunder are determined to be deferred compensation in fact subject to Section 409A of the Code, then and only then to the extent necessary to avoid subjecting the Participant to the imposition of any additional tax under Section 409A, amounts that would otherwise be payable under this Plan or any Award granted under this Plan during the six (6)-month period immediately following the Participant's "separation from service," within the meaning of Section 409A(a)(2)(A)(i), shall not be paid to the Participant during such period, but shall instead be accumulated and paid to the Participant (or, in the event of the Participant's death, the Participant's estate) in a lump sum on the first business day after the earlier of the date that is six (6) months following the Participant's separation from service or the Participant's death. Notwithstanding any other provision of this Plan to the contrary, the Administrator, to the extent the Administrator deems necessary or advisable in the Administrator's sole discretion, reserves the right, but shall not be required, to amend or modify this Plan and any Award granted under this Plan unilaterally so that the Award qualifies for exemption from or complies with Section 409A.

(iii) Imposition of Other Requirements. The Company reserves the right to impose other requirements on a Participant's participation in this Plan and on any Award to the extent the Company determines that it is necessary or advisable to comply with Applicable Laws or facilitate the administration of this Plan. A Participant is required to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing. Furthermore, the laws of the country in which a Participant is working at the time of Award Date, purchase, vesting, or sale of Restricted Stock received pursuant to this Plan (including any rules or regulations governing securities, foreign exchange, tax, labor, or other matters) may subject a Participant to additional procedural or regulatory requirements that the Participant is and will be solely responsible for and must fulfill.

(d) Participants in Other Countries or Jurisdictions. Without amending this Plan, the Administrator may grant Awards to Eligible Persons who are foreign nationals on such terms and conditions different from those specified in this Plan, as may, in the judgment of the Administrator, be necessary or desirable to foster and promote achievement of the purposes of this Plan, and shall have the authority to adopt such modifications, procedures, subplans, and the like as may be necessary or desirable to comply with provisions of the laws or regulations of other countries or jurisdictions in which the Company or any Related Entity may operate or have employees to ensure the viability of the benefits from Awards granted to Participants employed in such countries or jurisdictions, meet the requirements that permit this Plan to operate in a qualified or tax efficient manner, comply with applicable foreign laws or regulations, and meet the objectives of this Plan.

(e) Leaves of Absence. The Administrator shall have the discretion to determine at any time whether and to what extent the vesting of Options or Restricted Stock shall be tolled during any leave of absence; provided, however, that in the absence of such determination, vesting of Options or Restricted Stock shall continue during any paid leave and shall be tolled during any unpaid leave (unless otherwise required by Applicable Laws). Notwithstanding the foregoing, in the event of military leave, vesting shall toll during any unpaid portion of such leave, provided that, upon the Participant's return from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), the Participant shall be given vesting credit with respect to Options and Restricted Stock to the same extent as would have applied had the Participant continued to provide Continuous Service throughout the leave on the same terms as the Participant was providing Continuous Service immediately prior to such leave.

(f) Approval of Holders of Capital Stock. If required by Applicable Laws, continuance of this Plan shall be subject to approval by the holders of capital stock of the Company within 12 months before or after the date this Plan is adopted or, to the extent required by Applicable Laws, any date this Plan is amended. Such approval shall be obtained in the manner and to the degree required under Applicable Laws.

(g) Addenda. The Administrator may approve such addenda to this Plan as the Administrator may consider necessary or appropriate for the purpose of granting Awards to Employees, Consultants, or Directors, which Awards may contain such terms and conditions as the Administrator deems necessary or appropriate to accommodate differences in local law, tax policy, or custom, which may deviate from the terms and conditions set forth in this Plan. The terms of any such addenda shall supersede the terms of this Plan to the extent necessary to accommodate such differences but shall not otherwise affect the terms of this Plan as in effect for any other purpose.

(h) No Trust or Fund. This Plan is intended to constitute an “unfunded” plan. Nothing contained herein shall require the Company to segregate any monies or other property, or shares of Common Stock, or to create any trusts, or to make any special deposits for any immediate or deferred amounts payable to any Participant, and no Participant shall have any rights that are greater than those of a general unsecured creditor of the Company.

(i) Severability. If any provision of this Plan or any Award is determined to be invalid, illegal, or unenforceable in any jurisdiction, or as to any person, or would disqualify this Plan or any Award under any law deemed applicable by the Administrator, such provision shall be construed or deemed amended to conform to Applicable Laws, or, if it cannot be so construed or deemed amended without, in the Administrator’s determination, materially altering the intent of this Plan or the Award, such provision shall be stricken as to such jurisdiction, person, or Award, and the remainder of this Plan and any such Award shall remain in full force and effect.

(j) Headings. The headings used in this Plan are used for convenience of reference only and are not to be considered in construing or interpreting this Plan.

(k) Dispute Resolution.

(i) Governing Law. This Plan, all Awards granted thereunder and all determinations made and actions taken pursuant hereto, to the extent not otherwise governed by the laws of the United States, shall be governed by the laws of the State of Nevada without giving effect to principles of conflicts of law.

(ii) Venue and Jurisdiction. The Company and each Participant (A) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of Nevada and to the jurisdiction of the United States District Court for the District of Nevada for the purpose of any suit, action or other proceeding arising out of or based upon this Plan or any Award, (B) agree not to commence any suit, action or other proceeding arising out of or based upon this Plan or any Award except in the state courts of Nevada or the United States District Court for the District of Nevada, and (C) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that such party is not subject personally to the jurisdiction of the above-named courts, that such party’s property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper, or that this Plan or any Award or the subject matter hereof or thereof may not be enforced in or by such court.

(iii) WAIVER OF JURY TRIAL. THE COMPANY AND EACH PARTICIPANT WAIVES ANY RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS PLAN OR ANY AWARD. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS PLAN OR ANY AWARD, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL (OR KNOWINGLY AND VOLUNTARILY DECLINED TO DO SO).

(iv) Attorneys' Fees. If a legal action or proceeding shall be brought to recover any amount due under this Plan or an Award Agreement, or for or on account of any breach of or to enforce or interpret any of the terms, covenants, or conditions of this Plan or an Award Agreement, the prevailing party shall be entitled to an award of its fees and costs (whether taxable or not) including, without limitation, expert witness fees, all litigation or dispute resolution related expenses, and reasonable attorneys' fees incurred in connection with such action or proceeding, and any appeal therefrom, which award shall be made by the court, not a jury.

(1) Remedies. The Company shall be entitled to enforce its rights under this Plan and any Award Agreement specifically to recover damages by reason of any breach of any provision of this Plan or an Award Agreement and to exercise all other rights existing in its favor. Each Participant acknowledges that money damages may not be an adequate remedy for any breach of the provisions of this Plan or an Award Agreement, and that the Company may in its sole discretion apply to any court of law or equity of competent jurisdiction for specific performance and/or injunctive relief (without posting a bond or other security) to enforce or prevent any violation of the provisions of this Plan or an Award Agreement.

(m) Time is of the Essence; Computation of Time. Time is of the essence for each and every provision of this Plan. Whenever the last day for the exercise of any right or the discharge of any duty hereunder shall fall upon a Saturday, Sunday, or any date on which banks in the State of Nevada are authorized to be closed, the party having such right or duty may exercise such right or discharge such duty on the next succeeding day which is a regular business day.

(n) Information to Holders of Options. In the event the Company is relying on the exemption provided by Rule 12h-1(f) under the Exchange Act, the Company shall provide the information described in Rule 701(e)(3), (4) and (5) of the Securities Act, to all holders of Options in accordance with the requirements thereunder until such time as the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. The Company may request that holders of Options agree to keep confidential the information to be provided pursuant to this Section 15(n). If the holder does not agree to keep the information to be provided pursuant to this Section confidential, then the Company will not be required to provide the information unless otherwise required pursuant to Rule 12h-1(f)(1) of the Exchange Act.

(o) California Appendix Provisions. To the extent required by Applicable Laws, Participants who are residents of the State of California shall be subject to the additional terms and conditions set forth in Appendix B to this Plan until such time as the Common Stock becomes a "listed" security under the Securities Act.

16. Effective Date. The effective date (the “**Effective Date**”) is the date on which this Plan is adopted by the Board. If the shareholders of the Company do not approve this Plan within 12 months before or after the Board’s adoption of this Plan, any Incentive Stock Options granted under this Plan will be treated as Nonstatutory Stock Options.

As adopted by the Board of Directors of Dragonfly Energy Corp. on August 12, 2019.

As approved by the shareholders of Dragonfly Energy Corp. on August 20, 2019.

APPENDIX A

DEFINITIONS

As used in this Plan, the following definitions apply:

“Acquired Entity” means any entity acquired by the Company or a Related Entity or with which the Company or a Related Entity, whether by merger, consolidation, stock purchase, asset purchase, or other form of transaction.

“Applicable Laws” means all applicable statutes, laws, rules, orders, regulations, ordinances, judgments, decrees, and injunctions, as such are in effect from time to time, including without limitation (i) all applicable U.S. federal and state laws, (ii) the rules and regulations of any stock exchange or consolidated stock price reporting system on which prices for the Common Stock are quoted at any given time, and (iii) the applicable laws, rules, and regulations of any other country or jurisdiction in which Awards are made under this Plan or the Participant resides or provides services.

“Award” means any Incentive Stock Option, Nonstatutory Stock Option, or Restricted Stock issued, granted, or sold under this Plan.

“Award Agreement” means an Option Agreement or a Restricted Stock Agreement.

“Award Date” means the later of (a) the date on which the Administrator completes the corporate action authorizing the grant of an Award or such later date specified by the Administrator, and (b) the date on which all conditions precedent to an Award have been satisfied; provided that conditions to the exercisability or vesting of Awards shall not defer the Award Date.

“Carta” means the third-party software platform which may be used by the Company for the management of the Company’s cap table, valuations, investments, and equity plans (www.carta.com).

“Cause” means any of the following with respect to the Participant (unless a different definition is provided in an Award Agreement, written employment agreement or other written agreement signed by with the Participant, in which case such definition shall apply):

- (a) a material breach by the Participant of any written agreement between the Participant and the Company or a Related Entity and the Participant’s failure to cure such breach (eliminating or avoiding any harm to the Company or a Related Entity) within 30 days after receiving written notice thereof;
- (b) a material failure by the Participant to comply with the written policies or rules of the Company (or the Related Entity with which the Participant has an employment or service relationship) as they may be in effect from time to time;
- (c) neglect or unsatisfactory performance of the Participant’s duties and the Participant’s failure to cure such condition (eliminating or avoiding any harm to the Company or a Related Entity) within 30 days after receiving written notice thereof;
- (d) the Participant’s repeated failure to follow reasonable and lawful instructions from the Board or a superior officer of the Company (or the Related Entity with which the Participant has an employment or service relationship) and the Participant’s failure to cure such condition (eliminating or avoiding any harm to the Company or a Related Entity) within 30 days after receiving written notice thereof;
- (e) the Participant’s conviction of, plea of guilty, or plea of nolo contendere (no contest) to (i) a felony, or (ii) other crime (A) involving moral turpitude or dishonesty, (B) use of illegal drugs or abuse of alcohol that materially impairs the Participant’s ability to perform the Participant’s duties to the Company or a Related Entity, or (C) that results in, or is reasonably expected to result in, harm to the business or reputation of the Company or a Related Entity;

- (f) the Participant's commission of or participation in any act of fraud or material dishonesty against the Company or a Related Entity;
- (g) the Participant's commission of intentional damage to the business, property, or reputation of the Company or a Related Entity, or the Participant's conversion or misappropriation of property of the Company or a Related Entity;
- (h) the Participant's unauthorized use or disclosure of any proprietary information or trade secrets of the Company, a Related Entity, or any other party to which the Participant owes an obligation of nondisclosure as a result of the Participant's relationship with the Company; or
- (i) any purported Transfer of an Award in violation of this Plan or the Award Agreement, or any other material breach of terms of this Plan or an Award Agreement between the Company and the Participant.

The determination as to whether "Cause" exists shall be made by in good faith by the Company and shall be final and binding on the Participant. For the absence of doubt, the foregoing does not in any limit the ability of the Company or a Related Entity to terminate a Participant's employment or service relationship at any time for any reason or no reason.

"Change in Control," unless the Administrator determines otherwise with respect to an Award at the time the Award is granted or unless otherwise defined for purposes of an Award in a written employment, services, or other agreement between the Participant and the Company or a Related Entity, means consummation of:

- (a) a sale, lease, exchange, exclusive license, or other transfer, whether in one transaction or a series of related transactions undertaken with a common purpose, of all or substantially all of the Company's assets;
- (b) a merger or consolidation of the Company with or into another entity (other than a wholly-owned subsidiary of the Company);
- (c) a sale, whether in one transaction or a series of transactions undertaken with a common purpose, of all of the Company's outstanding voting securities; or
- (d) the consummation of a transaction, or series of related transactions, in which any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), or a group of such "persons" acting together, becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of all of the Company's then outstanding voting securities.

Notwithstanding the foregoing, a Change in Control shall not include (i) a merger or consolidation of the Company in which the holders of the outstanding voting securities of the Company immediately prior to the merger or consolidation hold at least a majority of the outstanding voting securities of the Successor Company immediately after the merger or consolidation; (ii) a sale, lease, exchange, or other transfer of all or substantially all of the Company's assets to a majority-owned subsidiary entity; or (iii) a transaction undertaken for the principal purpose of restructuring the capital of the Company, reincorporating the Company in a different jurisdiction, converting the Company to a limited liability company, or creating a holding company that will be owned in substantially the same proportions by the Persons that hold the Company's securities immediately before such transaction, or obtaining funding for the Company in a financing that is approved by the Board. Where a series of related transactions undertaken with a common purpose is deemed to be a Change in Control, the date of such Change in Control shall be the date on which the last of such transactions is consummated.

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

"Common Stock" means the common stock of the Company.

“Consultant” means a consultant or advisor who (i) is a natural person, and (ii) provides bona fide services to the Company or Related Entity as a consultant, advisor, or other independent service provider, provided that such services are not in connection with the offer or sale of securities in a capital-raising transaction, and do not directly or indirectly promote or maintain a market for the Company’s securities.

“Continuous Service” means continuous service by the Participant to the Company and/or a Related Entity as an Employee, Consultant, or Director without a Termination of Service, and will not be extended by any notice period or “garden leave” that is required contractually or under Applicable Laws.

“Director” means a member of the Company’s board of directors or a member of the board of directors or other corresponding governing body of a Related Entity.

“Disability” means that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment; provided, however, for purposes of determining the term of an Incentive Stock Option pursuant to Section 7(h)(iv) of this Plan, the “Disability” shall have the meaning ascribed to it under Section 22(e)(3) of the Code. The determination of whether a Participant has a Disability shall be determined under procedures established by the Administrator from time to time. Except in situations where the Administrator is determining “Disability” for purposes of the term of an Incentive Stock Option pursuant to Section 7(h)(iv) within the meaning of Section 22(e)(3) of the Code, the Administrator may rely on any determination that a Participant is disabled for purposes of benefits under any long-term disability plan maintained by the Company or any Related Entity in which a Participant participates.

“Eligible Person” means any person eligible to receive an Award as set forth in Section 6.

“Employee” means a natural person who is a common-law employee of the Company or a Related Entity.

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

“Fair Market Value” means, on a given date, (i) if there is a public market for the shares of Common Stock on such date, the closing price of the shares as reported on such date on the principal national securities exchange on which the shares are listed or, if no sales of shares have been reported on any national securities exchange, then the immediately preceding date on which sales of the shares have been so reported or quoted, and (ii) if there is no public market for the shares of Common Stock on such date, then the fair market value shall be determined by the Administrator in good faith utilizing valuation methods and procedures the Administrator deems appropriate and in compliance with the requirements of Section 409A of the Code (and the specific requirements of Treasury Regulation 1.409A-1(b)(5)(iv)(A)), and with respect to an Incentive Stock Option, the rules applicable under Section 422 of the Code and the applicable Treasury Regulations.

“Family Member” means a Participant’s child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the employee’s household (other than a tenant or employee), a trust in which these individuals (or the Participant) have more than 50% of the beneficial interest, a foundation in which these individuals (or the Participant) control the management of assets, and any other entity in which these individuals (or the Participant) own more than 50% of the voting interests.

“Further Stockholder Agreement” means a stockholder, shareholder, voting, right of first refusal, co-sale, or other similar agreements that is executed (or required by the Company to be executed) by stockholders of the Company holding at least a majority of the then outstanding shares of the Common Stock. A Further Stockholder Agreement may, for illustration and without limitation, impose restrictions on Share transferability (such as a right of first refusal or a prohibition on transfer), subject Shares to call rights and drag-along rights, grant the Company certain repurchase rights, and/or provide for certain other matters relating to voting of the Shares.

“Incentive Stock Option” means an Option granted pursuant to this Plan with the intention, as evidenced in the Option Agreement, that the Option qualify as an “incentive stock option” as that term is defined for purposes of Section 422 of the Code.

“ISO-Eligible Employee” means a natural person who is a common-law employee of the Company, a Parent or a Subsidiary.

“Nonstatutory Stock Option” means an Option other than an Incentive Stock Option granted pursuant to this Plan.

“Option” means an Incentive Stock Option or a Nonstatutory Stock Option granted pursuant to this Plan.

“Option Agreement” means a written agreement, the form(s) of which shall be approved from time to time by the Administrator, between the Company and a Participant setting forth the applicable terms, conditions, and limitations of an Option, consisting of a “Stock Option Award Notice,” the corresponding “Stock Option Agreement Terms,” and such other attached or incorporated documents as determined by the Administrator.

“Option Exchange Program” means a program approved by the Administrator, in the Administrator’s sole discretion, by which outstanding Options may be (i) cancelled and exchanged for new Options with a lower exercise price, Restricted Stock, cash or other property, or (ii) amended to decrease the exercise price as a result of a decline in the Fair Market Value.

“Option Expiration Date” means the last day of the maximum term of an Option.

“Optioned Stock” means Shares that are subject to an Option or that were issued pursuant to the exercise of an Option.

“Parent” means any entity (other than the Company) in an unbroken chain of entities ending with the Company if, at the time of the applicable Award Date, each of the entities other than the Company owns 50% or more of the total combined voting power of all classes of equity securities in one of the other entities in such chain.

“Participant” means any Eligible Person receiving an Award.

“Related Entities” means the Company’s Parents, the Company’s Subsidiaries, and the Subsidiaries of the Company’s Parents.

“Restricted Stock” means shares of Common Stock issued pursuant to this Plan. For the absence of doubt, “Restricted Stock” includes Optioned Stock issued by the Company upon the exercise of Options.

“Restricted Stock Agreement” means a written agreement, the form(s) of which shall be approved from time to time by the Administrator, between the Company and a Participant setting forth the applicable terms, conditions, and limitations of the grant or sale of the Restricted Stock, which shall be comprised of (i) a “Restricted Stock Award Notice,” the corresponding “Restricted Stock Agreement Terms,” and such other attached or incorporated documents as determined by the Administrator, or (ii) in the case of the Restricted Stock purchased pursuant to an Option (and unless the Company otherwise requires the documentation described in clause (i) above), an Exercise Notice, the corresponding “Restricted Stock Agreement Terms,” and such other attached or incorporated documents as determined by the Administrator.

“Section 409A” means Section 409A of the Code, as amended.

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

“Shares” means shares of Restricted Stock subject to this Plan.

“Subsidiary” means any entity (other than the Company) in an unbroken chain of entities beginning with the Company if, at the time of the applicable Award Date, each of the entities other than the last entity in the unbroken chain owns 50% or more of the total combined voting power of all classes of equity securities in one of the other entities in such chain.

“Successor Company” means the surviving entity, the successor entity, the acquiring entity, or its parent, as applicable, in connection with a Change in Control.

“Ten Percent Shareholder” means a person who owns (or is deemed to own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of any of its Affiliates.

“Termination of Service,” unless the Administrator determines otherwise with respect to an Award, means a termination or interruption of Continuous Service with the Company or a Related Entity for any reason, whether voluntary or involuntary, including by reason of death or Disability. Any question as to whether and when there has been a Termination of Service for the purposes of an Award and the cause of such Termination of Service shall be determined by the Company’s chief human resources officer or other person performing that function or, with respect to directors and executive officers, by the Board, whose determination shall be conclusive and binding. For purposes of the foregoing:

- (a) Neither a transfer of a Participant’s employment or service relationship between the Company and any Related Entity, nor a change in Participant’s status among Employee, Director, and Consultant, shall be considered a Termination of Service; provided that there is no interruption or termination of the Participant’s Continuous Service; provided further that if any Award is subject to Section 409A of the Code, this sentence shall only be given effect to the extent consistent with Section 409A of the Code. For example, a change in status from an Employee of the Company to a Director of a Related Entity itself will not constitute an interruption of Continuous Service. The Administrator or its delegate, in its sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave, or any other personal or family leave of absence.
- (b) Unless the Administrator determines otherwise, a Termination of Service shall be deemed to occur if the Participant’s employment or service relationship is with an entity that has ceased to be a Related Entity.

“Transfer” means the (i) sale, pledge, encumbrance, gift, assignment, hypothecation, disposal of, or otherwise voluntary transfer to a third party, or (ii) involuntary transfer to any third party pursuant to divorce, legal separation, foreclosure, legal judgment, bankruptcy, or other legal or administrative proceeding, or any other involuntary transfer.

“Transferee” means any person to whom the Participant has directly or indirectly transferred any Restricted Stock.

“Vesting Commencement Date” means the Award Date or such other date selected by the Administrator and identified in the instrument evidencing the Award as the date from which an Award begins to vest.

APPENDIX B

**TO THE DRAGONFLY ENERGY CORP.
2019 STOCK INCENTIVE PLAN**

(For California Residents Only)

This Appendix to the Dragonfly Energy Corp. 2019 Stock Incentive Plan (the “**Plan**”) shall have application only to Participants who are residents of the State of California. Capitalized terms contained herein shall have the same meanings given to them in this Plan, unless otherwise provided in this Appendix. **Notwithstanding any other provision of this Plan to the contrary and to the extent required by applicable law, the following terms and conditions shall apply to all Awards granted to residents of the State of California, until such time as the Common Stock becomes a “listed security” under the Securities Act:**

1. Options shall have a term of not more than ten years from the Award Date.
2. Awards shall be nontransferable other than by will or the laws of descent and distribution. Notwithstanding the foregoing, and to the extent permitted by Section 422 of the Code, the Administrator, in its discretion, may permit transfer of an Award to a revocable trust or as otherwise permitted by Rule 701 of the Securities Act.
3. Unless employment or services are terminated for Cause, the right to exercise an Option in the event of Termination of Service, to the extent that the Participant is otherwise entitled to exercise an Option on the date of Termination of Service, shall be
 - (a) at least six months from the date of a Participant’s Termination of Service if termination was caused by death or Disability;
 - (b) at least 30 days from the date of a Participant’s Termination of Service if termination of employment was caused by other than death or Disability; and
 - (c) but in no event later than the Option Expiration Date.
4. No Award may be granted to a resident of California more than ten years after the earlier of the date of adoption of this Plan and the date this Plan is approved by the shareholders.
5. Shareholders of the Company must approve this Plan by the later of (a) within 12 months before or after this Plan is adopted by the Board and (b) (i) with respect to Options, prior to or within 12 months of the grant of an Option under this Plan to a resident of the State of California, and (ii) with respect to Awards other than Options, prior to the issuance of such Award to a resident of the State of California. Any Option exercised by a California resident or shares issued under an Award to a California resident shall be rescinded if shareholder approval is not obtained in the foregoing manner. Shares subject to such Awards shall not be counted in determining whether such approval is obtained.
6. To the extent required by applicable law, the Company shall provide annual financial statements of the Company to each California resident holding an outstanding Award under this Plan. Such financial statements need not be audited and need not be issued to key persons whose duties at the Company assure them access to equivalent information.

**DRAGONFLY ENERGY CORP.
2021 STOCK INCENTIVE PLAN**

1. **Purpose.** The purposes of this 2021 Stock Incentive Plan (this **“Plan”**) of Dragonfly Energy Corp., a Nevada corporation (the **“Company”**) are to provide incentives to attract, retain and motivate Employees, Consultants, and Directors who can make significant contributions to the success of the Company, and to provide incentives that align their interests with those of the Company’s shareholders. This Plan provides for Awards by the Company of (a) grants of Incentive Stock Options, (b) grants of Nonstatutory Stock Options, and (c) grants and sales of Restricted Stock.
2. **Definitions.** Certain capitalized terms used and not otherwise defined in this Plan have the meanings set forth in Appendix A.
3. **Plan Administration.**
 - (a) **The Administrator.**
 - (i) This Plan shall be administered by the Company’s board of directors (the **“Board”**), a committee or subcommittee of the Board (comprised of at least two members of the Board) appointed by the Board to administer the Plan (a **“Committee”**), or a combination thereof, as determined by the Board (as applicable, the **“Administrator”**). This Plan may be administered by different Administrators with respect to different activities and/or different classes of Participants.
 - (ii) If a Committee has been appointed, the Committee shall continue to serve in the capacity determined by the Board until the Board determines otherwise. The Board may change the size of the Committee, appoint additional members, remove members (with or without cause), appoint substitute members, fill vacancies (however caused), and dissolve the Committee and thereafter directly administer this Plan, all to the extent permitted by Applicable Laws and in the case of a Committee administering this Plan in accordance with the requirements of Rule 16b-1 of the Exchange Act or Section 162(m) of the Code, to the extent permitted by such provisions.
 - (iii) To the extent permitted by Applicable Laws, the Administrator may delegate its authority under this Plan to one or more officers of the Company within parameters set by the Administrator. Any authority so granted shall be in addition to, and not in lieu of, the authority of the Administrator under this Plan.
 - (b) **Powers of the Administrator.**
 - (i) Subject to the terms and conditions expressly set forth in this Plan and to the extent permitted by Applicable Laws (and in the case of a Committee, subject to the resolutions of the Board and to the extent of the specific duties delegated by the Board), the Administrator shall have full power and exclusive authority, in its sole discretion to:
 - (1) select the Employees, Consultants, and Directors to whom Awards may be granted from time to time;
 - (2) determine the type or types of Awards to be granted to each Participant;
 - (3) determine the number of Shares subject to each Award;
 - (4) determine Fair Market Value, provided that such determination shall be applied consistently with respect to Participants under this Plan;

(5) determine the terms and conditions of any Award, including without limitation the exercise or purchase price, the time or times when Awards may vest and/or be exercised (which may be based on length of Continuous Service, performance criteria, and/or other factors), the circumstances (if any) when vesting will be accelerated or forfeiture restrictions will be waived, and any restriction or limitation regarding any Award, Optioned Stock, or Restricted Stock;

(6) approve the forms of notice or agreement for making Awards under this Plan;

(7) amend any outstanding Award or agreement related to any Optioned Stock or Restricted Stock, including any amendment adjusting vesting (e.g., in connection with a change in the terms or conditions under which such person is providing services to the Company), provided that no amendment shall be made that would materially and adversely affect the rights of any Participant without such Participant's consent;

(8) determine whether, to what extent, and under what circumstances Awards may be settled in cash, Shares, or other property;

(9) determine whether, to what extent, and under what circumstances Awards may be settled, suspended, or canceled;

(10) subject to Applicable Laws, to implement an Option Exchange Program and establish the terms and conditions of such Option Exchange Program without consent of the holders of capital stock of the Company, provided that no amendment or adjustment to an Option that would materially and adversely affect the rights of any Participant shall be made without such Participant's consent;

(11) approve addenda pursuant to Section 15(g) below or grant Awards to, or modify the terms of, any outstanding Award Agreement or any agreement related to any Optioned Stock or Restricted Stock held by Participants who are foreign nationals or employed outside of the United States with such terms and conditions as the Administrator deems necessary or appropriate to accommodate differences in local law, tax policy, or custom that deviate from the terms and conditions set forth in this Plan to the extent necessary or appropriate to accommodate such differences;

(12) construe and interpret this Plan and any instrument constituting, evidencing, or relating to an Award, Option Agreement, Optioned Stock, Restricted Stock, notice, or agreement executed or entered into under this Plan;

(13) promulgate, amend, and rescind such rules, regulations, and procedures as the Administrator deems necessary or appropriate for the proper administration of this Plan;

(14) delegate ministerial duties to such of the Company's officers and employees as the Administrator so determines; and

(15) make any other determination and take any other action that the Administrator deems necessary or appropriate for the proper administration of this Plan.

(ii) Decisions of the Administrator shall be final, conclusive, and binding on all persons, including the Company, Participants, and their respective legal representative, their successors in interest and permitted assigns and upon all other persons claiming by, under, or against any of them.

(c) Indemnification. To the maximum extent permitted by Applicable Laws, each member of the Board and the Committee, if applicable, shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such person in connection with or resulting from any claim, action, suit, or proceeding to which such person may be a party or in which such person may be involved by reason of any action taken or failure to act under this Plan and against and from any and all amounts paid by such person in settlement thereof (provided such settlement has been approved by the Company), or paid by such person in satisfaction of any judgment in any such claim, action, suit, or proceeding against such person, unless such loss, cost, liability, or expense is a result of such person's own willful misconduct or except as expressly provided by statute; provided, however, that within 60 days after institution of any such action, suit, or proceeding, such person shall offer in writing the Company an opportunity, at its own expense, to handle and defend such action, suit, or proceeding. The foregoing right of indemnification shall be in addition to any other rights of indemnification to which such person may be entitled under the Company's articles of incorporation, bylaws, written agreement, as a matter of law or otherwise, or of any power that the Company may have to indemnify or hold harmless.

4. Term of Plan. This Plan shall become effective upon its adoption by the Board and shall continue in effect for a term of 10 years unless earlier terminated under Section 9 or Section 10. No future Awards may be granted after the term of this Plan, but Awards granted during the term of this Plan shall remain outstanding in accordance with the applicable terms and conditions of such Awards and of this Plan.

5. Shares Subject to this Plan.

(a) Authorized Number of Shares. A maximum of 3,000,000 Shares shall be available for issuance under this Plan, subject to adjustment from time to time as provided in Section 9(a), and except as otherwise provided in Section 5(b). Shares issued under this Plan may be drawn from authorized and unissued Shares or Shares reacquired by the Company.

(b) Share Reavailability. If any Award lapses, expires, terminates, or is canceled prior to the issuance of Shares thereunder, or if Shares are issued under this Plan to a Participant and thereafter are forfeited to or otherwise reacquired by the Company, the Shares subject to such Awards and the forfeited or reacquired Shares shall again be available for issuance under this Plan. Any Shares tendered by a Participant or retained by the Company as full or partial payment to the Company for the purchase price of an Award or to satisfy tax withholding obligations in connection with an Award shall be available for Awards under this Plan. If Shares issued under this Plan are later (i) forfeited to the Company due to a failure to vest or (ii) reacquired by the Company at or less than the original purchase price paid to the Company for the Shares (including, without limitation, upon forfeiture to or repurchase by the Company), then such Shares shall again be available for future issuance under this Plan. The number of Shares available for issuance under this Plan shall not be reduced to reflect any dividends or dividend equivalents that are reinvested into additional Shares or credited as additional Shares subject or paid with respect to an Award.

6. Eligibility.

(a) In General. Nonstatutory Stock Options and Restricted Stock may be granted to natural persons (not entities) who are Employees, Directors, and Consultants. Incentive Stock Options may be granted only to ISO-Eligible Employees.

(b) Ten Percent Shareholders. An ISO-Eligible Employee who is also a Ten Percent Shareholder shall not be granted an Incentive Stock Option unless the Option exercise price is at least 110% of the Fair Market Value of the Shares at the Award Date and the Option is not exercisable after the expiration of five (5) years from the Award Date.

(c) Assumed Awards; Substitute Awards. Notwithstanding any other provision of this Plan to the contrary, the Administrator may, from time to time, cause the Company to assume outstanding awards granted by an Acquired Entity (an “**Assumed Award**”), by either (i) granting an Award under the Plan in replacement of or in substitution for the Assumed Award, or (ii) treating the Assumed Award as if it had been granted under the Plan if the terms of such Assumed Award could be applied to an Award granted under the Plan (in the case of either clause (i) or (ii) above, a “**Substitute Award**”). A Substitute Award shall be allowed if the holder of the Assumed Award would have been eligible to be granted an Award under this Plan if the Acquired Entity had applied the requirements of this Plan to such Assumed Award at the time the Assumed Award’s original grant. The Administrator may also grant Awards under the Plan in settlement of or in substitution for outstanding awards or obligations to make future awards in connection with the acquisition of an Acquired Entity, or an additional interest in an Affiliate.

7. Options.

(a) Grant of Options. The grant of any Option shall exclusively be evidenced by an executed Option Agreement between the Company and the applicable Employee, Consultant, or Director. Any such Option may be subject to vesting and other restrictions determined by the Administrator. The terms and conditions of Option Agreements may differ among individual Awards and Participants.

(b) Types of Options. Each Option shall be designated in the applicable Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. Notwithstanding the foregoing, the Company shall have no liability to any Participant or any other person if an Option designated as an Incentive Stock Option fails to qualify as such at any time or if an Option is determined to constitute “nonqualified deferred compensation” within the meaning of Section 409A of the Code and the terms of such Option do not satisfy the requirements of Section 409A of the Code.

(i) Non-Designation. If the Option Agreement fails to designate an Option as an Incentive Stock Option or a Nonstatutory Stock Option, the Option shall be deemed a Nonstatutory Stock Option.

(ii) Non-ISO-Eligible Employees; Non-Qualification. Notwithstanding any designation described in Section 7(b), (A) any Option granted to a non-ISO-Eligible Employee shall be deemed a Nonstatutory Stock Option, and (B) to the extent any Option does not qualify as an Incentive Stock Option, it shall be deemed a Nonstatutory Stock Option. Further, an Option originally granted as an Incentive Stock Option to an ISO-Eligible Employee shall, without any further action by the Company, convert to a Nonstatutory Stock Option three (3) months following the date the Participant ceases to be an ISO-Eligible Employee but continues to provide Continuous Service in a non-ISO-Eligible Employee capacity.

(iii) ISO \$100,000 Limitation. Notwithstanding any designation described in Section 7(a), to the extent that the aggregate Fair Market Value of stock with respect to which Incentive Stock Options are exercisable for the first time by a Participant during any calendar year (including Options designated as Incentive Stock Options under this Plan and all other options granted to the Participant by the Company, its Parent, or its Subsidiaries under other plans) exceeds \$100,000, such excess options shall be deemed and treated as Nonstatutory Stock Options. For purposes of this Section 7(b)(iii), Options designated as Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Optioned Stock subject to an option shall be determined as of the date of the grant of such Option.

(iv) Shareholder Approval. If the shareholders of the Company do not approve this Plan within 12 months before or after the Board’s adoption of this Plan (or the Board’s adoption of any amendment to this Plan that constitutes the adoption of a new plan for purposes of Section 422 of the Code), then any Options designated as Incentive Stock Options shall be deemed Nonstatutory Stock Options.

(c) Option Term. Subject to earlier termination in accordance with the terms of this Plan and the Option Agreement, the term of an Option (the “**Option Term**”) shall not exceed ten (10) years from the Award Date; provided however that the maximum term of an Incentive Stock Option granted to a Ten Percent Shareholder shall not exceed five (5) years from the Award Date.

(d) Option Exercise Price. The exercise price per share for Optioned Stock subject to an Option shall be determined by the Administrator. Except as otherwise provided in this Plan with respect to Substitute Awards satisfying the provisions of Section 424(a) of the Code, the exercise price per share for an Option shall not be less than 100% of the Fair Market Value of the Optioned Stock on the Award Date; provided however that (i) the exercise price per share for an Incentive Stock Option granted to a Ten Percent Shareholder shall not be less than 110% of the Fair Market Value of the Optioned Stock on the Award Date and (ii) the exercise price per share for an Incentive Stock Option may be lower than 100% of the Fair Market Value of the Optioned Stock only if such Incentive Stock Option is a Substitute Award for an Assumed Award in a manner complying with Section 424(a) of the Code.

(e) Exercise of Options.

(i) In General. Any Option granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator, consistent with the terms of this Plan and the applicable Option Agreement. The exercise of an Option shall result in a decrease in the number of Shares that thereafter may be available, both for purposes of this Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(ii) Procedures for Exercise. An Option shall be deemed exercised when (A) written notice of such exercise has been received by the Company in accordance with the terms of the Option Agreement by the person entitled to exercise the Option (the “**Exercise Notice**”) and further executed by the Participant and the Company confirming the additional documents thereafter constituting the Restricted Stock Agreement; (B) if so requested by the Company, the person exercising the Option has executed and delivered a new Restricted Stock Agreement supplied by the Company (including further customary restrictions and covenants determined by the Administrator in its sole discretion) with respect to the Optioned Stock for which the Option is exercised; and (C) the Company has received full payment for the Optioned Stock for which the Option is exercised and Participant has paid, or made arrangements to satisfy, any applicable taxes, withholding, required deductions or other required payments in accordance with Section 11, all of which as evidenced by the Company’s countersignature of the Exercise Notice or the new Restricted Stock Agreement, as applicable.

(iii) Exercise of Unvested Options. Unless otherwise expressly provided in the Option Agreement or approved in writing by the Administrator, Options shall only be exercisable to the extent vested at such time or times. If the Option Agreement (or the Administrator) so permits the Participant to exercise an Option as to unvested portions thereof, (A) the Optioned Stock issued upon such exercise shall be unvested (subject to continued vesting consistent with the vesting schedule of the exercised Option and subject to forfeiture to the extent not vested upon a Termination of Service), (B) the Optioned Stock issued upon such exercise shall be Restricted Stock for purposes of this Plan, and (C) the Participant shall be required to enter into a Restricted Stock Agreement provided by the Company as a condition to exercise of such Option.

(iv) Minimum Exercise Requirements. An Option may not be exercised for a fraction of a Share. The Administrator may require that an Option be exercised as to a minimum number of Shares, provided that such requirement shall not prevent a Participant from exercising the full number of Shares as to which an Option is then exercisable.

(f) **Payment of Exercise Price.** The exercise price for Optioned Stock purchased under an Option shall be paid in full to the Company by delivery of consideration equal to the product of the Option exercise price per share and the number of Shares so purchased. Such consideration must be paid before the Company will issue the Optioned Stock being purchased and must be in a permitted form. The exercise price shall be paid, to the extent permitted by Applicable Laws, either (i) in cash, check, or wire transfer at the time the Option is exercised, or (ii) one of the following methods to the extent approved in the discretion of the Administrator from time to time, upon such terms as the Administrator shall approve: (A) cancellation of indebtedness; (B) to the extent permitted under, and in accordance with, Applicable Laws, delivery of a promissory note with full recourse and such interest, security and redemption provisions as the Administrator determines to be appropriate (subject to the provisions of Section 78.211 of the Nevada Revised Statutes); (C) delivery of other previously owned Shares that have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which this Option is exercised; (D) through a “cashless exercise program” established with a broker; (E) by a “net exercise” or other similar procedure effected by withholding or reducing the Optioned Stock otherwise deliverable upon exercise this Option by an amount of the exercised Optioned Stock having a Fair Market Value equal to the aggregate exercise price at the time of exercise and applicable tax withholding obligations; (F) any combination of the foregoing methods; and/or (G) such other consideration and method of payment permitted under Applicable Laws. In making its determination as to the type of consideration to accept, the Administrator shall consider if acceptance of such consideration may be reasonably expected to benefit the Company and the Administrator may, in its sole discretion, refuse to accept a particular form of consideration at the time of any Option exercise.

(g) **Vesting.** The Administrator shall establish and set forth in each Option Agreement to what extent such Option is vested or unvested on the Award Date, and the terms and conditions by which unvested portions of an Option may vest, any of which provisions may be waived or modified by the Administrator at any time. If not otherwise established in the Option Agreement, the Option shall initially be 100% unvested on the Award Date and shall vest according to the following schedule, which may be waived or modified by the Administrator at any time:

Period of Participant’s Continuous Service from the Vesting Commencement Date	Portion of Total Option That Is Vested
After 1 year	1/4 th
After each additional one-month period of such Continuous Service completed after 1 year	An additional 1/48 th

(h) Effect of Termination of Service. The Administrator shall establish and set forth in each Option Agreement whether the Option shall continue to be exercisable, if at all, following termination of a Participant's Continuous Service, which provisions may be waived or modified by the Administrator at any time; provided however that:

- (1) all Option Agreements shall provide for a period of at least 30 days after a Termination of Service within which they may be exercised as to any vested Options; further provided that '
- (2) if the Termination of Service is caused by death or Disability, Option Agreements shall provide for a period of at least six (6) months after a Termination of Service within which they may exercise as to any vested Options; further provided that
- (3) under no circumstances may any Incentive Stock Option be exercised (A) more than three (3) months after the Termination of Service for a reason other than death or Disability, or (B) more than twelve (12) months after the Termination of Service for death or Disability; further provided that
- (4) under no circumstances may any Option be exercised after the Option Expiration Date set forth in the Option Agreement.

If the Option Agreement does not establish the terms and conditions upon which an Option shall terminate upon termination of the Participant's Continuous Service, the following shall apply:

- (i) Unvested or Non-Exercisable Options. Any portion of an Option that is unvested or non-exercisable on the date of a Participant's Termination of Service shall immediately expire, terminate, and be forfeited as of the date of the Termination of Service.
- (ii) Vested Options - In General. If the Participant (or other person entitled to exercise the Option) does not exercise the vested Option to the extent so entitled within the applicable time specified below, then the Option shall expire unexercised and terminate, and the Optioned Stock underlying the unexercised portion of the Option shall revert to this Plan. Under no circumstances may any Option be exercised after the Option Expiration Date set forth in the Option Agreement.
- (iii) Vested Options - General Termination (Not for Disability, Death or Cause). In the event of a Participant's Termination of Service other than under the circumstances set forth in the subsections (iv) through (vi) below, any vested Option held by the Participant shall expire unexercised and terminate upon the earlier of (A) the Option Expiration Date, or (B) three (3) months after the Termination of Service.
- (iv) Vested Options - Disability. In the event of a Participant's Termination of Service as a result of the Participant's Disability, any vested Option held by the Participant shall expire unexercised and terminate upon the earlier of (A) the Option Expiration Date, or (B) one (1) year after the Termination of Service.
- (v) Vested Options - Death. In the event of the death of the Participant during the period of Continuous Service since the Award Date, or within three (3) months following such Participant's Termination of Service, any vested Option held by any beneficiaries designated in accordance with Section 12, or if there are no such beneficiaries, by the Participant's estate, or by a person who acquired the right to exercise the vested Option by bequest or inheritance, shall expire unexercised and terminate upon the earlier of (A) the Option Expiration Date, or (B) one (1) year after the Termination of Service.
- (vi) Vested Options - Termination for Cause. In the event of a Termination of Service for Cause, any outstanding vested Option granted to or held by such Participant shall immediately terminate in its entirety upon first notification to the Participant of the Termination of Service for Cause. If a Participant's Continuous Service is suspended pending an investigation of whether the Participant's Continuous Service will be terminated for Cause, all the Participant's rights under any vested Option, including the right to exercise the Option, shall be suspended during the investigation period. Additionally, if any facts establishing the existence of Cause with respect to a Participant are discovered after the Participant's Termination of Service, any vested Option then held by the Participant may be immediately terminated by the Administrator, in its sole discretion. For clarity, nothing in this Section Z(h)(vi) shall in any way limit any right of the Company to repurchase unvested Shares issued upon exercise of an Option.

(i) Taxation of Incentive Stock Options. To obtain certain tax benefits afforded to Incentive Stock Options under Section 422 of the Code, the Participant must have been providing Continuous Service as an ISO-Eligible Employee within three (3) months of the date of exercise (or if Termination of Service occurs as a result of the Participant's Disability, then within one (1) year of the date of exercise) and must hold the shares acquired upon the exercise of an Incentive Stock Option until the later of: (A) two (2) years after the Award Date and (B) one (1) year after the date of exercise. A Participant may be subject to the alternative minimum tax at the time of exercise of an Incentive Stock Option. The Participant shall give the Company prompt notice of any disposition of (and the price realized from) shares acquired on the exercise of an Incentive Stock Option prior to the expiration of such holding periods.

(j) No Rights as a Shareholder. No holder of any Option, nor any person claiming under or through such holder will be, or have any of the rights or privileges (regarding dividends, voting or otherwise) of, a shareholder of the Company in respect of any Optioned Stock issuable upon the exercise of the Option, unless and until the Option is properly exercised in accordance with this Plan and the Option Agreement.

(k) Buyout Provisions. The Administrator may at any time offer to buy out for a payment in cash or Shares any Option previously granted under this Plan based on such terms and conditions as the Administrator shall establish and communicate to the Participant at the time that such offer is made.

(l) Option Transfer Restrictions.

(i) Incentive Stock Options. An Incentive Stock Option (or any rights of such Option) may not be sold, pledged, encumbered, assigned, hypothecated, disposed of, or otherwise transferred in any manner other than by will or by the laws of descent and distribution.

(ii) Nonstatutory Stock Options. To the extent provided in the Award Agreement, a Nonstatutory Stock Option may be transferable to a Family Member or such other transferees as may be permitted by the Administrator in its sole discretion. If the Nonstatutory Stock Option does not provide for transferability, then the Nonstatutory Stock Option shall not be sold, pledged, encumbered, assigned, hypothecated, disposed of, or otherwise transferred in any manner other than by will or by the laws of descent and distribution.

(iii) General. During the lifetime of the holder of an Option, an Option may be exercised only by such holder. The terms of any Option shall be binding upon the executors, administrators, heirs, successors, and assigns of the holder of an Option. The designation of a beneficiary by a Participant in accordance with Section 12 shall not constitute a transfer in violation of this Section 7(1). Any purported transfer of an Option in violation of this Section 7(1) shall be null and void.

8. Restricted Stock.

(a) Restricted Stock Agreement.

(i) The grant or sale of any Restricted Stock (including upon the exercise of any Option) under this Plan shall exclusively be evidenced by an executed Restricted Stock Agreement between the Company and the applicable Employee, Consultant, or Director. Any such Restricted Stock may be subject to vesting and other restrictions determined by the Administrator and set forth in the Restricted Stock Agreement. The Restricted Stock Agreement shall contain such other terms, provisions, and conditions not inconsistent with this Plan as may be determined by the Administrator in its sole discretion. The terms and conditions of Restricted Stock Agreements may differ among individual Awards and Participants.

(ii) The permissible consideration for a sale of Restricted Stock shall be determined by the Administrator, and may be the same methods as are set forth in Section 7(f) with respect to exercise of Options.

(b) Vesting of Restricted Stock. The Administrator shall establish and set forth in each Restricted Stock Agreement the extent to which such Restricted Stock is initially vested or unvested, and the terms and conditions by which unvested portions of the Restricted Stock may vest. Such provisions may be waived or modified by the Administrator at any time. If not otherwise established in the Restricted Stock Agreement, the Restricted Stock shall initially be 100% unvested and shall vest according to the following schedule, which may be waived or modified by the Administrator at any time:

Period of Participant's Continuous Service from the Vesting Commencement Date	Portion of Total Award That Is Vested
After 1 year	1/4 th
After each additional three-month period of such Continuous Service completed after 1 year	An additional 1/16 th

(c) Repurchase or Forfeiture of Restricted Stock. If not otherwise provided in the applicable Restricted Stock Agreement, any Restricted Stock issued, granted, or sold under this Plan shall be subject to each of the following repurchase options and/or forfeiture provisions, as applicable:

(i) Repurchase/Forfeiture of Unvested Restricted Stock. In the event a Termination of Service occurs for any reason, whether voluntary or involuntary (including death or Disability), with or without cause, the Company shall have an irrevocable option to purchase all or any portion of the unvested Restricted Stock (the **"Unvested Share Option"**) during the 120-day period following the Termination of Service (with respect to the Unvested Share Option, the **"Option Period"**). The purchase price applicable to an exercise of the Unvested Share Option (for purposes of this Unvested Share Option, the **"Repurchase Price"**) for each share of Restricted Stock shall be the lesser of (A) the purchase price per share paid by the Participant for such unvested Restricted Stock or (B) the Fair Market Value of such unvested Restricted Stock as of the end of the calendar month in which the Termination of Service occurs. In the event a Participant is granted unvested Restricted Stock without payment of a purchase price, any such Restricted Stock that is unvested upon a Termination of Service shall be immediately and automatically forfeited by the Participant.

(ii) Repurchase/Forfeiture for Cause Event. In the event the Company discovers any Cause with respect to a Participant, the Company shall have an irrevocable option to purchase all or any portion of the Shares (the **"Cause Option"**), during the 180-day period following such discovery of the Cause (with respect to the Cause Option, the **"Option Period"**). The purchase price applicable to an exercise of the Cause Option (for purposes of this Cause Option, the **"Repurchase Price"**) for each share of vested Restricted Stock shall be the lesser of (A) the purchase price per share paid by the Participant for such share of Restricted Stock, or (B) the Fair Market Value per share of the Restricted Stock as of the end of the calendar month in which the Cause occurs. In the event a Participant was granted Restricted Stock without payment of a purchase price, any such Restricted Stock shall be immediately and automatically forfeited by the Participant upon the Company's discovery of any Cause.

(iii) FMV Repurchase Option upon Termination of Service. In the event of a Termination of Service occurs for any reason, whether voluntary or involuntary (including death or Disability), with or without cause, the Company shall have an irrevocable option to purchase all or any portion of the Restricted Stock (the “**FMV Repurchase Option**”) during the 120-day period following the Termination of Service (with respect to the FMV Repurchase Option, the “**Option Period**”). The purchase price applicable to an exercise of the FMV Repurchase Option (for purposes of this FMV Repurchase Option, the “**Repurchase Price**”) shall be the Fair Market Value per share of the Restricted Stock.

(d) Exercise of Repurchase Option.

(i) A repurchase option under the Plan or a Restricted Stock Agreement (as applicable, a “**Repurchase Option**”) may be exercised by written notice to the Participant of such exercise during the applicable Option Period. Additionally, except to extent the Company notifies the Participant in writing during the applicable Option Period that the Company elects not to exercise its Unvested Share Option or Cause Option with respect to some or all of the applicable Restricted Stock, the Unvested Share Option or Cause Option, as applicable, shall be deemed automatically exercised by the Company with respect to all applicable Restricted Stock on the last day of the applicable Option Period.

(ii) The Company, at its sole discretion, may satisfy the Repurchase Price by (A) payment in the amount of the Repurchase Price, or (B) cancellation of indebtedness equal to the Repurchase Price, or (C) by a combination of (A) and (B) with the combined payment and amount of indebtedness cancelled equaling the Repurchase Price. In the event of any deemed automatic exercise of a Repurchase Option pursuant to this Section 8(d) in which the Participant is indebted to the Company, such indebtedness equal to the Repurchase Price shall be deemed automatically canceled as of the end of the Option Period unless the Company otherwise satisfies its payment obligations.

(iii) The Company may assign all or any portion of a Repurchase Option to one or more designees at its sole discretion. If the Participant transfers any Restricted Stock, then the Repurchase Option shall apply to the transferee to the same extent as if the Restricted Stock was still held by the Participant.

(e) No Purchase Obligation. Except to the extent the Company has exercised a Repurchase Option, the Company has no obligation, either now or in the future, to repurchase any Restricted Stock at any time. The Repurchase Price may be less than the price originally paid by the Participant and the Participant bears any risk associated with the potential loss in value.

(f) Stock Certificates. To the extent this Plan or any instrument evidencing an Award provides for issuance of stock certificates to reflect the issuance of Shares, the issuance may be effected on a noncertificated basis, to the extent not prohibited by Applicable Laws or the applicable rules of any stock exchange. Unless the Administrator determines otherwise, any certificates evidencing Restricted Stock shall remain in the possession of the Company until the Restricted Stock is no longer subject to repurchase or forfeiture subject to this Plan, and the Participant shall be required, as a condition of the Award of Restricted Stock, to deliver to the Company a stock power endorsed in blank and such other instruments of transfer as the Administrator may determine in its sole discretion.

(g) Rights as a Holder of Capital Stock. After Restricted Stock is acquired in accordance with this Plan and the Restricted Stock Agreement (including the payment of any consideration contemplated by the Option Agreement), the Participant shall have the rights equivalent to those of a holder of capital stock, and shall be a record holder when such Participant’s acquisition and the issuance of the Restricted Stock is entered upon the records of the Company or its duly authorized transfer agent; provided that (i) the applicable Award Agreement may (but is not required to) specify to what extent Shares of Restricted Stock may exercise any voting rights or receive credit for dividends and distributions, and (ii) the Administrator may apply any restrictions that the Administrator deems advisable to the crediting and payment of dividends and other distributions. No adjustment will be made for a dividend or other right for which the record date is prior to the date on which the Participant becomes the record holder of the Restricted Stock, except as provided in this Section 8.

(h) Restricted Stock Transfer Restrictions.

(i) In General. Except to the extent complying with this Section 8 and the terms of the applicable Restricted Stock Agreement, Shares (or any rights of such Shares) may not be sold, pledged, encumbered, assigned, hypothecated, disposed of, or otherwise transferred in any manner. Any purported transfer effected in violation of this Section 8 or the applicable Restricted Stock Agreement shall be null and void and shall have no force or effect, and the Company shall not be required (A) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Plan or the applicable Restricted Stock Agreement, or (B) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been purportedly transferred.

(ii) Transfer of Unvested Shares. The Participant shall not transfer, assign, encumber, or otherwise dispose of any unvested Shares without the Company's prior written approval in its sole and absolute discretion, except that the Participant may, transfer unvested Shares (A) by beneficiary designation, will, or intestate succession or (B) to the Participant's Family Members or to a trust established by the Participant for the benefit of the Participant or the Participant's Family Members.

(iii) Securities Law Restrictions. The Shares may not be transferred except in accordance with the Securities Act, any applicable securities laws of any state, and any other applicable law. Regardless of whether the offering and sale of the Restricted Stock have been registered under the Securities Act, or have been registered or qualified under the securities laws of any state, the Company at its discretion may impose restrictions upon the sale, pledge, gift, assignment, hypothecation, disposal of, or other transfer of the Shares (including the placement of appropriate legends on certificates or the imposition of stop-transfer instructions) if, in the judgment of the Company, such restrictions are necessary or desirable to achieve compliance with the Securities Act, the securities laws of any state or any other law.

(iv) Notice of Certain Transfers. To the extent a Participant holds Restricted Stock as a result of the exercise of an Option that has been designated as an Incentive Stock Option, to obtain certain tax benefits afforded to Incentive Stock Options, the Participant must hold such Restricted Stock issued upon the exercise of the Incentive Stock Option until the later of: (A) two (2) years after the Award Date for such Incentive Stock Option and (B) one (1) year after the date of exercise of such Incentive Stock Option.

(v) Transferee Requirements. A transfer, assignment, encumbrance, or other disposition of Shares otherwise complying with the requirements of this Plan and the Restricted Stock Agreement shall only be effective if and when (A) the Transferee agrees in writing on a form prescribed by the Company to be bound by all provisions of the Plan and the applicable Restricted Stock Agreement, including without limitation any applicable Unvested Share Option and this Section 8(h), and the Transferee agrees to enter into any Further Stockholder Agreement (with the Transferee having the designation, rights, and obligations generally applicable to a shareholder that only holds Common Stock, but not the designation, rights and obligations that are specific to an "Investor" or other similar class of designation).

(vi) Rights of Company.

(1) Upon the Company's request in connection with any proposed Transfer, the Participant shall provide, at the Participant's expense, an opinion of legal counsel (such counsel being reasonably satisfactory to the Company) addressed to the Company that the proposed transfer will not violate any applicable federal or state securities laws.

(2) Any Transfer not made in compliance with the requirements of this Plan and the applicable Restricted Stock Agreement shall be null and void ab initio, shall not be recorded on the books of the Company or its transfer agent, and shall not be recognized by the Company. The Company shall not be required (A) to transfer any Shares on the Company's books that have not transferred in full compliance with the terms of this Plan and any applicable Award Agreement, or (B) with respect to any transferee to whom Shares have been transferred in any manner not fully complying with the terms of this Plan, to treat such transferee as the owner of Shares, or as otherwise holding any corresponding voting, dividend, or liquidation rights with respect to Shares.

(3) The Participant unconditionally and irrevocably acknowledges and agrees that any breach of this Plan or the applicable Award Agreement would result in substantial harm to the Company for which monetary damages would not adequately compensate the Company, and that the provisions of this Plan shall be specifically enforceable, and that any breach or threatened breach of this Plan shall be the proper subject of a restraining or other protective order, temporary or permanent injunction, or other remedies available in equity (including, without limitation, seeking specific performance or the rescission of purchases, sales, and other transfers of Shares not made in strict compliance with this Plan and the applicable Restricted Stock Agreement. Further, the Participant unconditionally and irrevocably waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach.

(4) For the absence of doubt, in the event of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares, or other change affecting the Company's Common Stock as a class without the Company's receipt of consideration, any new, substituted, or additional securities distributed with respect to the Shares shall be immediately subject to the provisions of this Section 8, to the same extent as the Shares immediately prior to such event or change.

(i) Market Stand-Off. In connection with the initial underwritten public offering by the Company of its equity securities pursuant to an effective registration statement filed under the Securities Act (the "**IPO**"), a Participant shall not, without the prior written consent of the Company's managing underwriter, during the 180-day period following the effective date of the registration statement (or such longer period as the underwriters or the Company shall request in order to facilitate compliance with FINRA Rule 2241 or NYSE Member Rule 472 or any successor or similar rule or regulation) (the "**Lock Up Period**"), (i) lend, offer, assign, pledge, encumber, hypothecate, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right, or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Restricted Stock or any securities convertible into or exercisable or exchangeable for Restricted Stock (whether such shares or any such securities are then owned by the Participant or are thereafter acquired), or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Restricted Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Restricted Stock or such other securities, in cash or otherwise. In order to enforce this Section 8(i), the Company may impose stop-transfer instructions during the Lock Up Period. The underwriters in connection with the IPO are intended third-party beneficiaries of this Section 8(i) and shall have the right, power, and authority to enforce the provisions hereof as though they were a party hereto. The Participant further agrees to execute such agreements as may be reasonably requested by the underwriters in the IPO that are consistent with this Section 8(i) or that are necessary to give further effect thereto. For the absence of doubt, nothing in this Section 8(i) shall restrict the repurchase of Restricted Stock by the Company during the Lock Up Period.

(j) Company's Right of First Refusal. The Participant acknowledges that all of the Restricted Stock is subject to a right of first refusal and certain other transfer restrictions set forth in the Company's bylaws, a copy of which is on file at the principal office of the Company. The Participant agrees to fully comply with the terms of such right of first refusal and other transfer restrictions.

9. Corporate Transactions.

(a) Adjustments. Subject to any action required under Applicable Laws by the holders of capital stock of the Company, in the event of a stock split, reverse stock split, stock dividend, combination, consolidation, reclassification of the Shares, or subdivision of the Shares after the Award Date of any Award (i) the numbers and class of the Shares (A) available for future Awards under Section and (B) subject to each outstanding Award; (ii) the exercise price per Share of each such outstanding Option; and (iii) any repurchase price per Share applicable to Shares issued pursuant to any Award, shall be equitably adjusted by the Administrator to the extent necessary to preserve the economic intent of such Award. Any such adjustment by the Administrator shall be made in the Administrator's sole and absolute discretion and shall be final, binding, and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class (nor any resulting dilution of the percentage interest in the Company represented by any Shares), shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares subject to an Award. If, by reason of a transaction described in this Section 9(a) or an adjustment pursuant to this Section 9(a), an Option Agreement or Restricted Stock Agreement covers additional or different shares of stock or securities, then such additional or different shares shall be subject to all of the terms, conditions, and restrictions which were applicable to the Award, Optioned Stock, and/or Shares, applicable, subject to the Option Agreement or Restricted Stock Agreement prior to such adjustment.

(b) Dissolution or Liquidation. Unless otherwise determined by the Administrator in its sole discretion, (i) Options shall terminate immediately prior to the dissolution or liquidation of the Company; and (ii) to the extent a forfeiture provision or repurchase right is applicable to any Restricted Stock with respect to any unvested status, and has not been waived by the Administrator, the Restricted Stock shall be forfeited immediately prior to the consummation of the dissolution or liquidation.

(c) Change in Control.

(i) In the event of a Change in Control, the Administrator may, but shall not be obligated to:

- (1) provide for the continuation of Awards; or
- (2) accelerate, vest, or cause the lapse of restrictions with respect to all or any portion of any Award; or
- (3) cancel Awards and cause to be paid to the holders of vested Awards the Fair Market Values of such Awards, if any, as determined by the Administrator, in its sole discretion; provided that in the case of an Option having an Option Exercise Price equal to or exceeding the price paid for a Share in connection with the Change in Control, the Administrator may cancel the Option without the payment of consideration therefor; or
- (4) provide for the issuance of substitute Awards or the assumption or replacement of such Awards by the Successor Company; or

(5) provide written notice to Participants of a ten (10) or more day period prior to the Change in Control during which such Options shall be exercisable, to the extent otherwise vested and exercisable, upon the occurrence of the Change in Control. Any Options not exercised under such circumstances within such designated period shall terminate and be of no further force and effect upon the Change in Control.

(ii) The obligations of the Company under the Plan shall be binding upon any successor entity resulting from the Change in Control, or upon any Successor Company succeeding to all or substantially all of the assets and business of the Company and its Affiliates, taken as a whole.

(iii) For the avoidance of doubt, nothing in this Section 9(c) requires all outstanding Awards to be treated similarly.

(d) Company's Drag-Along Right. Upon a Change in Control, the Company shall also have the right (the "**Drag-Along Right**"), but not the obligation, to cause a Participant to (i) exercise any vested and unexercised Option, and (ii) tender for purchase any or all Restricted Stock (including any Restricted Stock acquired pursuant to clause (i) of this sentence), in the same proportion, for the same consideration, at the same price and on the same terms and conditions as apply to the Company's other holders of Common Stock. The Drag-Along Right shall apply to the Participant's vested Option and Restricted Stock. If the Company elects to exercise the Drag-Along Right, the Company shall notify the Participant in writing (the "**Drag-Along Notice**"). Such Drag-Along Notice shall set forth the name and address of the proposed purchaser, the proposed amount and form of consideration, and other terms and conditions of transfer offered by the proposed purchaser, the amount of the Participant's Restricted Stock proposed to be purchased by such purchaser, and a calculation of the proposed purchase price applicable to the Participant. Upon the receipt of the Drag-Along Notice, the Participant shall be obligated to transfer the applicable Restricted Stock free and clear of any encumbrances to the proposed purchaser on the terms and price consistent with the Drag-Along Notice.

(e) No Limitations. The grant of Awards shall in no way affect the Company's right to adjust, reclassify, reorganize, or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate, or sell or transfer all or any part of its business or assets.

(f) Fractional Shares. In the event of any adjustment in the number of shares subject to any Award, each such Award shall cover only the number of full shares resulting from such adjustment, and any fractional shares resulting from such adjustment shall be disregarded.

(g) Section 409A. Notwithstanding any other provision of this Plan to the contrary, (i) any adjustments made pursuant to this Section 9 to Awards that are considered "deferred compensation" within the meaning of Section 409A shall be made in compliance with the requirements of Section 409A, and (ii) any adjustments made pursuant to this Section 9 to Awards that are not considered "deferred compensation" subject to Section 409A shall be made in such a manner as to ensure that after such adjustment the Awards either (A) continue not to be subject to Section 409A, or (B) comply with the requirements of Section 409A.

10. Amendment of this Plan and the Awards.

(a) Amendment of the Plan. The Board at any time, and from time to time, may amend or terminate this Plan; provided, however, except as provided in Section 9(a) and Section 10(c), no amendment shall be effective unless approved by the shareholders of the Company to the extent shareholder approval is necessary to satisfy any Applicable Laws. At the time of such amendment, the Board shall determine, upon advice from counsel, whether such amendment will be contingent on shareholder approval.

(b) Shareholder Approval. The Board may, in its sole discretion, submit any other amendment to this Plan for shareholder approval.

(c) Contemplated Amendments. It is expressly contemplated that the Board may amend this Plan in any respect the Board deems necessary or advisable to provide eligible Employees, Consultants, and Directors with the maximum benefits provided or to be provided under the provisions of the Code and the regulations promulgated thereunder.

(d) No Impairment of Rights. Rights under any Award granted before amendment of this Plan shall not be impaired by any amendment of this Plan unless the applicable Participant consents in writing.

(e) Amendment of Awards. The Administrator at any time, and from time to time, may amend the terms of any one or more Awards; provided, however, that the Administrator may not make any amendment that would otherwise constitute an impairment of the rights under any Award unless the applicable Participant consents in writing.

11. Withholding Obligations.

(a) The Company shall require the payment of, and the Participant shall pay to the Company or a Related Entity, as applicable, the amount of (i) any taxes that the Company or a Related Entity is required by applicable federal, state, local, or foreign law to withhold with respect to the grant, vesting, or exercise of an Award (“**tax withholding obligations**”) and (ii) any amounts due from the Participant to the Company or to any Related Entity (“**other obligations**”). Notwithstanding any other provision of this Plan to the contrary, the Company shall not be required to issue any Shares or otherwise settle an Award under this Plan until such tax withholding obligations and other obligations are satisfied.

(b) The Administrator, in its sole discretion, may permit or require a Participant to satisfy all or part of the Participant’s applicable tax withholding obligations and other obligations by (i) paying cash to the Company or a Related Entity, as applicable, (ii) having the Company or a Related Entity, as applicable, withhold an amount from any cash amounts otherwise due or to become due from the Company to the Participant, (iii) having the Company withhold a number of Shares that would otherwise be issued to the Participant (or become vested, in the case of Restricted Stock) having a Fair Market Value equal to the tax withholding obligations and other obligations, and/or (iv) surrendering a number of Shares the Participant already owns having a value equal to the tax withholding obligations and other obligations. The Company also has the right to withhold any tax withholding obligations from any compensation otherwise payable to a Participant by the Company or a Related Entity. The value of the Shares so withheld or tendered may not exceed the employer’s applicable minimum required tax withholding rate or such other applicable rate as is necessary to avoid adverse treatment for financial accounting purposes, as determined by the Administrator in its sole discretion.

12. Beneficiaries. If permitted by the Company, a Participant may designate one or more beneficiaries with respect to an Award by timely filing the prescribed form with the Company. A beneficiary designation may be changed by filing the prescribed form with the Company at any time before the Participant’s death. Except as otherwise provided in the applicable Option Agreement or Restricted Stock Agreement, if no beneficiary was designated or if no designated beneficiary survives the Participant, then after a Participant’s death, any vested Award(s) shall be transferred or distributed to the Participant’s estate or to any person who has the right to acquire the Award by bequest or inheritance.

13. Termination, Clawback, and Forfeiture of Awards for Cause. Notwithstanding anything to the contrary contained herein, the Administrator may, in its sole discretion, cancel an Award if any Cause is discovered with respect to the corresponding Participant. Unless otherwise agreed in writing by the Administrator with knowledge of the instance of Cause, all outstanding Options (whether or not vested) of a Participant shall immediately terminate and cease to be exercisable on the date on which the Cause occurs. In the event of Cause with respect to a Participant, (a) the Participant shall forfeit any gain realized on the vesting, exercise, or settlement of any Award, and must repay the gain to the Company, and (b) if the Participant receives any amount in excess of what the Participant should have received under the terms of the Award for any reason (including, without limitation, by reason of a financial restatement, mistake in calculations, or other administrative error), then the Participant shall be required to repay any such excess amount to the Company. Without limiting the foregoing, all Awards shall be subject to reduction, cancellation, forfeiture, or recoupment to the extent necessary to comply with Applicable Laws.

14. Further Stockholder Agreements. In connection with the grant, vesting, and/or exercise of any Award under this Plan, or at any other time determined by the Administrator, the Administrator may require a Participant to execute and become a party to a Further Stockholder Agreement as a condition of such grant, vesting, and/or exercise.

15. General.

(a) No Right to Employment or Uniform Treatment. No individual or Participant shall have any claim to be granted any Award under this Plan, and the Company has no obligation for uniformity of terms or treatment of Participants under this Plan. Furthermore, nothing in this Plan or any Award granted under this Plan shall be deemed to constitute an employment contract or confer or be deemed to confer on any Participant any right to continue in the employ of, or to continue any other relationship with, the Company or any Related Entity or limit in any way the right of the Company or any Related Entity to terminate a Participant's employment or other relationship at any time, with or without cause. EXCEPT AS THE COMPANY AND A PARTICIPANT MAY OTHERWISE AGREE IN WRITING, ANY EMPLOYMENT OR OTHER RELATIONSHIP BETWEEN THE PARTICIPANT AND THE COMPANY OR RELATED ENTITY SHALL BE TERMINABLE BY THE COMPANY OR RELATED ENTITY, AT WILL, WITH OR WITHOUT CAUSE, FOR ANY REASON OR FOR NO REASON.

(b) No Obligation to Register. The Company shall be under no obligation to any Participant to register for offering or resale or to qualify for exemption under the Securities Act, or to register or qualify under the laws of any state or foreign jurisdiction, any Share, security or interest in a security paid or issued under, or created by, this Plan, or to continue in effect any such registrations or qualifications if made.

(c) Compliance with Laws and Regulations.

(i) Section 422. In interpreting and applying the provisions of this Plan, any Option granted as an Incentive Stock Option pursuant to this Plan shall, to the extent permitted by law, be construed as an "incentive stock option" within the meaning of Section 422 of the Code.

(ii) Section 409A. This Plan and Awards granted under this Plan are intended to be exempt from the requirements of Section 409A to the maximum extent possible, whether pursuant to the transfer of property rules provided under Section 83 of the Code or the short-term deferral exception described in Treasury Regulation Section 1.409A-1(b)(4), the exclusion applicable to stock options and certain other equity-based compensation under Treasury Regulation Section 1.409A-1(b)(5), or otherwise. To the extent Section 409A is applicable to this Plan or any Award granted under this Plan, it is intended that this Plan and any Awards granted under this Plan shall comply with the deferral, payout, plan termination, and other limitations and restrictions imposed under Section 409A. Notwithstanding any other provision of this Plan or any Award granted under this Plan to the contrary, this Plan and any Award granted under this Plan shall be interpreted, operated, and administered in a manner consistent with such intentions; provided, however, that the Administrator makes no representations that Awards granted under this Plan shall be exempt from or comply with Section 409A and makes no undertaking to preclude Section 409A from applying to Awards granted under this Plan. Without limiting the generality of the foregoing, and notwithstanding any other provision of this Plan or any Award granted under this Plan to the contrary, with respect to any payments and benefits under this Plan or any Award granted under this Plan to which Section 409A applies, all references in this Plan or any Award granted under this Plan to the termination of the Participant's employment or service are intended to mean the Participant's "separation from service," within the meaning of Section 409A(a)(2)(A)(i) to the extent necessary to avoid subjecting the Participant to the imposition of any additional tax under Section 409A. In addition, if the Participant is a "specified employee," within the meaning of Section 409A, and amounts payable hereunder are determined to be deferred compensation in fact subject to Section 409A of the Code, then and only then to the extent necessary to avoid subjecting the Participant to the imposition of any additional tax under Section 409A, amounts that would otherwise be payable under this Plan or any Award granted under this Plan during the six (6)-month period immediately following the Participant's "separation from service," within the meaning of Section 409A(a)(2)(A)(i), shall not be paid to the Participant during such period, but shall instead be accumulated and paid to the Participant (or, in the event of the Participant's death, the Participant's estate) in a lump sum on the first business day after the earlier of the date that is six (6) months following the Participant's separation from service or the Participant's death. Notwithstanding any other provision of this Plan to the contrary, the Administrator, to the extent the Administrator deems necessary or advisable in the Administrator's sole discretion, reserves the right, but shall not be required, to amend or modify this Plan and any Award granted under this Plan unilaterally so that the Award qualifies for exemption from or complies with Section 409A.

(iii) Imposition of Other Requirements. The Company reserves the right to impose other requirements on a Participant's participation in this Plan and on any Award to the extent the Company determines that it is necessary or advisable to comply with Applicable Laws or facilitate the administration of this Plan. A Participant is required to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing. Furthermore, the laws of the country in which a Participant is working at the time of Award Date, purchase, vesting, or sale of Restricted Stock received pursuant to this Plan (including any rules or regulations governing securities, foreign exchange, tax, labor, or other matters) may subject a Participant to additional procedural or regulatory requirements that the Participant is and will be solely responsible for and must fulfill.

(d) Participants in Other Countries or Jurisdictions. Without amending this Plan, the Administrator may grant Awards to Eligible Persons who are foreign nationals on such terms and conditions different from those specified in this Plan, as may, in the judgment of the Administrator, be necessary or desirable to foster and promote achievement of the purposes of this Plan, and shall have the authority to adopt such modifications, procedures, subplans, and the like as may be necessary or desirable to comply with provisions of the laws or regulations of other countries or jurisdictions in which the Company or any Related Entity may operate or have employees to ensure the viability of the benefits from Awards granted to Participants employed in such countries or jurisdictions, meet the requirements that permit this Plan to operate in a qualified or tax efficient manner, comply with applicable foreign laws or regulations, and meet the objectives of this Plan.

(e) Leaves of Absence. The Administrator shall have the discretion to determine at any time whether and to what extent the vesting of Options or Restricted Stock shall be tolled during any leave of absence; provided, however, that in the absence of such determination, vesting of Options or Restricted Stock shall continue during any paid leave and shall be tolled during any unpaid leave (unless otherwise required by Applicable Laws). Notwithstanding the foregoing, in the event of military leave, vesting shall toll during any unpaid portion of such leave, provided that, upon the Participant's return from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), the Participant shall be given vesting credit with respect to Options and Restricted Stock to the same extent as would have applied had the Participant continued to provide Continuous Service throughout the leave on the same terms as the Participant was providing Continuous Service immediately prior to such leave.

(f) Approval of Holders of Capital Stock. If required by Applicable Laws, continuance of this Plan shall be subject to approval by the holders of capital stock of the Company within 12 months before or after the date this Plan is adopted or, to the extent required by Applicable Laws, any date this Plan is amended. Such approval shall be obtained in the manner and to the degree required under Applicable Laws.

(g) Addenda. The Administrator may approve such addenda to this Plan as the Administrator may consider necessary or appropriate for the purpose of granting Awards to Employees, Consultants, or Directors, which Awards may contain such terms and conditions as the Administrator deems necessary or appropriate to accommodate differences in local law, tax policy, or custom, which may deviate from the terms and conditions set forth in this Plan. The terms of any such addenda shall supersede the terms of this Plan to the extent necessary to accommodate such differences but shall not otherwise affect the terms of this Plan as in effect for any other purpose.

(h) No Trust or Fund. This Plan is intended to constitute an “unfunded” plan. Nothing contained herein shall require the Company to segregate any monies or other property, or shares of Common Stock, or to create any trusts, or to make any special deposits for any immediate or deferred amounts payable to any Participant, and no Participant shall have any rights that are greater than those of a general unsecured creditor of the Company.

(i) Severability. If any provision of this Plan or any Award is determined to be invalid, illegal, or unenforceable in any jurisdiction, or as to any person, or would disqualify this Plan or any Award under any law deemed applicable by the Administrator, such provision shall be construed or deemed amended to conform to Applicable Laws, or, if it cannot be so construed or deemed amended without, in the Administrator’s determination, materially altering the intent of this Plan or the Award, such provision shall be stricken as to such jurisdiction, person, or Award, and the remainder of this Plan and any such Award (i) shall remain in full force and effect.

(j) Headings. The headings used in this Plan are used for convenience of reference only and are not to be considered in construing or interpreting this Plan.

(k) Dispute Resolution.

(i) Governing Law. This Plan, all Awards granted thereunder and all determinations made and actions taken pursuant hereto, to the extent not otherwise governed by the laws of the United States, shall be governed by the laws of the State of Nevada without giving effect to principles of conflicts of law.

(ii) Venue and Jurisdiction. The Company and each Participant (A) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of Nevada and to the jurisdiction of the United States District Court for the District of Nevada for the purpose of any suit, action or other proceeding arising out of or based upon this Plan or any Award, (B) agree not to commence any suit, action or other proceeding arising out of or based upon this Plan or any Award except in the state courts of Nevada or the United States District Court for the District of Nevada, and (C) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that such party is not subject personally to the jurisdiction of the above-named courts, that such party’s property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper, or that this Plan or any Award or the subject matter hereof or thereof may not be enforced in or by such court.

(iii) WAIVER OF JURY TRIAL. THE COMPANY AND EACH PARTICIPANT WAIVES ANY RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS PLAN OR ANY AWARD. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS PLAN OR ANY AWARD, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL (OR KNOWINGLY AND VOLUNTARILY DECLINED TO DO SO).

(iv) Attorneys' Fees. If a legal action or proceeding shall be brought to recover any amount due under this Plan or an Award Agreement, or for or on account of any breach of or to enforce or interpret any of the terms, covenants, or conditions of this Plan or an Award Agreement, the prevailing party shall be entitled to an award of its fees and costs (whether taxable or not) including, without limitation, expert witness fees, all litigation or dispute resolution related expenses, and reasonable attorneys' fees incurred in connection with such action or proceeding, and any appeal therefrom, which award shall be made by the court, not a jury.

(l) Remedies. The Company shall be entitled to enforce its rights under this Plan and any Award Agreement specifically to recover damages by reason of any breach of any provision of this Plan or an Award Agreement and to exercise all other rights existing in its favor. Each Participant acknowledges that money damages may not be an adequate remedy for any breach of the provisions of this Plan or an Award Agreement, and that the Company may in its sole discretion apply to any court of law or equity of competent jurisdiction for specific performance and/or injunctive relief (without posting a bond or other security) to enforce or prevent any violation of the provisions of this Plan or an Award Agreement.

(m) Time is of the Essence; Computation of Time. Time is of the essence for each and every provision of this Plan. Whenever the last day for the exercise of any right or the discharge of any duty hereunder shall fall upon a Saturday, Sunday, or any date on which banks in the State of Nevada are authorized to be closed, the party having such right or duty may exercise such right or discharge such duty on the next succeeding day which is a regular business day.

(n) Information to Holders of Options. In the event the Company is relying on the exemption provided by Rule 12h-1(f) under the Exchange Act, the Company shall provide the information described in Rule 701(e)(3), (4) and (5) of the Securities Act, to all holders of Options in accordance with the requirements thereunder until such time as the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. The Company may request that holders of Options agree to keep confidential the information to be provided pursuant to this Section 15(n). If the holder does not agree to keep the information to be provided pursuant to this Section confidential, then the Company will not be required to provide the information unless otherwise required pursuant to Rule 12h-1(f)(l) of the Exchange Act.

(o) California Appendix Provisions. To the extent required by Applicable Laws, Participants who are residents of the State of California shall be subject to the additional terms and conditions set forth in Appendix B to this Plan until such time as the Common Stock becomes a "listed" security under the Securities Act.

16. Effective Date. The effective date (the “**Effective Date**”) is the date on which this Plan is adopted by the Board. If the shareholders of the Company do not approve this Plan within 12 months before or after the Board’s adoption of this Plan, any Incentive Stock Options granted under this Plan will be treated as Nonstatutory Stock Options.

As adopted by the Board of Directors of Dragonfly Energy Corp. on August 12, 2021.

As approved by the shareholders of Dragonfly Energy Corp. on August 20, 2021.

APPENDIX A

DEFINITIONS

As used in this Plan, the following definitions apply:

“Acquired Entity” means any entity acquired by the Company or a Related Entity or with which the Company or a Related Entity, whether by merger, consolidation, stock purchase, asset purchase, or other form of transaction.

“Applicable Laws” means all applicable statutes, laws, rules, orders, regulations, ordinances, judgments, decrees, and injunctions, as such are in effect from time to time, including without limitation (i) all applicable U.S. federal and state laws, (ii) the rules and regulations of any stock exchange or consolidated stock price reporting system on which prices for the Common Stock are quoted at any given time, and (iii) the applicable laws, rules, and regulations of any other country or jurisdiction in which Awards are made under this Plan or the Participant resides or provides services.

“Award” means any Incentive Stock Option, Nonstatutory Stock Option, or Restricted Stock issued, granted, or sold under this Plan.

“Award Agreement” means an Option Agreement or a Restricted Stock Agreement.

“Award Date” means the later of (a) the date on which the Administrator completes the corporate action authorizing the grant of an Award or such later date specified by the Administrator, and (b) the date on which all conditions precedent to an Award have been satisfied; provided that conditions to the exercisability or vesting of Awards shall not defer the Award Date.

“Carta” means the third-party software platform which may be used by the Company for the management of the Company’s cap table, valuations, investments, and equity plans (www.carta.com).

“Cause” means any of the following with respect to the Participant (unless a different definition is provided in an Award Agreement, written employment agreement or other written agreement signed by with the Participant, in which case such definition shall apply):

(a) a material breach by the Participant of any written agreement between the Participant and the Company or a Related Entity and the Participant’s failure to cure such breach (eliminating or avoiding any harm to the Company or a Related Entity) within 30 days after receiving written notice thereof;

(b) a material failure by the Participant to comply with the written policies or rules of the Company (or the Related Entity with which the Participant has an employment or service relationship) as they may be in effect from time to time;

(c) neglect or unsatisfactory performance of the Participant’s duties and the Participant’s failure to cure such condition (eliminating or avoiding any harm to the Company or a Related Entity) within 30 days after receiving written notice thereof;

(d) the Participant’s repeated failure to follow reasonable and lawful instructions from the Board or a superior officer of the Company (or the Related Entity with which the Participant has an employment or service relationship) and the Participant’s failure to cure such condition (eliminating or avoiding any harm to the Company or a Related Entity) within 30 days after receiving written notice thereof;

(e) the Participant’s conviction of, plea of guilty, or plea of nolo contendere (no contest) to (i) a felony, or (ii) other crime (A) involving moral turpitude or dishonesty, (B) use of illegal drugs or abuse of alcohol that materially impairs the Participant’s ability to perform the Participant’s duties to the Company or a Related Entity, or (C) that results in, or is reasonably expected to result in, harm to the business or reputation of the Company or a Related Entity;

(f) the Participant’s commission of or participation in any act of fraud or material dishonesty against the Company or a Related Entity;

(g) the Participant’s commission of intentional damage to the business, property, or reputation of the Company or a Related Entity, or the Participant’s conversion or misappropriation of property of the Company or a Related Entity;

(h) the Participant’s unauthorized use or disclosure of any proprietary information or trade secrets of the Company, a Related Entity, or any other party to which the Participant owes an obligation of nondisclosure as a result of the Participant’s relationship with the Company; or

(i) any purported Transfer of an Award in violation of this Plan or the Award Agreement, or any other material breach of terms of this Plan or an Award Agreement between the Company and the Participant.

The determination as to whether “Cause” exists shall be made by in good faith by the Company and shall be final and binding on the Participant. For the absence of doubt, the foregoing does not in any limit the ability of the Company or a Related Entity to terminate a Participant’s employment or service relationship at any time for any reason or no reason.

“**Change in Control**,” unless the Administrator determines otherwise with respect to an Award at the time the Award is granted or unless otherwise defined for purposes of an Award in a written employment, services, or other agreement between the Participant and the Company or a Related Entity, means consummation of:

(a) a sale, lease, exchange, exclusive license, or other transfer, whether in one transaction or a series of related transactions undertaken with a common purpose, of all or substantially all of the Company’s assets;

(b) a merger or consolidation of the Company with or into another entity (other than a wholly-owned subsidiary of the Company);

(c) a sale, whether in one transaction or a series of transactions undertaken with a common purpose, of all of the Company’s outstanding voting securities; or

(d) the consummation of a transaction, or series of related transactions, in which any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), or a group of such “persons” acting together, becomes the “beneficial owner” (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of all of the Company’s then outstanding voting securities.

Notwithstanding the foregoing, a Change in Control shall not include (i) a merger or consolidation of the Company in which the holders of the outstanding voting securities of the Company immediately prior to the merger or consolidation hold at least a majority of the outstanding voting securities of the Successor Company immediately after the merger or consolidation; (ii) a sale, lease, exchange, or other transfer of all or substantially all of the Company’s assets to a majority-owned subsidiary entity; or (iii) a transaction undertaken for the principal purpose of restructuring the capital of the Company, reincorporating the Company in a different jurisdiction, converting the Company to a limited liability company, or creating a holding company that will be owned in substantially the same proportions by the Persons that hold the Company’s securities immediately before such transaction, or obtaining funding for the Company in a financing that is approved by the Board. Where a series of related transactions undertaken with a common purpose is deemed to be a Change in Control, the date of such Change in Control shall be the date on which the last of such transactions is consummated.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Common Stock**” means the common stock of the Company.

“Consultant” means a consultant or advisor who (i) is a natural person, and (ii) provides bona fide services to the Company or Related Entity as a consultant, advisor, or other independent service provider, provided that such services are not in connection with the offer or sale of securities in a capital-raising transaction, and do not directly or indirectly promote or maintain a market for the Company’s securities.

“Continuous Service” means continuous service by the Participant to the Company and/or a Related Entity as an Employee, Consultant, or Director without a Termination of Service, and will not be extended by any notice period or “garden leave” that is required contractually or under Applicable Laws.

“Director” means a member of the Company’s board of directors or a member of the board of directors or other corresponding governing body of a Related Entity.

“Disability” means that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment; provided, however, for purposes of determining the term of an Incentive Stock Option pursuant to Section 7(h)(iv) of this Plan, the “Disability” shall have the meaning ascribed to it under Section 22(e)(3) of the Code. The determination of whether a Participant has a Disability shall be determined under procedures established by the Administrator from time to time. Except in situations where the Administrator is determining “Disability” for purposes of the term of an Incentive Stock Option pursuant to Section 7(h)(iv) within the meaning of Section 22(e)(3) of the Code, the Administrator may rely on any determination that a Participant is disabled for purposes of benefits under any long-term disability plan maintained by the Company or any Related Entity in which a Participant participates.

“Eligible Person” means any person eligible to receive an Award as set forth in Section 6.

“Employee” means a natural person who is a common-law employee of the Company or a Related Entity.

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

“Fair Market Value” means, on a given date, (i) if there is a public market for the shares of Common Stock on such date, the closing price of the shares as reported on such date on the principal national securities exchange on which the shares are listed or, if no sales of shares have been reported on any national securities exchange, then the immediately preceding date on which sales of the shares have been so reported or quoted, and (ii) if there is no public market for the shares of Common Stock on such date, then the fair market value shall be determined by the Administrator in good faith utilizing valuation methods and procedures the Administrator deems appropriate and in compliance with the requirements of Section 409A of the Code (and the specific requirements of Treasury Regulation 1.409A-l(b)(5)(iv)(A)), and with respect to an Incentive Stock Option, the rules applicable under Section 422 of the Code and the applicable Treasury Regulations.

“Family Member” means a Participant’s child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the employee’s household (other than a tenant or employee), a trust in which these individuals (or the Participant) have more than 50% of the beneficial interest, a foundation in which these individuals (or the Participant) control the management of assets, and any other entity in which these individuals (or the Participant) own more than 50% of the voting interests.

“Further Stockholder Agreement” means a stockholder, shareholder, voting, right of first refusal, co- sale, or other similar agreements that is executed (or required by the Company to be executed) by stockholders of the Company holding at least a majority of the then outstanding shares of the Common Stock. A Further Stockholder Agreement may, for illustration and without limitation, impose restrictions on Share transferability (such as a right of first refusal or a prohibition on transfer), subject Shares to call rights and drag-along rights, grant the Company certain repurchase rights, and/or provide for certain other matters relating to voting of the Shares.

“Incentive Stock Option” means an Option granted pursuant to this Plan with the intention, as evidenced in the Option Agreement, that the Option qualify as an “incentive stock option” as that term is defined for purposes of Section 422 of the Code.

“ISO-Eligible Employee” means a natural person who is a common-law employee of the Company, a Parent or a Subsidiary.

“Nonstatutory Stock Option” means an Option other than an Incentive Stock Option granted pursuant to this Plan.

“Option” means an Incentive Stock Option or a Nonstatutory Stock Option granted pursuant to this Plan.

“Option Agreement” means a written agreement, the form(s) of which shall be approved from time to time by the Administrator, between the Company and a Participant setting forth the applicable terms, conditions, and limitations of an Option, consisting of a “Stock Option Award Notice,” the corresponding “Stock Option Agreement Terms,” and such other attached or incorporated documents as determined by the Administrator.

“Option Exchange Program” means a program approved by the Administrator, in the Administrator’s sole discretion, by which outstanding Options may be (i) cancelled and exchanged for new Options with a lower exercise price, Restricted Stock, cash or other property, or (ii) amended to decrease the exercise price as a result of a decline in the Fair Market Value.

“Option Expiration Date” means the last day of the maximum term of an Option.

“Optioned Stock” means Shares that are subject to an Option or that were issued pursuant to the exercise of an Option.

“Parent” means any entity (other than the Company) in an unbroken chain of entities ending with the Company if, at the time of the applicable Award Date, each of the entities other than the Company owns 50% or more of the total combined voting power of all classes of equity securities in one of the other entities in such chain.

“Participant” means any Eligible Person receiving an Award.

“Related Entities” means the Company’s Parents, the Company’s Subsidiaries, and the Subsidiaries of the Company’s Parents.

“Restricted Stock” means shares of Common Stock issued pursuant to this Plan. For the absence of doubt, “Restricted Stock” includes Optioned Stock issued by the Company upon the exercise of Options.

“Restricted Stock Agreement” means a written agreement, the form(s) of which shall be approved from time to time by the Administrator, between the Company and a Participant setting forth the applicable terms, conditions, and limitations of the grant or sale of the Restricted Stock, which shall be comprised of (i) a “Restricted Stock Award Notice,” the corresponding “Restricted Stock Agreement Terms,” and such other attached or incorporated documents as determined by the Administrator, or (ii) in the case of the Restricted Stock purchased pursuant to an Option (and unless the Company otherwise requires the documentation described in clause (i) above), an Exercise Notice, the corresponding “Restricted Stock Agreement Terms,” and such other attached or incorporated documents as determined by the Administrator.

“Section 409A” means Section 409A of the Code, as amended.

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

“Shares” means shares of Restricted Stock subject to this Plan.

“Subsidiary” means any entity (other than the Company) in an unbroken chain of entities beginning with the Company if, at the time of the applicable Award Date, each of the entities other than the last entity in the unbroken chain owns 50% or more of the total combined voting power of all classes of equity securities in one of the other entities in such chain.

“Successor Company” means the surviving entity, the successor entity, the acquiring entity, or its parent, as applicable, in connection with a Change in Control.

“Ten Percent Shareholder” means a person who owns (or is deemed to own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of any of its Affiliates.

“Termination of Service,” unless the Administrator determines otherwise with respect to an Award, means a termination or interruption of Continuous Service with the Company or a Related Entity for any reason, whether voluntary or involuntary, including by reason of death or Disability. Any question as to whether and when there has been a Termination of Service for the purposes of an Award and the cause of such Termination of Service shall be determined by the Company’s chief human resources officer or other person performing that function or, with respect to directors and executive officers, by the Board, whose determination shall be conclusive and binding. For purposes of the foregoing:

(a) Neither a transfer of a Participant’s employment or service relationship between the Company and any Related Entity, nor a change in Participant’s status among Employee, Director, and Consultant, shall be considered a Termination of Service; provided that there is no interruption or termination of the Participant’s Continuous Service; provided further that if any Award is subject to Section 409A of the Code, this sentence shall only be given effect to the extent consistent with Section 409A of the Code. For example, a change in status from an Employee of the Company to a Director of a Related Entity itself will not constitute an interruption of Continuous Service. The Administrator or its delegate, in its sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave, or any other personal or family leave of absence.

(b) Unless the Administrator determines otherwise, a Termination of Service shall be deemed to occur if the Participant’s employment or service relationship is with an entity that has ceased to be a Related Entity.

“Transfer” means the (i) sale, pledge, encumbrance, gift, assignment, hypothecation, disposal of, or otherwise voluntary transfer to a third party, or (ii) involuntary transfer to any third party pursuant to divorce, legal separation, foreclosure, legal judgment, bankruptcy, or other legal or administrative proceeding, or any other involuntary transfer.

“Transferee” means any person to whom the Participant has directly or indirectly transferred any Restricted Stock.

“Vesting Commencement Date” means the Award Date or such other date selected by the Administrator and identified in the instrument evidencing the Award as the date from which an Award begins to vest.

APPENDIX B

**TO THE DRAGONFLY ENERGY CORP.
2021 STOCK INCENTIVE PLAN**

(For California Residents Only)

This Appendix to the Dragonfly Energy Corp. 2021 Stock Incentive Plan (the “**Plan**”) shall have application only to Participants who are residents of the State of California. Capitalized terms contained herein shall have the same meanings given to them in this Plan, unless otherwise provided in this Appendix. **Notwithstanding any other provision of this Plan to the contrary and to the extent required by applicable law, the following terms and conditions shall apply to all Awards granted to residents of the State of California, until such time as the Common Stock becomes a “listed security” under the Securities Act:**

1. Options shall have a term of not more than ten years from the Award Date.
2. Awards shall be nontransferable other than by will or the laws of descent and distribution. Notwithstanding the foregoing, and to the extent permitted by Section 422 of the Code, the Administrator, in its discretion, may permit transfer of an Award to a revocable trust or as otherwise permitted by Rule 701 of the Securities Act.
3. Unless employment or services are terminated for Cause, the right to exercise an Option in the event of Termination of Service, to the extent that the Participant is otherwise entitled to exercise an Option on the date of Termination of Service, shall be
 - (a) at least six months from the date of a Participant’s Termination of Service if termination was caused by death or Disability;
 - (b) at least 30 days from the date of a Participant’s Termination of Service if termination of employment was caused by other than death or Disability; and
 - (c) but in no event later than the Option Expiration Date.
4. No Award may be granted to a resident of California more than ten years after the earlier of the date of adoption of this Plan and the date this Plan is approved by the shareholders.
5. Shareholders of the Company must approve this Plan by the later of (a) within 12 months before or after this Plan is adopted by the Board and (b) (i) with respect to Options, prior to or within 12 months of the grant of an Option under this Plan to a resident of the State of California, and (ii) with respect to Awards other than Options, prior to the issuance of such Award to a resident of the State of California. Any Option exercised by a California resident or shares issued under an Award to a California resident shall be rescinded if shareholder approval is not obtained in the foregoing manner. Shares subject to such Awards shall not be counted in determining whether such approval is obtained.
6. To the extent required by applicable law, the Company shall provide annual financial statements of the Company to each California resident holding an outstanding Award under this Plan. Such financial statements need not be audited and need not be issued to key persons whose duties at the Company assure them access to equivalent information.

AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

THIS AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”), dated as of October 7, 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 64,435,337 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, the PIPE Investor (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 the PIPE Investor (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(u).

“**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 Investor**” means Chardan Capital Markets, LLC.

“**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, Sponsor and the PIPE Investor 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 ninetyeth (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, (ii) the Equity Facility Definitive Documentation (as defined in the Merger Agreement) and (iii) the \$10 warrant and penny warrant to be issued under the Debt Financing (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: /s/ Denis Phares

Name: Denis Phares

Title: Chief Executive Officer

[Signature Page to Registration Rights Agreement]

STOCKHOLDER:

Denis Phares

Name of Stockholder

/s/Denis Phares

(Signature)

Denis Phares

Name of Signing Party (Please Print)

Chief Executive Officer

Title of Signing Party (Please Print)

Tax ID #

October 7th, 2022

Date Signed

[Signature Page to Registration Rights Agreement]

STOCKHOLDER:

PHARES 2021 GRAT DATED JULY 9, 2021

Name of Stockholder

/s/Denis Phares
(Signature)

Denis Phares
Name of Signing Party (Please Print)

Title of Signing Party (Please Print)

Tax ID #

October 7, 2022
Date Signed

[Signature Page to Registration Rights Agreement]

STOCKHOLDER:

John Marchetti

Name of Stockholder

/s/John Marchetti

(Signature)

John Marchetti

Name of Signing Party (Please Print)

Chief Financial Officer

Title of Signing Party (Please Print)

Tax ID #

October 7, 2022

Date Signed

[Signature Page to Registration Rights Agreement]

STOCKHOLDER:

NICHOLS GRAT I DATED JUNE 14, 2021

Name of Stockholder

/s/Sean Nichols
(Signature)

Sean Nichols
Name of Signing Party (Please Print)

Title of Signing Party (Please Print)

Tax ID #

October 7, 2022
Date Signed

[Signature Page to Registration Rights Agreement]

STOCKHOLDER:

NICHOLS LIVING TRUST 2015

Name of Stockholder

/s/Sean Nichols

(Signature)

Sean Nichols

Name of Signing Party (Please Print)

Title of Signing Party (Please Print)

Tax ID #

October 7, 2022

Date Signed

[Signature Page to Registration Rights Agreement]

STOCKHOLDER:

Sean Nichols

Name of Stockholder

/s/Sean Nichols

(Signature)

Sean Nichols

Name of Signing Party (Please Print)

Chief Operating Officer

Title of Signing Party (Please Print)

Tax ID #

October 7, 2022

Date Signed

[Signature Page to Registration Rights Agreement]

STOCKHOLDER:

Nicole Harvey

Name of Stockholder

/s/Nicole Harvey

(Signature)

Nicole Harvey

Name of Signing Party (Please Print)

General Counsel, Compliance Officer and Corporate Secretary

Title of Signing Party (Please Print)

Tax ID #

October 7, 2022

Date Signed

[Signature Page to Registration Rights Agreement]

STOCKHOLDER:

DYNAVOLT TECHNOLOGY (HK) LTD.

Name of Stockholder

/s/Leonard Chen
(Signature)

Leonard Chen

Name of Signing Party (Please Print)

PRESIDENT

Title of Signing Party (Please Print)

Tax ID #

October 7, 2022

Date Signed

[Signature Page to Registration Rights Agreement]

STOCKHOLDER:

Jon Biele

Name of Stockholder

/s/Jon Biele

(Signature)

Jon Biele

Name of Signing Party (Please Print)

Jon Biele Resigning

Director

Title of Signing Party (Please Print)

Tax ID #

10/4/2022

Date Signed

STOCKHOLDER:

Jory Des Jardins
Name of Stockholder

/s/Jory Des Jardins
(Signature)

Jory Des Jardins
Name of Signing Party (Please Print)

Resigning Director
Title of Signing Party (Please Print)

Tax ID #

10/4/2022
Date Signed

STOCKHOLDER:

Perry Boyle

Name of Stockholder

/s/Perry Boyle

(Signature)

Perry Boyle

Name of Signing Party (Please Print)

Director

Title of Signing Party (Please Print)

Tax ID #

October 7, 2022

Date Signed

STOCKHOLDER:

Roderick Hardamon

Name of Stockholder

/s/Roderick Hardamon

(Signature)

Roderick Hardamon

Name of Signing Party (Please Print)

Resigning Director

Title of Signing Party (Please Print)

Tax ID #

10/5/2022

Date Signed

STOCKHOLDER:

Hitesh ThaKRAR

Name of Stockholder

/s/Hitesh Thakrar

(Signature)

Hitesh ThaKRAR

Name of Signing Party (Please Print)

hitesh thakrar

Title of Signing Party (Please Print)

Tax ID #

10/5/2022

Date Signed

STOCKHOLDER:

Todd Thomson

Name of Stockholder

/s/Todd Thomson

(Signature)

Todd Thomson

Name of Signing Party (Please Print)

Resigning Director

Title of Signing Party (Please Print)

Tax ID #

10/4/2022

Date Signed

STOCKHOLDER:

Chardan Capital Markets LLC

Name of Stockholder

/s/Jonas Grossman

(Signature)

Jonas Grossman

Name of Signing Party (Please Print)

President

Title of Signing Party (Please Print)

Tax ID #

October 7, 2022

Date Signed

STOCKHOLDER:

Chardan NexTech Investments 2 LLC

Name of Stockholder

/s/Jonas Grossman

(Signature)

Jonas Grossman

Name of Signing Party (Please Print)

Manager

Title of Signing Party (Please Print)

Tax ID #

October 7, 2022

Date Signed

STOCKHOLDER:

Chardan NexTech Warrant Holdings LLC

Name of Stockholder

/s/Jonas Grossman

(Signature)

Jonas Grossman

Name of Signing Party (Please Print)

President

Title of Signing Party (Please Print)

Tax ID #

October 7, 2022

Date Signed

EXHIBIT A

Initial Stockholders

Stockholder Name	Initial Shares	Initial Warrants
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	-
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	14,858,517	15,222,892
Phares 2021 GRAT dated July 9, 2021	1,217,906	1,262,842
Sean Nichols	298,461	125,619
Nichols Living Trust 2015	3,383,142	3,507,968
Nichols GRAT I dated June 14, 2021	54,393	56,400
John Marchetti	236,417	0
Nicole Harvey	120,572	12,256
Dynavolt Technology (HK) Ltd	11,820,900	12,257,052

Other Stockholders

Stockholder Name	Shares
Chardan Capital Markets, LLC	500,000



Dragonfly Energy Holdings Corp. Code of Conduct

Powered By Our Values

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Additional Resources



Letter From Leadership



Take a second to look around. Think about both the essentials and the luxuries of our everyday lives. From light bulbs, to life-saving medical equipment, to luxury yachts. Our products have the capability to power it all. And we can do so in ways that are cleaner, greener, and more revolutionary than ever before. We develop the technologies to power our day-to-day lives. And we couldn't be prouder. But the question then becomes, what powers us?

Here at Dragonfly Energy Holdings Corp. ("Dragonfly"), the answer is simple. It's our Values: Tell the Truth, Be Fair, Keep Your Promises, Respect Individuals, and Encourage Intellectual Curiosity. They are the foundation of our success. They have fueled years of rapid growth and guided our decisions every step along the way. We are relying on you to adopt these Values, and we want you to look to our Code of Conduct ("CCode") for help.

Read the Code and refer to it often. It will help you live our Values in everything you do, while showing you how to be accountable to those around you. Speak up if you suspect anything is in violation of our Code or our policies and ask questions if something isn't clear.

Your commitment to integrity is especially important in our industry. We operate in a culture that requires employees to meet certain ethical standards. Dedicate yourself to upholding these standards and you'll be doing your part to maintain our reputation as a Company that's Powered by our Values.

Denis Phares
Chief Executive Officer



Honoring Our Values

Tell the Truth

Be Fair

Keep Your Promises

Respect Individuals

Encourage Intellectual Curiosity



Understanding Our Code



Purpose and Overview

What does it mean to be a part of the Dragonfly team? It means serving our customers, fulfilling our mission, and building a Company we can all be proud of. But what matters more than the work we do is the way we do it – by doing what's right and what's best for our Company and our customers.

Dragonfly expects us to act with integrity in every action and interaction, making decisions that reflect who we are and what we stand for as a Company. In many situations, the right thing to do may be clear. But, we understand that work can be complicated – so can the laws and rules that apply to us. Sometimes it can be hard to know what to do or where to go for help.

Our Code of Conduct ("Code") is your most important resource in this effort. It is designed with you in mind – a vital resource that will help you:

- Comply with applicable laws, regulations and Company policies.
- Promote integrity and the highest standards of ethical conduct.
- Address common ethical situations you could encounter in your work.
- Avoid even the appearance of anything improper in connection with our Company's business activities.

Complying With Laws and Regulations

Our Company is committed to compliance with all laws, rules, and regulations that apply to our business. It is impossible to anticipate every question you may have or situation you might face so, in addition to the Code, our Company also has other resources that can be of help. These additional resources are listed throughout the Code. As always, we rely on you to use good judgment and to seek help when you need it. Contact the Compliance Officer at (775) 221-8900 or legal@dragonflyenergy.com.



Who Must Follow This Code

All employees of Dragonfly and its subsidiaries, including executives, corporate officers, and members of our Board of Directors, are required to read, understand, and follow our Code.

Consultants, contractors, agents, suppliers, vendors, and temporary employees ("business partners") who serve as an extension of Dragonfly are also expected to follow the spirit of our Code, our [Supplier Code of Conduct](#), and any applicable contractual provisions.

If you supervise our business partners, you are responsible for communicating our standards and ensuring that they are understood. If a business partner fails to meet our ethics and compliance expectations or their related contractual obligations, it may result in the termination of their contract.

Accountability and Discipline

Violating our Code, our policies, or the law, or encouraging others to do so, exposes our Company to liability and puts our reputation at risk. If you see or suspect a violation, [report it](#).

Anyone who violates our Code will be subject to disciplinary action, up to and including termination of their employment with Dragonfly. You should also understand that violations of laws or regulations may also result in legal proceedings and penalties including, in some circumstances, criminal prosecution.



Our Responsibilities

Each of us has an obligation to act with integrity, even when this means making difficult choices. Meeting this obligation is what enables us to succeed and grow.

Employee Responsibilities

Every employee has a responsibility to:

- Act in a professional, honest, and ethical manner when conducting business on behalf of our Company.
- Know the information in our Code and Company policies and pay particular attention to the topics that apply to your specific job responsibilities.
- Complete all required employee training in a timely manner and keep up-to-date on current standards and expectations.
- Report concerns about possible violations of our Code, our policies, or the law to your supervisor, an executive, or any of the resources listed in this Code.
- Cooperate and tell the truth when responding to an investigation or audit, and never alter or destroy records in response to an investigation or when an investigation is anticipated.



Additional Responsibilities of Supervisors

Dragonfly supervisors are expected to meet the following additional responsibilities:

- Lead by example. As a supervisor, you are expected to exemplify high standards of ethical business conduct.
- Help create a work environment that values mutual respect and open communication.
- Be a resource for others. Communicate often with employees and business partners about how the Code and other policies apply to their daily work.
- Be proactive. Look for opportunities to discuss and address ethical dilemmas and challenging situations with others.
- Delegate responsibly. Never delegate authority to any individual whom you believe may engage in unlawful conduct or unethical activities.
- Respond quickly and effectively. When a concern is brought to your attention, ensure that it is treated seriously and with due respect for everyone involved.
- Be aware of the limits of your authority. Do not take any action that exceeds your authority. If you are ever unsure of what is appropriate (and what isn't), discuss the matter with your supervisor.

Remember: No reason, including the desire to meet business goals, should ever be an excuse for violating our Code, our policies, or the law.

What If?

Q: I'm a supervisor and not clear on what my obligations are if someone comes to me with an accusation – and what if it involves a senior supervisor?

A: No matter who the allegation involves, you must report it. Dragonfly provides several avenues for reporting concerns. If for any reason you are uncomfortable making a report to a particular person, you may talk to any of the other resources listed in the Code.

Q: I observed misconduct in an area not under my supervision. Am I still required to report the issue?

A: You are chiefly responsible for employees and business partners under your supervision, but all Dragonfly employees are required to report misconduct. As a leader, you are especially obliged to be proactive. The best approach would be to talk first with the supervisor who oversees the area where the problem is occurring, but if this isn't feasible or effective, you should contact another resource described in our Code.



Making Good Decisions

Making the right decision is not always easy. There may be times when you'll be under pressure or unsure of what to do. Always remember that when you have a tough choice to make, you're not alone. There are resources available to help you.

Facing a Difficult Decision?

It may help to ask yourself:



Is it legal?



Is it consistent with our Code and our Values?



Would I feel comfortable if senior management and others within my Company knew about it?



Would I feel comfortable if my decision or my actions were made public?

If the answer to all of these questions is "yes," the decision to move forward is probably OK, but if the answer to any question is "no" or "I'm not sure," stop and seek guidance.

Remember, in any situation, under any circumstances, it is always appropriate to ask for help.

One More Thing ...

We value your feedback. If you have suggestions for ways to enhance our Code, our policies, or our resources to better address a particular issue you have encountered, bring them forward. Promoting an ethical Dragonfly is a responsibility we all share.

Where to Go for Help

If you see or suspect any violation of our Code, our policies, or the law, or if you have a question about what to do, talk to your supervisor.

If you're uncomfortable speaking with your supervisor, there are other resources available to help you:

- Contact another member of management.
- Contact [Human Resources](#).
- Contact the [Compliance Office](#).
- Contact the [Legal Department](#).
- Contact the EthicsPoint Hotline at (844) 995-4981.

Dragonfly will make every reasonable attempt to ensure that your concerns are addressed appropriately.

What to Expect When You Use the EthicsPoint Hotline

The EthicsPoint Hotline web portal and phone line are available 24 hours a day, seven days a week. Trained specialists from an independent third-party provider of corporate compliance services will answer your call, document your concerns, and forward a written report to Dragonfly for further investigation.

When you contact the EthicsPoint Hotline, you may choose to remain anonymous where permitted by local law. All reports received will be treated equally, whether they are submitted anonymously or not.

After you make a report, you will receive an identification number so you can follow up on your concern. Following up is especially important if you have submitted a report anonymously, as we may need additional information in order to conduct an effective investigation. This identification number will also enable you to track the resolution of the case; however, please note that out of respect for privacy, Dragonfly will not be able to inform you about individual disciplinary actions.

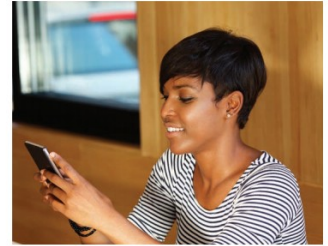
Any report you make will be kept confidential by all individuals involved with reviewing and, if necessary, investigating it.

Remember, an issue cannot be addressed unless it is brought to someone's attention.

What If?

Q: I believe someone has misused the EthicsPoint Hotline, made an anonymous call and falsely accused someone of wrongdoing. What should I do?

A: Report your concern immediately. Experience has shown that the EthicsPoint Hotline is rarely used for malicious purposes, but it is important to know that we will follow up on reports, and anyone who uses the EthicsPoint Hotline in bad faith to spread falsehoods or threaten others, or with the intent to unjustly damage another person's reputation, will be subject to disciplinary action.



Our Non-retaliation Policy

We will not tolerate any retaliation against any employee who, in good faith, asks questions, makes a report of actions that may be inconsistent with our Code, our policies, or the law, or who assists in an investigation of suspected wrongdoing.

Reporting "in good faith" means making a genuine attempt to provide honest, complete, and accurate information, even if it later proves to be unsubstantiated or mistaken.

What If?

Q: I suspect there may be some unethical behavior going on in my business unit involving my supervisor. I know I should report my suspicions, and I'm thinking about using the EthicsPoint Hotline, but I'm concerned about retaliation.

A: You are required to report misconduct and, in your situation, using the EthicsPoint Hotline is a good option. We will investigate your suspicions and may need to talk to you to gather additional information. After you make the report, if you believe you are experiencing any retaliation, you should report it. We take claims of retaliation seriously. Reports of retaliation will be thoroughly investigated and, if they are true, retaliators will be disciplined.

Creating a Great Workplace



Diversity, Equity, and Inclusion

Dragonfly helps bring together employees with a wide variety of backgrounds, skills, and cultures. Combining such a wealth of talent and resources creates the diverse and dynamic teams that consistently drive our results.

Our colleagues, job applicants, and business partners are entitled to respect. We are committed to ensuring that they feel welcomed and valued and that they are given opportunities to grow, contribute, and develop with us. To uphold that commitment, we support laws prohibiting discrimination and provide equal opportunity for employment, income, and advancement in all our departments, programs, and worksites.

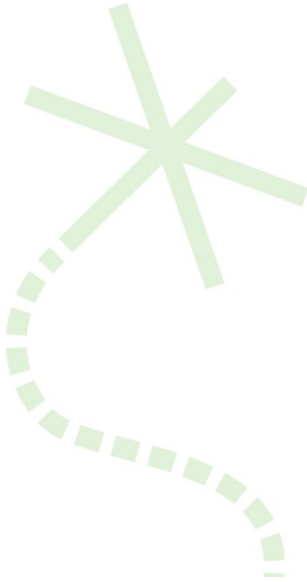
This means we base employment decisions solely on qualifications, demonstrated skills, and achievements – and never on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age, disability, genetic information, or any other characteristic protected by law.

Do the Right Thing

- Treat others respectfully and professionally.
- Promote diversity in hiring and other employment decisions.
- Do not discriminate against others on the basis of any other characteristic protected by law or Company policy.

Watch Out For

- Comments, jokes, or materials, including emails, which others might consider offensive.
- Inappropriate bias when judging others. If you supervise others, judge them on performance. Use objective, quantifiable standards and avoid introducing unrelated considerations into your decisions.



What If?

Q: One of my coworkers sends emails containing jokes and derogatory comments about certain nationalities. They make me uncomfortable, but no one else has spoken up about them. What should I do?

A: You should notify your supervisor or Human Resources. Sending these kinds of jokes violates our Values as well as our policies that relate to the use of email and our standards on diversity, harassment, and discrimination. By doing nothing you are condoning discrimination and tolerating beliefs that can seriously erode the team environment that we have all worked to create.



Harassment-free Workplace

We all have the right to work in an environment that is free from intimidation, harassment, bullying, and abusive conduct. Verbal or physical conduct by any employee that harasses another, disrupts another's work performance, or creates an intimidating, offensive, abusive, or hostile work environment will not be tolerated.

Sexual Harassment

A common form of harassment is sexual harassment, which in general occurs when:

- Actions that are unwelcome are made a condition of employment or used as the basis for employment decisions, such as a request for a date, a sexual favor, or other similar conduct of a sexual nature.
- An intimidating, offensive, or hostile environment is created by unwelcome sexual advances, insulting jokes, or other offensive verbal or physical behavior of a sexual nature.



Do the Right Thing

- Promote a positive attitude toward policies designed to build a safe, ethical, and professional workplace.
- Help each other by speaking out when a coworker's conduct makes others uncomfortable.
- Demonstrate professionalism. Do not visit inappropriate internet sites or display sexually explicit or offensive pictures.
- Report all incidents of harassment and intimidation that may compromise our ability to work together and be productive.

Watch Out For

- Threatening remarks, obscene phone calls, stalking, or any other form of harassment.
- Sexual harassment or other unwelcome verbal or physical conduct of a sexual nature.
- The display of sexually explicit or offensive pictures or other materials.
- Sexual or offensive jokes or comments (explicit or by innuendo) and leering.
- Verbal abuse, threats, or taunting.

What If?

Q: While on a business trip, a colleague of mine repeatedly asked me out for drinks and made comments about my appearance that made me uncomfortable. We weren't in the office and it was after regular working hours, so I wasn't sure what I should do. Was that harassment?

A: Yes, it was. *This type of conduct is not tolerated, not only during working hours but in all work-related situations, including business trips. Tell your colleague such actions are inappropriate and must be stopped, and if they continue, report the problem.*

Q: I frequently hear a colleague making derogatory comments to another coworker. These comments make me feel uncomfortable, but I feel like it's none of my business, and the person they're directed at will speak up if they are offended. Should I ignore this?

A: No, you shouldn't. *It's up to each of us to help maintain a work environment where people feel welcomed, valued, and included. Since you're aware of this situation, you have a responsibility to speak up about it. If you feel you can, speak to your colleague and ask that this behavior stop. If you feel you can't or the comments continue, talk to your supervisor or another resource.*



Health and Safety

Ensuring safety is an integral part of everything we do. Each of us is responsible for acting in a way that protects ourselves and others. No matter what job you do or where you do it, we count on every employee to actively promote a safe and healthy workplace, and report any situations that may pose a health, safety, or security risk.

Reporting risks and hazards is not just the right thing to do, it's a requirement, because a failure to speak up about an incident, or to participate in an investigation into an incident, can have serious repercussions for you, for our Company, and for every employee on the job, every day. Do your part to keep everyone in the Dragonfly family injury-free.

Alcohol and Drugs

While at work or on Dragonfly business:

- You should be always ready to carry out your work duties – never impaired.
- Do not use, possess, or be under the influence of illegal drugs or any substance that could interfere with a safe and effective work environment or harm our Company's reputation.

Workplace Violence

Violence of any kind has no place at Dragonfly. We won't tolerate:

- Intimidating, threatening, or hostile behavior.
- Causing physical injury to another.
- Acts of vandalism, arson, sabotage, or other criminal activities.
- The carrying of firearms or other weapons onto Company property unless you are authorized to do so.

Do the Right Thing

- Follow the safety, security, and health rules and practices that apply to your job.
- Maintain a neat, safe working environment by keeping workstations, aisles, and other workspaces free from obstacles, wires, and other potential hazards.
- Notify your supervisor immediately about any unsafe equipment, or any situation that could pose a threat to health or safety or damage the environment. As an employee, you have the right and the responsibility to stop any work if you feel your safety is at risk.
- Cooperate with any investigations into incidents.

Watch Out For

- Unsafe practices or work conditions.
- Carelessness in enforcing security standards, such as facility entry procedures and password protocols.

What If?

Q: I've noticed some practices in my area that don't seem safe. Who can I speak to? I'm new here and don't want to be considered a troublemaker.

A: Discuss your concerns with your supervisor or Human Resources. There may be very good reasons for the practices, but it's important to remember that raising a concern about safety does not make you a troublemaker, but a responsible employee concerned about the safety of others.

Q: A subcontractor commits a violation of our standards. Are subcontractors expected to follow the same health, safety, and security policies and procedures as employees?

A: Absolutely. Supervisors are responsible for ensuring that subcontractors and other business partners at work on Dragonfly premises understand and comply with all applicable laws and regulations governing the particular facility, as well as with additional requirements our Company may impose.

Protecting Information and Assets



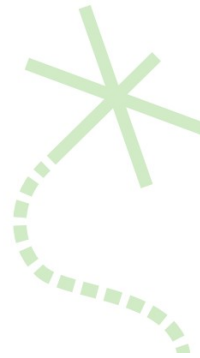
Our Company Assets

Each of us is entrusted with Company assets – the resources we own (whether tangible or intangible) that enable us to operate. We are personally responsible for using them with care and protecting them from fraud, waste, and abuse. Personal use of Company assets is discouraged, but where permitted, should be kept to a minimum and have no adverse effect on productivity and the work environment.

Physical and Electronic Assets

Physical assets include Dragonfly facilities, materials, and equipment. Electronic assets include computer and communication systems, software, and hardware. Files and records are also Company assets, and we have a responsibility to ensure their confidentiality, security, and integrity.

Be aware that any information you create, share, or download onto Company systems belongs to Dragonfly, and we have the right to review and monitor system use at any time, without notifying you, to the extent permitted by law.



Do the Right Thing

- Use Company assets to carry out your job responsibilities, never for activities that are improper or illegal.
- Observe good physical security practices, especially those related to badging in and out of our facilities.
- Be a good steward of our electronic resources and systems, and practice good cybersecurity:
 - » Do not share passwords or allow other people, including friends and family, to use Dragonfly resources.
 - » Only use software that has been properly licensed. The copying or use of unlicensed or "pirated" software on Company computers or other equipment to conduct Company business is strictly prohibited. If you have any questions about whether or not a particular use of software is licensed, contact [Agilitec](#).
 - » [Lock your workstation when you step away and log off our systems when you complete your work for the day.](#)
 - » [Beware of phishing attempts – use caution in opening email attachments from unknown senders or clicking on suspicious links.](#)



Watch Out For

- Requests to borrow or use Dragonfly equipment without approval.
- Excessive use of Dragonfly resources for personal purposes.
- Unknown individuals without proper credentials entering our facilities.

Confidential Information and Intellectual Property

Dragonfly relies on each of us to be vigilant and protect confidential information and intellectual property – some of our most important and valuable assets. This means keeping this information secure, limiting access to those who have a need to know in order to do their job, and only using it for authorized purposes.

Be aware that your obligation to restrict your use of Dragonfly confidential information and intellectual property continues even after your employment ends.

Intellectual Property

Examples of intellectual property (IP) include:

- Business and marketing plans
- Company initiatives (existing, planned, proposed, or developing)
- Customer lists
- Trade secrets and discoveries
- Methods, know-how, and techniques
- Innovations and designs
- Systems, software, and technology
- Patents, trademarks, and copyrights

Dragonfly commits substantial resources to technology development and innovation, and the creation and protection of our intellectual property rights are critical to our business. Contact the Legal Department if you receive questions regarding:

- The scope of intellectual property rights
- The applicability of Dragonfly rights to another company's products
- The applicability of a third party's intellectual property rights to Dragonfly intellectual property rights or products



Do the Right Thing

- Promptly disclose to Company management any inventions or other IP that you create while you are employed by Dragonfly.
- Properly label confidential information to indicate how it should be handled, distributed, and destroyed.
- Use and disclose confidential information only for legitimate business purposes.
- Protect our intellectual property and confidential information by sharing it only with authorized parties.
- Only store or communicate Company information using Dragonfly information systems.

Watch Out For

- Discussions of Dragonfly confidential information in places where others might be able to overhear – for example on planes and elevators and when using phones.
- Sending confidential information to unattended devices or printers.

Data Privacy

We respect the personal information of others. Follow our policies and all applicable laws and regulations in collecting, accessing, using, storing, sharing, and disposing of sensitive information. Only use it – and share it with others outside of Dragonfly – for legitimate business purposes.

Make sure you know the kind of information that is considered personal information. It includes anything that could be used to identify someone, either directly or indirectly, such as a name, email address, phone number, or credit card number.

Watch Out For

- Failing to shred or securely dispose of sensitive information.
- Using “free” or individually purchased internet hosting, collaboration, or cloud services that could put personal information at risk.



Accurate Recordkeeping

The accuracy and completeness of our disclosures and business records are essential to making informed decisions and supporting investors, regulators, and others. Our books and records must accurately and fairly reflect our transactions in sufficient detail and in accordance with our accounting practices and policies.

Some employees have special responsibilities in this area, but all of us contribute to the process of recording business results or maintaining records. Ensure that the information we record is accurate, timely, complete, and maintained in a manner that is consistent with our internal controls, disclosure controls, and legal obligations.



Records Management

Documents should only be disposed of in compliance with Dragonfly policies and should never be destroyed or hidden. You must never conceal wrongdoing or permit others to do so. Never destroy documents in response to – or in anticipation of – an investigation or audit.

If you have any questions or concerns about retaining or destroying corporate records, please contact the Legal Department.

Do the Right Thing

- Create business records that accurately reflect the truth of the underlying event or transaction. Be guided by the principles of transparency and truthfulness.
- Write carefully in all of your business communications. Write as though someday the records you create may become public documents.

Watch Out For

- Records that are not clear and complete or that obscure the true nature of any action.
- Undisclosed or unrecorded funds, assets, or liabilities.
- Improper destruction of documents.

What If?

Q: At the end of the last quarter reporting period, my supervisor asked me to record additional expenses, even though I had not yet received the invoices from the supplier and the work has not yet started. I agreed to do it, since we were all sure that the work would be completed in the next quarter. Now I wonder if I did the right thing.

A: No, you didn't. Costs must be recorded in the period in which they are incurred. The work was not started and the costs were not incurred by the date you recorded the transaction. It was therefore a misrepresentation and, depending on the circumstances, could amount to fraud.



Responsible Communications

Dragonfly is committed to maintaining honest, professional, and lawful internal and public communications.

We need a consistent voice when making disclosures or providing information to the public. For this reason, each of us must help the Company ensure that only authorized persons speak on behalf of Dragonfly. Refer any communications with the media, investors, stock analysts, and other members of the financial community to executive management.

Full, Fair, and Timely Disclosures

Dragonfly is committed to meeting its obligations of full, fair, and timely disclosure in all reports and documents that describe our business and financial results, and other public communications.

Watch Out For

- Giving public speeches or writing articles for professional journals or other public communications that relate to Dragonfly without appropriate management approval.
- The temptation to use your title or affiliation outside of your work for Dragonfly without it being clear that the use is for identification only.
- Invitations to speak "off the record" to journalists or analysts who ask you for information about Dragonfly or its customers or business partners.

Be careful when writing communications that might be published online. If you participate in internet discussion groups, chat rooms, bulletin boards, blogs, social media sites, or other electronic communications, even under an alias, never give the impression that you are speaking on behalf of Dragonfly.

If you believe a false statement about our Company has been posted, do not post or share nonpublic information, even if your intent is to "set the record straight." Your posting might be misinterpreted, start false rumors, or may be inaccurate or misleading. Instead, contact [Investor Relations](#) or the [Chief Finance Officer](#).

Working With Integrity

Product Quality, Safety, and Stewardship

We are dedicated to earning and maintaining the trust of our customers by ensuring the quality, safety, and performance of our products. Each of us, as well as business partners, are expected to meet all product quality and safety specifications and our customers' expectations.

Do the Right Thing

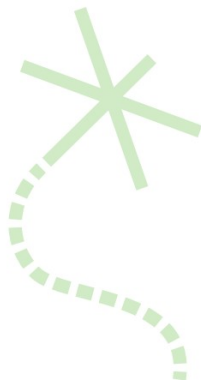
- Adhere to the highest standards and never take shortcuts or make exceptions that could compromise the quality or safety of our products.
- Do your part to ensure complete and accurate quality testing and performance reporting.
- Routinely check equipment and processes to ensure they conform to specifications and expectations – work toward continuous improvement.
- If you believe there is a safety issue or defect that might endanger a customer, report the issue to your supervisor immediately.



What If?

Q: I think there may be an issue with one of the manufacturing processes at my facility, but we are behind schedule and if I say anything, we will be delayed further as the Company investigates. What should I do?

A: Dragonfly never sacrifices quality to meet a Company deadline or target. You should report the matter immediately.



Fair Dealing

We treat our customers and business partners fairly. We work to understand and meet their needs and seek competitive advantages through superior performance, never through unethical or illegal practices. We tell the truth about our services and capabilities and never make claims that aren't true. In short, we treat our customers and business partners as we would like to be treated.

Do the Right Thing

- Be responsive to customer requests and questions. Only promise what you can deliver and deliver on what you promise.
- Never take unfair advantage of anyone by manipulating, concealing, misrepresenting material facts, abusing privileged information, or any other unfair dealing practice.
- Never grant a customer's request to do something that you regard as unethical or unlawful.
- Speak with your supervisor if you have concerns about any error, omission, undue delay, or defect in quality or our customer service.

Watch Out For

- Pressure from colleagues or supervisors to cut corners on quality or delivery standards.
- Temptations to tell customers what you think they want to hear rather than the truth; if a situation is unclear, begin by presenting a fair and accurate picture as a basis for decision-making.



Conflicts of Interest

A conflict of interest can occur whenever you have a competing interest or activity that may interfere with your ability to make an objective decision on behalf of Dragonfly. Each of us is expected to use good judgment and avoid situations that can lead to even the appearance of a conflict, because the perception of a conflict can undermine the trust others place in us and damage our reputation.

Conflicts of interest may be actual, potential, or even just a matter of perception. Since these situations are not always clear-cut, you need to fully disclose them to your supervisor so that they can be properly evaluated, monitored, and managed.



Be alert to situations, including the following, which are common examples of potential conflicts of interest:

Corporate opportunities

If you learn about a business opportunity because of your job, it belongs to Dragonfly first. This means that you should not take that opportunity for yourself unless you get approval from [the Compliance Officer](#).

Friends and relatives

On occasion, it is possible that you may find yourself in a situation where you are working with a close friend or relative who works for a customer, business partner, competitor, or even our Company. Since it is impossible to anticipate every scenario that could create a potential conflict, you should disclose your situation to your supervisor to determine if any precautions need to be taken.

Outside employment

To ensure that there are no conflicts and that potential issues are addressed, you always need to disclose and discuss outside employment with your supervisor. If approved, you must ensure that the outside activity does not interfere with your work at Dragonfly. Working for a competitor, business partner, or customer may raise conflicts that will need to be resolved. Also, any approved side or personal business should not compete with Dragonfly.

Personal investments

A conflict can occur if you have a significant ownership or other financial interest in a competitor, business partner, or customer. Make sure you know what's permitted – and what's not – by our policies and seek help with any questions.

Civic activities

Unless Company management specifically asks you to do so, you shouldn't accept a seat on the board of directors or advisory board of any of our competitors, business partners, or customers, especially if your current job gives you the ability to influence our relationship with them.

Do the Right Thing

- Avoid conflict of interest situations whenever possible.
- Always make business decisions in the best interest of Dragonfly.
- Think ahead and proactively address situations that may put your interests or those of a family member in potential conflict with Dragonfly.
- Discuss with your supervisor full details of any situation that could be perceived as a potential conflict of interest.

Gifts and Entertainment

A modest gift may be a thoughtful "thank you," or a meal may offer an opportunity to discuss business. If not handled carefully, however, the exchange of gifts and entertainment could be improper or create a conflict of interest. This is especially true if an offer is extended frequently, or if the value is large enough that someone may think it is being offered in an attempt to influence a business decision.

Only offer and accept gifts and entertainment that comply with our policies and make sure that anything given or received is accurately reported in our books and records.

Be aware that the rules for what we may give to – or accept from – government officials are much more strict. Don't offer anything of value to a government official without obtaining approval, in advance, from [the Compliance Officer](#). [And remember, We do not accept or provide gifts, favors, or entertainment to anyone – even if it complies with our policies – if the intent is to improperly influence a decision.](#)



Do the Right Thing

- Only provide and accept gifts and entertainment that are reasonable complements to business relationships.
- Never offer gifts to – or accept them from – a business partner with whom you are involved in contract negotiations.
- Make sure that anything given or received complies with the Company policies of both the giver and the recipient.
- Never give or accept cash or cash equivalents.
- Do not request or solicit personal gifts, favors, entertainment, or services.
- Raise a concern whenever you suspect that a colleague or business partner may be improperly attempting to influence a decision of a customer or government official.

Watch Out For

- Situations that could embarrass you or our Company (e.g., entertainment at sexually oriented establishments).
- Gifts, favors, or entertainment that may be reasonable for a privately owned company but not for a government official or agency.

What If?

Q: When traveling, I received a gift from a business partner that I believe was excessive. What should I do?

A: You need to let *the Human Resources Department or the Compliance Officer* know as soon as possible. We may need to return the gift with a letter explaining our policy. If a gift is perishable or impractical to return, another option may be to distribute it to employees or donate it to charity, with a letter of explanation to the donor.



Sourcing Responsibly

Dragonfly evaluates and engages with qualified business partners on an objective basis grounded in fairness. When selecting partners, we assess their ability to satisfy our business and technical needs and requirements.

All agreements are negotiated in good faith and must be fair and reasonable for both parties. Do your part to hold our business partners to our high standards and ensure they operate ethically, in compliance with the law, and in a way that's consistent with our Code, our policies, and our Values.

Government Contracting

We are committed to meeting the many special legal, regulatory, and contractual requirements that apply to our government contracts. These requirements may apply to bidding, accounting, invoices, subcontracting, employment practices, contract performance, gifts and entertainment, purchasing, and other matters. These requirements may also flow down to individuals and companies working on our behalf.

If you are responsible for conducting business with the government on behalf of Dragonfly, make sure you know and comply with what's contractually required as well as all laws and regulations that apply to our government-related work.



Following the Law



Cooperation With Investigations and Audits

From time to time, employees may be asked to participate in internal and external investigations and audits that are conducted by our Company. All employees are expected to fully cooperate with all such requests and ensure that any information you provide is true, accurate, and complete.

You may also receive inquiries or requests from government officials. If you learn of a potential government investigation or inquiry, immediately notify your supervisor and the [Legal Department](#) before taking or promising any action. If you are directed by our Company to respond to a government official's request, extend the same level of cooperation and again, ensure that the information you provide is true, accurate, and complete.

Watch Out For

- **Falsified information.** Never destroy, alter, or conceal any document in anticipation of or in response to a request for these documents.
- **Unlawful influence.** Never provide or attempt to influence others to provide incomplete, false, or misleading statements to a Company or government investigator.



Insider Trading

We respect every company's right to protect its material, nonpublic ("inside") information, and we comply with insider trading laws. In the course of business, you may learn confidential information about Dragonfly or about other publicly traded companies that is not available to the public. Trading securities while aware of inside information, or disclosing it to others who then trade ("tipping"), is prohibited by various laws.

Material Information

Material information is the kind of information a reasonable investor would take into consideration when deciding whether to buy or sell a security. Some examples of information about a company that may be material are:

- A proposed acquisition or sale of a business
- A significant expansion or cutback of operations
- A significant product development or important information about a product
- Extraordinary management or business developments
- Changes in strategic direction such as entering new markets

Do the Right Thing

- Do not buy or sell securities of any company when you have material nonpublic information about that company.
- Protect material nonpublic information from the general public including information in both electronic form and in paper copy.
- Discuss any questions or concerns about insider trading with the [Legal Department](#).

Watch Out For

- Requests from friends or family for information about companies that we do business with or have confidential information about. Even casual conversations could be viewed as illegal "tipping" of inside information.
- Sharing material nonpublic information with anyone, either on purpose or by accident, unless it is essential for Dragonfly-related business. Giving this information to anyone else who might make an investment decision based on your inside information is considered "tipping" and is against the law regardless of whether you benefit from the outcome of their trading.

Anti-corruption and Anti-bribery

We believe that all forms of bribery and other corrupt practices are an inappropriate way to conduct business regardless of local customs. Dragonfly is committed to complying with all applicable anti-corruption laws.

We do not pay or accept bribes or kickbacks, at any time for any reason. This applies equally to any person or firm who represents our Company.

It is especially important that we exercise due diligence and carefully monitor third parties acting on our behalf. We carefully screen all business partners who work on our behalf, particularly when dealing in countries with high corruption rates and in any situations where "red flags" would indicate further screening is needed before retaining the business partner. Our partners must understand that they are required to operate in strict compliance with our standards and to maintain accurate records of all transactions. We never ask them to do something that we are prohibited from doing ourselves.



Key Definitions

- **Bribery** means giving or receiving anything of value (or offering to do so) in order to obtain a business, financial, or commercial advantage.
- **Corruption** is the abuse of an entrusted power for private gain.
- **Facilitation payments** are typically small payments to a low-level government official that are intended to encourage them to perform their responsibilities.
- **Government officials** include government employees, political parties, candidates for office, employees of public organizations, and government-owned entities.

Do the Right Thing

- Understand the standards set forth under anti-bribery laws which apply to your role at Dragonfly.
- Never give anything of value inconsistent with local laws and regulations to any government official. If you are not sure of the local laws, the safest course of action is to not give anything of value.
- Accurately and completely record all payments to third parties.

Watch Out For

- Apparent violations of anti-bribery laws by our business partners.
- Agents who do not wish to have all terms of their engagement with Dragonfly clearly documented in writing.

What If?

Q: I work with a foreign agent in connection with our operations in another country. I suspect that some of the money we pay this agent goes toward making payments or bribes to government officials. What should I do?

A: This matter should be reported to the **Compliance Officer** for investigation. If there is bribery and we fail to act, both you and our Company could be liable. While investigating these kinds of matters can be culturally difficult in some countries, any agent doing business with us should understand the necessity of these measures. It is important and appropriate to remind our agents of this policy.



Global Trade

Dragonfly has global operations that support a growing, worldwide customer base. To maintain and grow our global standing, we must strictly comply with all applicable laws that govern the import, export, and re-export of our products, and also with the laws of the countries where our products are manufactured, repaired, or used. Any violation of these laws, even through ignorance, could have damaging and long-lasting effects on our business.

If your responsibilities include exporting products or receiving imported products, you are responsible for screening customers, suppliers, and transactions to ensure that we comply with all applicable export and import requirements.

Anti-boycott Regulations

We are subject to the anti-boycott provisions of U.S. law that require us to refuse to participate in foreign boycotts that the United States does not sanction. We promptly report any request to join in, support, or furnish information concerning a non-U.S.-sanctioned boycott.

Do the Right Thing

- Obtain all necessary licenses before the export or re-export of products, services, or technology.
- Report complete, accurate, and detailed information regarding every imported product, including its place(s) of manufacture and its full cost.
- Direct any questions you have regarding imports or exports of our products, parts, or technology to the [Compliance Officer](#).

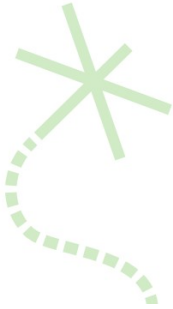
Watch Out For

- Transferring technical data and technology to someone in another country, such as through email, conversations, meetings, or database access. This restriction applies to sharing information with coworkers, as well as non-employees.
- Transporting Company assets that contain certain technology (such as a computer an associate takes on a business trip) to another country.

What If?

Q: My work requires regular interaction with customs officials. As part of my job, I am routinely asked to provide the Customs Service with information about our imports and exports. Do I really need to contact the Compliance Officer prior to each and every submission of information to the government?

A: *The right approach here would be to discuss with the Compliance Officer the types of requests your department routinely receives from Customs. These routine requests, once understood, might be handled without any Compliance Review. Extraordinary requests would still require Legal Department review to ensure that you are responding accurately, fully, and in accordance with the law.*



Antitrust and Fair Competition

We believe in free and open competition and never engage in practices that may limit competition or try to gain competitive advantages through unethical or illegal business practices. Antitrust laws are complex and compliance requirements can vary depending on the circumstances, so seek help with any questions about what is appropriate and what isn't.

In general, the following activities are red flags, should be avoided, and, if detected, reported to [the Legal Department](#):

- Sharing our Company's competitively sensitive information with a competitor.
- Sharing competitively sensitive information of business partners or other third parties with their competitors.
- Attempting to obtain nonpublic information about competitors from new hires or candidates for employment.



Do the Right Thing

- Do not enter into agreements with competitors or others to engage in any anti-competitive behavior, including setting prices or dividing up customers, suppliers, or markets.
- Do not engage in conversations with competitors about competitively sensitive information.

Watch Out For

- **Collusion** – when companies secretly communicate or agree on how they will compete. This could include agreements or exchanges of information on pricing, terms, wages, or allocations of markets.
- **Bid-rigging** – when competitors or service providers manipulate bidding so that fair competition is limited. This may include comparing bids, agreeing to refrain from bidding, or knowingly submitting noncompetitive bids.
- **Tying** – when a company with market power forces customers to agree to services or products that they do not want or need.
- **Predatory pricing** – when a company with market power sells a service below cost to eliminate or harm a competitor, with the intent to recover the loss of revenue later by raising prices after the competitor has been eliminated or harmed.

What If?

Q: I received sensitive pricing information from one of our competitors. What should I do?

A: You should contact the Legal Department without delay and before any further action is taken. It is important, from the moment we receive such information, that we demonstrate respect for antitrust laws, and we make it clear that we expect others to do the same. This requires appropriate action that can only be decided on a case-to-case basis and may include sending a letter to the competitor.



Anti-money Laundering

Money laundering is a global problem with far-reaching and serious consequences. It is defined as the process of moving funds made from illegal activities through a legal business to make them appear legitimate. Involvement in such activities undermines our integrity, damages our reputation, and can expose our Company and the individuals involved to severe sanctions.

We are committed to conducting business in a way that prevents money laundering and complying with all anti-money laundering, financial crimes, and anti-terrorism laws wherever we operate. Report any suspicious financial transactions and activities to the Legal Department or the Compliance Officer and, if required, to appropriate government agencies.

Watch Out For

- Attempts to pay in cash or in a different currency than shown on the invoice.
- Requests to ship to a country that differs from where payment originated.
- Avoidance of recordkeeping requirements.
- Payments made by someone who is not a party to the transaction.
- Unusual changes to a customer's normal pattern of transactions.

Additional Resources



Resource:	Contact:
Human Resources	george@dragonflyenergy.com (775) 622-3448 x152
The Compliance Office	legal@dragonflyenergy.com (775) 221-8900
EthicsPoint Hotline	dragonflyenergy.ethicspoint.com (844) 995-4981
The Legal Department	legal@dragonflyenergy.com (775) 221-8900
Corporate Communications	jmarchetti@dragonflyenergy.com (775) 221-8890

Dragonfly Energy Holdings Corp.
Code of Ethics

Statement of Purpose

Good judgment is the foundation of everything Dragonfly Energy Holdings Corp. (“Dragonfly”) does as a company. Understanding out ethical and legal parameters strengthens our judgment.

Build Trust and Credibility

The success of our business is dependent on the trust and confidence we earn from our Employees (“Employees” Includes Exempt, Non-Exempt, Part-Time, Full-Time and Temporary employees, as those terms are defined in the Employment Classification Policy”), customers and shareholders. We gain credibility by adhering to our commitments, displaying honesty and integrity and reaching company goals solely through honorable conduct. It is easy to say what we must do, but the proof is in our actions. Ultimately, we will be judged on what we do.

When considering any action, it is wise to ask: will this build trust and credibility for Dragonfly? Will it help create a working environment in which Dragonfly can succeed over the long term? Is the commitment I am making one I can follow through with? The only way we will maximize trust and credibility is by answering “yes” to those questions and by working every day to build our trust and credibility.

Respect for Individuals

We all deserve to work in an environment where we are treated with dignity and respect. Dragonfly is committed to creating such an environment because it brings out the full potential in each of us, which, in turn, contributes directly to our business success. We cannot afford to let anyone’s talents go to waste.

Dragonfly is an equal employment/affirmative action employer and is committed to providing a workplace that is free of discrimination of all types from abusive, offensive or harassing behavior. Any employee who feels harassed or discriminated against should report the incident to his or her manager or to human resources.

Create a Culture of Open and Honest Communication

At Dragonfly everyone should feel comfortable to speak his or her mind, particularly with respect to ethics concerns. Managers have a responsibility to create an open and supportive environment where employees feel comfortable raising such questions. We all benefit tremendously when employees exercise their power to prevent mistakes or wrongdoing by asking the right questions at the right times.

Dragonfly will investigate all reported instances of questionable or unethical behavior. In every instance where improper behavior is found to have occurred, the company will take appropriate action. We will not tolerate retaliation against employees who raise genuine ethics concerns in good faith.

For your information, Dragonfly’s whistleblower policy is as follows:

Employees are encouraged, in the first instance, to address such issues with their managers or the HR manager, as most problems can be resolved swiftly. If for any reason that is not possible or if an employee is not comfortable raising the issue with his or her manager or HR, Dragonfly’s Compliance Officer does operate with an open-door policy.

Set Tone at the Top

Management has the added responsibility for demonstrating, through their actions, the importance of this Code. In any business, ethical behavior does not simply happen; it is the product of clear and direct communication of behavioral expectations, modeled from the top and demonstrated by example. Again, ultimately, our actions are what matters.

To make our Code work, managers must be responsible for promptly addressing ethical questions or concerns raised by employees and for taking the appropriate steps to deal with such issues. Managers should not consider employees’ ethics concerns as threats or challenges to their authority, but rather as another encouraged form of business communication. At Dragonfly, we want the ethics dialogue to become a natural part of daily work.

Uphold the Law

Dragonfly’s commitment to integrity begins with complying with laws, rules and regulations where we do business. Further, each of us must have an understanding of the company policies, laws, rules and regulations that apply to our specific roles. If we are unsure of whether a contemplated action is permitted by law or Dragonfly policy, we should seek the advice from the resource expert. We are responsible for preventing violations of law and for speaking up if we see possible violations.

Policy Statement

I. Personal Responsibilities of Employees, Officers and Directors

All of us are expected to protect and enhance the assets and reputation of the Company. The honesty, integrity, sound judgment and professional and ethical conduct of the Company’s employees, officers and directors is fundamental to the reputation, functioning and success of the Company. cAccordingly, in carrying out our duties, we must:

- Act with honesty and integrity, including the ethical handling of any actual or apparent conflict of interest between personal and professional relationships;
 - Promote full, fair, accurate, timely and understandable disclosure in the reports and documents that the Company files with, or submits to, the Securities and Exchange Commission (the “SEC”) and in other public communications made by the Company;
 - Encourage and reward professional integrity in all aspects of our organization and eliminate barriers to responsible behavior, such as coercion, fear of reprisal or alienation from the Company;
 - Provide for the education of all members of the Company about federal, state and local laws, rules and regulations and any applicable stock exchange rules relevant to the performance of their duties;
 - Comply and take all reasonable actions to cause the Company to comply with applicable governmental laws, rules and regulations and any applicable stock exchange rules;
 - Promptly report violations of this Code, including any violations of governmental laws, rules or regulations, and any applicable stock exchange rules, to the Compliance Officer or any other appropriate person identified in this Code;
 - Ensure accountability for adherence to this Code; and • Promote ethical and honest behavior in the workplace.
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II. Conflicts of Interest

A “conflict of interest” exists when a person’s private interests interfere—or appear to interfere—in any way with the interests of the Company. A conflict situation can arise when an employee, officer or director takes actions or has interests that may make it—or appear to make it—difficult to perform their Company work objectively and effectively. Conflicts of interest may also arise when an employee, officer or director, or members of his or her family, receives improper personal benefits, including material gifts or favors, as a result of his or her position in the Company. Loans to, or guarantees of obligations of, employees, officers, directors and their family members may create conflicts of interest.

Conflicts of interest may not always be apparent, so if you have a question regarding whether a particular situation is a conflict of interest, you should consult with your supervisor or the Compliance Officer. Any employee, officer or director who becomes aware of a conflict or potential conflict should bring it to the attention of a supervisor, manager or other appropriate personnel or follow the guidelines described below. Above all, the consistent use of good judgment by employees, officers and directors will help the Company avoid and prevent conflicts of interest.

This Code does not attempt to describe all possible conflicts of interest that could develop, but some of the more common conflicts from which employees, officers and directors must refrain are:

a. Assisting a Competitor or Competing Against the Company. An obvious conflict of interest is providing assistance to an organization that provides services in competition with the current or proposed services of the Company. Without the consent of the Board of Directors of the Company (the “Board”), employees, officers and employee-directors, during their employment with the Company, may not: (a) work for such an organization as an employee, consultant or member of its board of directors; or (b) have any ownership interest (excluding indirect interests through broad-based mutual funds or similar investment funds in which you exercise no discretion as to the choice of investment), in any enterprise which competes with any business of the Company, except, solely in the case of a publicly-traded company, as a holder of less than one percent (1%) of the publicly traded stock in such a company. For the avoidance of doubt, non-employee directors are not subject to the foregoing restrictions in paragraphs (a) and (b). Such activities are prohibited because they divide your loyalty between the Company and that organization. If you are an employee, officer or employee-director and your investments in such organizations increases to more than the one percent (1%) threshold as specified above, you must promptly report these investments in writing to the Compliance Officer. You may also not market services in competition with the Company’s current or proposed services. It is your responsibility to consult with your supervisor to determine whether any planned activity will compete with any of the Company’s actual or proposed product lines or services before you pursue the activity.

b. Supplying the Company. Generally, you may not be a supplier, vendor or business partner of the Company or represent or work for a supplier, vendor or business partner of the Company while you work for the Company. In addition, you may not accept money or benefits of any kind for any advice or services you may provide to a supplier, vendor or business partner in connection with its business with the Company, other than in accordance with the policies outlined in Section II. H. and Section IX of this Code.

c. Someone Close to You Working in the Industry. You may find yourself in a situation where your spouse, another member of your immediate family, or someone else you are close to is employed by a competitor, supplier, vendor or business partner of the Company. Such situations call for extra sensitivity to security, confidentiality and conflicts of interest because the closeness of the relationship might lead you to inadvertently compromise the interests of the Company. There are several factors to consider in assessing such a situation, including the relationship between the Company and the other company, the nature of your responsibilities as a Company employee and those of the person close to you, and the access each of you has to your respective employer's trade secrets, proprietary information, and customer information ("Confidential Information"). The very appearance of a conflict of interest can create problems, regardless of the behavior of the Company employee involved. You should review your specific situation with your supervisor to assess the nature and extent of any concern and how it can be resolved.

d. Loans, Guarantees and Other Personal Financial Transactions. The Company will not make any loans to, or guarantee any personal obligations of, employees, officers, directors or their respective family members. You should not enter into any material personal financial transactions with the Company except Company-related corporate transactions (such as a cashless exercise of stock options) or other transactions that have been cleared with the Company's Chief Executive Officer (the "CEO") or the Compliance Officer. You also should not obtain a material loan or guarantee of personal obligations from, or enter into any other material personal financial transaction with, any organization which competes with any business of the Company or is a material customer, supplier, vendor or business partner of the Company. This guideline does not prohibit arm's-length or normal-course transactions with banks, brokerage firms or other financial institutions.

e. Family or Related Businesses. Potential transactions with family businesses or other businesses in which you participate as an owner, partner, director, officer, employee, consultant or shareholder, and which may create a conflict of interest or may interfere with your duties to the Company must be disclosed in writing to the Compliance Officer for approval. The appearance of favoritism, potential for conflict and likelihood of discouraging other service providers in the future will be considered carefully by the Compliance Officer before the transaction is approved.

- f. **Improper Conduct and Activities.** You may not engage in any conduct or activities that are inconsistent with the Company’s best interests or that disrupt or impair the Company’s or its clients’ relationship with any person or entity with which the Company has or proposes to enter into a business or contractual relationship.
- g. **Compensation from Non-Company Sources.** You may not accept compensation, in any form, for services performed for the Company from any source other than the Company. This provision is not intended to prevent members of our Board from having outside employment. However, each director must disclose to the Board any current or contemplated outside employment or similar relationships for the purpose of ensuring that no potential conflict of interest exists.
- h. **Gifts, Entertainment and Improper Payments.** You and members of your family may not request or accept from, or offer, promise or give to, any person or entity dealing or desiring to deal with the Company, any payments, gifts, entertainment, services, travel, lodging, or any other forms of compensation for personal benefit. For these purposes, a “gift” generally does not include articles of nominal value ordinarily used for sales promotion, and “entertainment” does not include ordinary business meals or reasonable entertainment (including tickets for sports, concerts or similar events) considered to be a normal part of a business relationship that is accepted only on a very infrequent basis and that does not detract or have the appearance of detracting from the integrity of the relationship. Participation in entertainment activities should be with a representative of the vendor, supplier or other entity in attendance at the activity. Giving or receiving any payment or gift in the nature of a bribe, kickback or other improper influence is absolutely prohibited.

III. Responsibilities of the CEO and Senior Financial Officers

In addition to the matters set forth in the remainder of this Code, the CEO and senior financial officers are subject to the following additional specific policies:

- i. **Disclosure.** The CEO and all senior financial officers are responsible for full, fair, accurate, timely and understandable disclosure in the periodic reports or documents required to be filed by the Company with the SEC. Accordingly, it is the responsibility of the CEO and each senior financial officer to promptly bring to the attention of the Compliance Officer and the Company’s Chief Financial Officer (the “CFO”) and to the Audit Committee any material information of which he or she may become aware that affects the disclosures made by the Company in its public filings or otherwise assist the Compliance Officer and the CFO in fulfilling the responsibilities specified in the Company’s applicable policies.
 - j. **Internal Controls; Fraud.** The CEO and each senior financial officer shall promptly bring to the attention of the Compliance Officer and the CFO and to the Audit Committee any information he or she may have concerning (a) significant deficiencies in the design and operation of internal controls which could adversely affect the Company’s ability to record, process, summarize and report financial data or (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company’s financial reporting, disclosures or internal controls.
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k. Code of Conduct. The CEO and each senior financial officer shall promptly bring to the attention of the Compliance Officer and the CFO and to the Audit Committee any information he or she may have concerning any violation of this Code, including any actual or apparent conflicts of interest between personal and professional relationships, involving any management or other employees who have a significant role in the Company's financial reporting, disclosure or internal controls.

l. Violations. The CEO and each senior financial officer shall promptly bring to the attention of the Compliance Officer and the CFO and to the Audit Committee any information he or she may have concerning evidence of a material violation of the securities or other laws, rules or regulations applicable to the Company and the operation of its business, by the Company or any agent thereof, or of violation of this Code.

III. Insider Trading

Employees, officers and directors who have access to Confidential Information are not permitted to use or share that information for stock trading purposes except in the conduct of our business. All nonpublic information about the Company, its customers, vendors, suppliers, business partners and other firms the Company may be negotiating major transactions with, should be considered Confidential Information. To use non- public information for personal financial benefit or to “tip” others who might make an investment decision on the basis of this information is not only unethical, but also illegal. In order to assist in compliance with laws against insider trading, the Company has adopted a specific policy governing employees', officers' and directors' trading in securities of the Company. This insider trading policy has been distributed to every employee, officer and director of the Company. If you have any questions, please consult the Compliance Officer.

IV. Confidentiality; Privacy and Protection of Personally Identifiable Information

Employees, officers and directors must maintain the confidentiality of Confidential Information (including letters, memos and internal Company documents) entrusted to them by the Company and people with whom the Company interacts, including its vendors, suppliers, business partners and customers, except when disclosure is authorized by the Compliance Officer or required by laws or regulations. Confidential Information includes all non-public information that might be of use to competitors, harmful to the Company and its vendors, suppliers, business partners and customers, or otherwise subject to restrictions on disclosure by law. If an employee, officer or director leaves the Company, they must return to the Company all documents containing Confidential Information of the Company, whether in hard copy or electronic form, including without limitation all reports, information, and other materials relating to the Company's pipelines and research projects. Employees, officers and directors are prohibited from copying, preserving, falsifying, deleting without authorization, transferring, or sending relevant reports, information, document materials or processes for their personal or other benefit. This prohibition and the obligation to preserve Confidential Information continues even after employment ends.

In addition, customers and other people with whom the Company comes in contact entrust the Company with their personal information, which is defined as any piece of personally identifiable information, including, but not limited to, such personal information as name, mailing address, e- mail address, phone number, credit card number, driver’s license number, social security number and information about health, race, religious beliefs, etc. The Company collects, processes, uses and retains personal information only in compliance with applicable laws. Employees, directors and officers are responsible for protecting this information both inside and outside of the Company and will do so in accordance with applicable laws, any data protection policies established by the Company and any extra standards required by contract. If personal information is to be transferred outside of any country, check to determine the necessity of a cross-border data transfer agreement. Internally, such information may only be disclosed for business purposes in accordance with applicable privacy laws. Externally, this information may not be disclosed.

V. Corporate Opportunities

Employees, officers and directors are prohibited from taking for themselves, personally, opportunities that properly belong to the Company or are discovered through the use of corporate property, information or position without the consent of the Board. No employee, officer or director may use corporate property, information or position for improper personal gain. Employees, officers and directors owe a duty to the Company to advance its legitimate interests when the opportunity to do so arises.

VI. Books and Records

The Company is a publicly-owned company. As such, the Company relies on the public securities markets for capital to fund our activities. The Company’s books and records are crucial to its business and form the basis of its financial statements and reports and other disclosures to shareholders and the public. Public investors rely upon the quality and integrity of the Company’s financial statements, reports, press releases and other disclosures. Additionally, the Company’s books and records are a source of essential data that guide the business decision-making and strategic planning of the Company. Accordingly, it is imperative that the Company maintain accurate books and records and report its financial results and condition accurately.

a. Accuracy and Completeness. Each employee, officer and director must do his or her part to ensure that the books of account and financial records of the Company meet the highest standards of accuracy and completeness. This responsibility does not rest exclusively with the Company’s accounting personnel. There is never an acceptable reason to make false or misleading entries. Undisclosed or unrecorded funds, payments or receipts are strictly prohibited. If you have reason to believe that any of the Company’s books and records are not being maintained in an accurate or complete manner, or if you become aware of any breakdown in internal controls or in the Company’s filings or other communications, you are expected to report this immediately as described in Section XVI, or to the Compliance Officer or the CFO. Similarly, the Company relies on you to speak up if you ever feel or if you actually are being pressured to destroy documents which would not normally be destroyed, or if you become aware that any misleading, incomplete or false statement was made to an accountant, auditor, attorney or government official in connection with any audit, examination or filing with a government agency, such as the SEC.

b. Financial Statements and Accounts. All employees who are involved in supplying any kind of supporting documentation, determining account classification or approving transactions will be held responsible for ensuring that transactions are reported accurately, completely and in reasonable detail. All transactions must be recorded appropriately to ensure full accountability for all assets and activities of the Company and to supply the data needed in connection with the preparation of financial statements. Each employee involved in the preparation of the Company's financial statements must prepare them in accordance with generally accepted accounting principles in the United States ("GAAP") and other applicable standards and rules, so that the statements fairly and completely reflect the operations and financial condition of the Company.

c. Payments and Expense Accounts. No payment on behalf of the Company may be approved or made if any part of it is to be used for any purpose other than that described by the supporting documents. All receipts and disbursements must be fully and accurately described in the books and records of the Company and must be supported by appropriate descriptive documentation. Employees should request reimbursement for business-related expenses in strict accordance with the Company's travel and entertainment policies.

d. Retention of Documents. Documents and records must be retained for the periods of time specified by the Company. Each employee, officer and director is responsible for understanding and complying with the Company's document and record retention guidelines. Also, if you are aware of an imminent or ongoing investigation, audit or examination initiated by the Company or any government or regulatory agency, you should retain all documents and records in your custody or control relating to the matter under review, even if the age of the records is beyond the Company's retention guidelines. Please note that the knowing destruction or deliberate falsification of any document or data in order to impede a governmental or regulatory investigation, audit or examination may be the basis for immediate dismissal and termination of employment and may subject you to prosecution for obstruction of justice. If you are not sure that a document can be destroyed, consult your supervisor or the Compliance Officer.

VII. Treatment of Employees

The Company has established comprehensive programs to ensure compliance with labor and employment laws, including equal employment opportunity policies and procedures, safety and health programs, and wage and hour procedures. For further information on particular labor and employment compliance policies, see the applicable sections of the Company's Employee Handbook, policies in PolicyTech, or contact the Human Resources Department.

a. Safety, Health and the Environment. The Company is committed to maintaining a safe work environment by eliminating recognized hazards in the workplace. The Company will, and you are required to, comply with all applicable environmental, health and safety ("EHS") laws and regulations and with all related Company policies. The Company is committed to maintaining safe workplaces, reducing the environmental impact of our operations and encouraging environmentally sustainable business operations. This also applies to our vendors, suppliers and business partners who acknowledge our standards and commitments. Employees, officers and directors are responsible for adhering to the applicable EHS requirements and for taking the necessary precautions to protect themselves and their colleagues. In addition, you must report to work in a condition suitable for performing your duties, free from the influence of illegal drugs or alcohol. To further your own safety and that of your fellow employees, you are also required to report to your supervisor any unsafe conditions, hazards, broken equipment, accidents, violence and employees visibly under the influence of illegal drugs or alcohol.

b. Nondiscrimination and Equal Employment Opportunity. The Company is an equal opportunity employer that embraces and values a diverse workforce and pledges to provide equal employment opportunity to all job applicants and employees. We will not tolerate discrimination against applicants or employees based on any protected classification including without limitation their race, religion, color, gender, pregnancy, childbirth, or pregnancy-related conditions, age, marital status, national origin or ancestry, sexual orientation, citizenship status, disability or status as a disabled veteran. We require all employees to refrain from unlawful discrimination in any aspect of employment, including decisions concerning recruitment, hiring, termination, promotions, salary treatment, or any other term, condition or privilege of employment or career development. You must treat all employees, vendors, suppliers, business partners, contractors and customers of the Company and other people with whom we come in contact with respect, dignity and honesty. We will not tolerate the use of discriminatory slurs, or any other remarks, jokes or conduct or other forms of harassment based on race, religion, color, gender, age, marital status, national origin or ancestry, sexual orientation, citizenship status, disability, status as a disabled veteran, or any other protected status.

c. Sexual and Other Forms of Harassment. The Company's policy, as well as the applicable laws, strictly prohibits all forms of harassment, violence and threatening behavior in the workplace, including unlawful harassment based on race, religion, color, gender, pregnancy, childbirth, or pregnancy-related conditions, age, marital status, national origin or ancestry, sexual orientation, citizenship status, disability, status as a disabled veteran or any other protected class. This prohibition also applies to the harassment of Company employees by non-employees. Sexual harassment includes linking, either explicitly or implicitly, a person's submission to, or rejection of, sexual advances to any decision regarding that person's terms or conditions of employment. It also includes the existence of a sexually abusive or hostile working environment. This can be characterized by unwelcome sexual advances or verbal or physical conduct of a sexual nature. The Company prohibits retaliation against individuals who report suspected violations or who participate in the investigation of any complaints of sexual or other forms of harassment.

d. Reporting Responsibilities and Procedures. If you believe that you have been subjected to harassment of any kind or any other type of unlawful discrimination, or if you feel retaliated against because of filing a complaint, you should report the matter as described in Section XVI. Any manager who has knowledge of any incident of sexual or other prohibited forms of harassment is required to report such information to the Human Resources Department or a corporate officer. Complaints of harassment, abuse or discrimination will be taken seriously and investigated immediately and thoroughly by Human Resources. Investigations will be conducted as confidentially as possible. Employees found to have engaged in sexual harassment or any other kind of abusive behavior shall be subject to disciplinary action, which may include termination. However, false accusations of harassment also violate the Company's policy.

VIII. Business Partner Relations

The Company seeks to do business only with vendors, suppliers and other business partners who conduct business ethically and legally. You must use care and good judgment in selecting and maintaining relationships with all of the Company's vendors, suppliers and other business partners. Employees, officers or directors who participate in the selection of any vendor, supplier or other business partner must use a selection process that is fair, lawful, does not improperly discriminate, and complies with all Company policies and procedures, and ensure that vendors, suppliers and other business partners are apprised of their obligation to abide by the Company's standards of business documents.

IX. Computer Use

All Internet, Intranet and e-mail activities are to be conducted for legitimate business purposes only. You acknowledge that, to the extent permitted by the applicable laws, the Company owns and has all rights to monitor, inspect, disclose and expunge all electronic files and records on Company systems, and that you should have no expectation of privacy with respect to all such files and records. Employee use and/or access of all Company computing resources, including computers, mobile phones and tablets, networked services and Internet and e-mail access (including web surfing), must at all times comply with all Company policies and applicable laws, including those relating to intellectual property, privacy, defamation (libel and slander) and unfair competition. You are reminded that all on-line, social media and e-mail activities, intentionally or not, are potentially public in nature. We must never act in a way that would bring liability, loss of credibility or embarrassment to the Company. Adhering to these guidelines with respect to computer use is very important, as violation may result in significant civil and even criminal penalties for both you and the Company.

X. Intellectual Property

Each employee, officer and director has an obligation to protect the Company's intellectual property. These "intellectual properties" may not be tangible like our buildings or equipment, but they are among the most valuable of the Company's assets. Our patents, logos, brand, copyrights, software, know-how and trademarks are examples of the Company's intellectual property. We protect all of our intellectual property rights — even those that are not patentable or protected by copyright or trademark laws — to the fullest extent permitted by law. In keeping with the Company's high standards for quality and ethical conduct, each of us must protect the value of the intellectual property of the Company by protecting their confidentiality and safeguarding them from theft, infringement or misuse, including by using Company trademarks and brand resources properly and consistently. Furthermore, all employees, officers and directors shall maintain the secrecy of innovations for which the Company will seek or is seeking patent or trade secret protection. You must advise senior management or the Compliance Officer of infringements by others or if you are unsure about a proposed use of Company intellectual property or any other materials for public dissemination. In addition to the guidelines included in this Code, employees and officers are subject to the obligations provided by any proprietary information and inventions assignment agreements that they may enter into with the Company.

XI. Protection of Other Company Assets; Proprietary Information

You must endeavor to protect the Company's assets and property and ensure their efficient use. Our assets include, among other things, our office equipment, technology and information. Theft, carelessness and waste have a direct impact on our profitability. You must use all assets and property of the Company for legitimate business purposes only. You must report any suspected incident of fraud or theft immediately to your supervisor or the Compliance Officer for investigation. If you are an officer or director you must report such fraud or theft to the Board or a committee of the Board.

To protect the security of Company information, the Company reserves the right to restrict personal use of e-mail and Internet services. Such restrictions include website restrictions, size and type of files (for example, photos, music or video), or the dissemination of spam messages. All software used on Company computers must be legal, licensed and in compliance with Company policies. Employees are prohibited from installing any non-compliant software without the authorization of the IT Department.

Your obligation to protect our assets includes the Company's proprietary information. Proprietary information includes, but is not limited to, business, marketing and strategic plans, research and development strategies, customer and mailing lists, supplier, vendor and business partner names and pricing, records, salary information, intellectual property, information management system, any unpublished financial data and reports and any unique products, processes or information the Company has developed. Unauthorized use or distribution of this information violates this Code and may subject you to civil or criminal penalties.

XII. Anti-Bribery and Anti-Corruption and Anti-Money Laundering; Political Contributions

The Company will not tolerate bribery or any form of corruption. Payments or promises to pay something of value to obtain or retain business or otherwise secure an improper advantage must never be made to a government official, employee or parties with whom the Company maintains a business and/or contractual relationship. The Company conducts its business in a manner consistent with foreign corrupt practices and/or any applicable governmental laws, rules and regulations. If you have any questions regarding this policy, you should contact the Compliance Officer.

a. Payments to Government Officials. The U.S. government has a number of laws and regulations regarding business gratuities that may be accepted by U.S. government personnel. The promise, offer or delivery to any official or employee of the U.S. government of a gift, favor or other gratuity on behalf of the Company, directly or indirectly, in violation of these rules would violate Company policy and could be a criminal offense. Foreign, state and local governments may have similar rules that you must also comply with. Employees, directors and officers may only transact business on behalf of the Company in foreign markets and with foreign government officials in accordance with the Company's established policies regarding foreign corrupt practices and/or any applicable governmental laws, rules and regulations.

- b. This policy is not intended to curtail your freedom to support political candidates and causes within legal limits, but care should be exercised so that no action by you is perceived as an attempt to influence government decisions in matters affecting the Company. Any personal contribution to any political candidate, party or organization must not be represented as a contribution from the Company, and you should not identify employment by the Company in connection with your individual political activities.
 - c. The Company prohibits facilitation payments, which are small value payments made to a government official, in order to secure or speed up the performance of a routine or expected governmental action to which the payer is entitled. All employees are expressly prohibited from offering, promising, accepting, giving, soliciting, receiving or authorizing, a bribe or facilitation payment.
 - d. Third-Party Risk. All employees must take reasonable precautions to ensure that all third parties they engage have solid qualifications, charge customary fees, have no apparent conflicts of interest, and are willing to sign a written contract that includes a statement that they will not make payments prohibited by law. Third parties include suppliers, agents, brokers, consultants, and other business partners. All employees should exercise due care in selecting such business partners to ensure they are reputable, honest, and qualified for their roles, and in monitoring their activity once selected. All employees must follow any mandatory due diligence procedures adopted by the Company in regards to third-party intermediaries.
 - e. Counterparty Risk. The Company requires the employees to conduct a reasonable level of due diligence on all counterparties and proposed transactions in order to detect risks associated with foreign corrupt practices and/or any applicable governmental laws, rules and regulations. Prior to beginning a relationship with any counterparties, such as vendors, suppliers or business partners, the Company will conduct due diligence checks to identify, among others, the potential involvement of (i) trade controls targets; (ii) embargoed and sanctioned territories; and (iii) any indication of illegal or other illicit activities. Prior to entering into any transactions with new or existing counterparties, the Company will screen the names of any guarantors, intermediaries, or banks involved in the proposed transaction(s) against the applicable trade control lists.
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XIII. Disclosure Obligations and Procedures

The Company's policy is to release data of public importance, including reports to be filed with the SEC, at the earliest appropriate time consistent with the need to both maintain confidentiality of information before final decisions are made and to avoid endangering the Company's business through disclosure of information potentially advantageous to competitors. All public statements, oral or written, must be accurate, with no material omissions. Information that could reasonably be expected to have an impact on the market for Company securities may be released only through the Company's Authorized Spokespersons (as defined in the Company's Disclosure Policy). All inquiries from financial analysts, media representatives, or financial consultants should also be directed to the Compliance Officer, the Public Relations Department or the CFO. Financial information and results, including projections, forecasts, and forward looking statements, should not be supplied in business proposals, presentations or advertising or presented to the press or released to the media without express prior approval and review by the CFO and the Public Relations Department. For further information on disclosure obligations and procedures, see the Company's Disclosure Policy.

Social media, such as Twitter, Facebook and LinkedIn, brings opportunities to build conversations and communities, but also carries certain risks. All employees, officers and directors of the Company must therefore engage in social media conduct in a cautious and careful manner and only the Company's Public Relations Department may represent the Company in social media. In addition, employees may not engage in social media postings that are inconsistent with the Company's confidentiality policies. The use of any social network, blog or public website to post non-public information related to the Company is prohibited without the Company's authorization.

XIV. Amendments and Waivers of this Code

From time to time, the Company may amend certain provisions of this Code. Waivers of this Code for executive officers and directors of the Company must be granted by the Audit Committee. Waivers of this Code for all other employees of the Company may be granted by an executive officer of the Company. Amendments to and waivers of this Code will be publicly disclosed as required by applicable laws and regulations.

XV. Compliance with this Code

The Company takes this Code very seriously. You must understand this Code and take responsibility for seeking the advice of your supervisor or other appropriate officials of the Company if you need clarification on any point. Employees who have questions about this Code or wish to make an anonymous report of any suspected or actual violations of this Code are also encouraged to call the Company's confidential compliance and ethics hotline at 844-995-4981 or on the Internet at www.dragonflyenergy.ethicspoint.com.

a. Reporting Violations. If you believe you have violated this Code or any applicable laws or regulations, you must report the violation so that the Company can take appropriate action. The fact that you reported the violation will be given consideration in determining appropriate disciplinary action, if any. In many cases, a prompt report of a violation can substantially reduce the adverse impact of a violation on all involved, on third parties, on the Company and on you. If you become aware that another employee, of whatever level of seniority, has, in all likelihood, violated this Code, including any law or regulation applicable to the Company's businesses, you are under a duty to report that violation, in order that the Company can take steps to rectify the problem and prevent a recurrence. Violations may be reported to your supervisor, the Human Resources Department, Compliance Officer or the CFO, as appropriate. Such reports will be treated confidentially to the extent possible, and no person will be subject to retaliation for reporting a suspected violation in good faith. Employees are expected to cooperate in internal investigations of misconduct and the Company prohibits retaliation against individuals who cooperate with the investigation of any complaints. Any employee may submit a goodfaith concern regarding questionable accounting or auditing matters without fear of dismissal or retaliation of any kind.

b. Disciplinary Action. The Company intends to use every reasonable effort to prevent the occurrence of conduct not in compliance with this Code and other Company policies, including those outlined in the Company's Employee Handbook, and to halt any such conduct that may occur as soon as reasonably possible after its discovery. Company employees and officers who violate this Code and other Company policies and procedures may be subject to disciplinary actions, which may include termination. In addition, disciplinary measures will apply to anyone who directs or approves infractions, or has knowledge of them and does not move promptly to correct them in accordance with Company policies. In addition, persons who violate the law during the course of their employment may be subject to criminal and civil penalties, as well as payment of civil damages to others.

The Board shall determine, or designate appropriate persons to determine, appropriate actions to be taken in the event of violations of this Code by the CEO or the Company's senior financial officers. Such actions shall be reasonably designed to deter wrongdoing and to promote accountability for adherence to this Code and shall include written notices to the individuals involved that the Board has determined that there has been a violation, censure by the Board, demotion or re-assignment of the individual involved, suspension with or without pay or benefits (as determined by the Board) and termination of the individual's employment. In determining what action is appropriate in a particular case, the Board or such designee shall take into account all relevant information, including the nature and severity of the violation, whether the violation appears to have been intentional or inadvertent, whether the individual in question has been advised prior to the violation as to the proper course of action and whether or not the individual in question had committed other violations in the past.

Employee

Includes Exempt, Non-Exempt, Part-Time, Full-Time and Temporary employees, as those terms are defined in the Employment Classification Policy.

October 7, 2022

Office of the Chief Accountant
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
United States of America

Commissioners:

We have read Dragonfly Energy Holdings Corp.'s (formerly known as Chardan NexTech Acquisition 2 Corp.'s) statements included under Item 4.01 of its Form 8-K dated October 7, 2022. We agree with the statements concerning our Firm under Item 4.01, in which we were informed of our dismissal on October 7, 2022. We are not in a position to agree or disagree with other statements contained therein.

Very truly yours,

/s/ WithumSmith+Brown, PC

New York, New York

LIST OF SUBSIDIARIES OF DRAGONFLY ENERGY HOLDINGS CORP.

Name	Jurisdiction of Incorporation or Organization
Dragonfly Energy Corp.	Nevada

UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

Chardan is providing the following unaudited pro forma condensed combined financial information to aid you in your analysis of the financial aspects of the Business Combination and related transactions. The following unaudited pro forma condensed combined financial information presents the combination of the financial information of Chardan and Dragonfly adjusted to give effect to the Business Combination and related transactions. The following unaudited pro forma condensed combined financial information has been prepared in accordance with Article 11 of Regulation S-X as amended by the final rule, Release No. 33-10786 “Amendments to Financial Disclosures about Acquired and Disposed Businesses.” Defined terms included below have the same meaning as terms defined and included elsewhere in this proxy statement/prospectus.

The historical financial information of Chardan was derived from the unaudited financial statements of Chardan as of June 30, 2022 and for the six months ended June 30, 2022 and the audited financial statements of Chardan as of December 31, 2021, included in the proxy statement/prospectus. The historical financial information of Dragonfly was derived from the unaudited financial statements of Dragonfly as of June 30, 2022 and for the six months ended June 30, 2022 and the audited financial statements of Dragonfly as of December 31, 2021, included in the proxy statement/prospectus. Such unaudited pro forma financial information has been prepared on a basis consistent with the audited financial statements of Chardan and Dragonfly, respectively, and should be read in conjunction with the audited historical financial statements and related notes, each of which is included in the proxy statement/prospectus. This information should be read together with Chardan’s and Dragonfly’s financial statements and related notes, the sections titled “*Chardan’s Management’s Discussion and Analysis of Financial Condition and Results of Operations*” and “*Dragonfly’s Management’s Discussion and Analysis of Financial Condition and Results of Operations*” and other financial information included in the proxy statement/prospectus.

The Business Combination is accounted for as a reverse recapitalization, with no goodwill or other intangible assets recorded, in accordance with GAAP. Under this method of accounting, Chardan is treated as the “acquired” company for financial reporting purposes. Dragonfly has been determined to be the accounting acquirer because Dragonfly, as a group, will retain a majority of the outstanding shares of New Dragonfly as of the closing of the Business Combination, they have nominated five of the seven members of the board of directors as of the closing of the Business Combination, Dragonfly’s management will continue to manage New Dragonfly and Dragonfly’s business will comprise the ongoing operations of New Dragonfly.

The unaudited pro forma condensed combined balance sheet as of June 30, 2022 assumes that the Business Combination and related transactions occurred on June 30, 2022. The unaudited pro forma condensed combined statements of operations for the six months ended June 30, 2022 and for the year ended December 31, 2021 give pro forma effect to the Business Combination and related transactions as if they had occurred on January 1, 2021. Chardan and Dragonfly have not had any historical relationship prior to the Business Combination. Accordingly, no pro forma adjustments were required to eliminate activities between the companies.

These unaudited pro forma condensed combined financial statements are for informational purposes only. They do not purport to indicate the results that would have been obtained had the Business Combination and related transactions actually been completed on the assumed date or for the periods presented, or which may be realized in the future. The pro forma adjustments are based on the information currently available and the assumptions and estimates underlying the pro forma adjustments are described in the accompanying notes. Actual results may differ materially from the assumptions within the accompanying unaudited pro forma condensed combined financial information.

Description of the Business Combination

On May 15, 2022, Chardan entered into an Agreement and Plan of Merger (as amended on July 12, 2022, the “Business Combination Agreement,” and together with the other agreements and transactions contemplated by the Business Combination Agreement, the “Business Combination”) with CNTQ2 Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Chardan (“Merger Sub”), and Dragonfly Energy Corp., a Nevada corporation (“Dragonfly”). Pursuant to the terms of the Business Combination Agreement, a business combination between Chardan and Dragonfly has been effected through the merger of Merger Sub with and into Dragonfly, with Dragonfly surviving the merger as a wholly owned subsidiary of Chardan (the “Merger”).

At the closing of the Business Combination, the total consideration received by Dragonfly Equity Holders (shares and options) from Chardan will have an aggregate deemed value equal to \$415,000,000, payable, in the case of Dragonfly Equity Holders, solely in new shares of Common Stock. The new shares of Common Stock have been delivered to Dragonfly Equity Holders (including to holders of the Dragonfly preferred shares to be converted to common shares) and were allocated pro rata between the holders of Dragonfly common stock and options to acquire Dragonfly common stock contingent upon, the Closing. Based on the number of shares of Dragonfly common stock outstanding as of June 30, 2022 (together, solely for the purposes of this calculation, with additional Dragonfly shares issued upon exercise of Dragonfly Convertible Preferred Stock) on a fully-diluted and as-converted basis, taking into account the assumptions further described below, Dragonfly Stockholders will receive 38,576,648 shares of Common Stock.

Following the closing of the Business Combination, former holders of shares of Dragonfly common stock (including shares received as a result of the Dragonfly Preferred Stock Conversion) are entitled to receive their pro rata share of up to 40,000,000 additional Earnout Shares of Common Stock. The Earnout Shares are issuable in three tranches. The first tranche of 15,000,000 shares is issuable if New Dragonfly's 2023 total audited revenue is equal to or greater than \$250 million and New Dragonfly's 2023 audited operating income is equal to or greater than \$35 million. The second tranche of 12,500,000 shares is issuable upon achieving a volume-weighted average trading price threshold of at least \$22.50 on or prior to December 31, 2026 and the third tranche of 12,500,000 is issuable upon achieving a volume-weighted average trading price threshold of at least \$32.50 on or prior to December 31, 2028. To the extent not previously earned, the second tranche is issuable if the \$32.50 price target is achieved by December 31, 2028.

Dragonfly accounts for the Earnout Shares as either equity-classified or liability-classified instruments based on an assessment of the Earnout Shares specific terms and applicable authoritative guidance in ASC 480, Distinguishing Liabilities from Equity ("ASC 480") and ASC 815, as defined below. Dragonfly has determined that the Earnout Shares are indexed to New Dragonfly's stock and are therefore not precluded from equity classification. Such accounting determination will be assessed at each financial statement reporting date to determine whether equity classification remains appropriate. The pro forma value of the Earnout Consideration was prepared utilizing a Monte Carlo simulation model. The significant assumptions utilized in estimating the fair value of Earnout Consideration include the following: (1) our Common Stock price of \$10.00; (2) risk-free rate of 4.43%; (3) projected revenue and EBITDA of \$255,100,000 and \$41,000,000 respectively; (4) expected volatility of future annual revenue and future annual EBITDA of 37.0% and 61.0% respectively; (5) discount rates ranging from 3.4%-6.8%; and (6) expected probability of change in control of 15.0%. The pro forma fair value of the Earnout Shares is \$271.7 million.

The accounting treatment of the Earnout Shares have been recognized at fair value upon the closing of the Business Combination and classified in stockholders' equity. Because the Business Combination is accounted for as a reverse recapitalization, the issuance of the Earnout Shares have been treated as a deemed dividend and since New Dragonfly does not have retained earnings on a pro forma basis, the issuance has been recorded within additional-paid-in-capital. The unaudited pro forma condensed combined financial information does not reflect pro forma adjustments related to the recognition of these shares because there is no net impact on additional paid-in capital on a pro forma combined basis. If the Earnout Shares are later determined to be classified as a liability on the balance sheet then New Dragonfly would recognize subsequent changes in the fair value of such Earnout Shares recognized as a gain or loss at each reporting period during the earnout period, pursuant to the provisions of Accounting Standards Codification ("ASC") 815, *Derivatives and Hedging* ("ASC 815").

Charter Amendment

On August 5, 2022, in connection with the Charter Amendment, 9,556,652 shares of Chardan common stock were redeemed, resulting in the distribution of \$97,194,950 from the Trust Account to the redeeming stockholders. Following such redemptions, approximately \$31,460,579 million remained in the Trust Account and 6,255,848 shares of Common Stock remained issued and outstanding.

On August 8, 2022, Chardan announced that it was extending the time available to the Company to consummate its initial business combination for an additional (1) month from August 13, 2022 to September 13, 2022 (“Extension No. 1”). Extension No. 1 provides the Company with additional time to complete its proposed business combination with Dragonfly. Extension No. 1 is the first of up to three (3) one-month extensions permitted under the Company’s Second A&R Charter.

On September 6, 2022, Chardan announced that it was extending the time available to the Company to consummate its initial business combination for an additional (1) month from September 13, 2022 to October 13, 2022 (“Extension No. 2”). Extension No. 2 provides the Company with additional time to complete its proposed business combination with Dragonfly. Extension No. 2 is the second of up to three (3) one-month extensions permitted under the Company’s Second A&R Charter.

Subscription Agreement

In connection with the execution of the Business Combination Agreement, Chardan entered into the Subscription Agreement with the Sponsor pursuant to which the Sponsor has agreed to purchase, and Chardan has agreed to sell to the Sponsor 500,000 shares of Chardan common stock, for a purchase price of \$10.00 per share and an aggregate purchase price of \$5 million. Per the Subscription Agreement, Chardan Capital Market’s purchase commitment is reduced to the extent Chardan purchases shares of Common Stock in the open market that are not redeemed and result in the Company receiving at least \$5 million in cash from the Trust Account. As of the Closing, Chardan Capital Markets acquired in total 485,000 shares of Common Stock in the open market at purchase prices per share ranging from \$10.33 to \$10.38 (such shares, the “Purchased Shares”). These Purchased Shares were not redeemed, resulting in the: (i) Company’s receipt of \$5,016,547 from the Trust Account (based on a per share redemption price of \$10.34) and (ii) satisfaction of Chardan’s purchase commitment under the Subscription Agreement.

The Term Loan

Also in connection with the execution of the Business Combination Agreement, Chardan and Dragonfly entered into the Commitment Letter with the Initial Term Loan Lenders committing to provide \$75 million in principal amount of Term Loan. In connection with the Term Loan, the Term Lenders have received the Penny Warrants (in respect of 5.6% of Dragonfly’s common stock on a fully-diluted basis, calculated as of the Closing Date) and the \$10 Warrants (in respect of 1,600,000 shares of Common Stock). The obligations of the Term Loan Lenders to provide such financing under the Debt Commitment Letter are subject to a number of specified conditions. Management has determined that the warrants issued in connection with the term loan are equity classified instruments.

Equity Facility

Concurrently with the execution of the Business Combination Agreement, Legacy Dragonfly and CCM 5 entered into an equity facility letter agreement, pursuant to which Chardan and Dragonfly agreed to enter into purchase agreement of up to \$150 million of the Common Stock, that may be issued and sold by the Company to CCM LLC from time to time pursuant to the terms of the Purchase Agreement. Pursuant to, on the terms of and subject to the satisfaction of the conditions in the Purchase Agreement, including the filing and effectiveness of a registration statement registering the resale by CCM LLC of the shares of the Common Stock issued to it under the Purchase Agreement, the Company will have the right from time to time at its option to direct CCM LLC to purchase up to a specified maximum amount of shares of the Common Stock, up to a maximum aggregate purchase price of \$150 million over the 36-month term of the equity facility. The equity facility is structured to allow the Company, on the terms and subject to the conditions thereof, to raise funds from the issuance of equity on a periodic basis outside the context of a traditional underwritten follow-on offering.

The pro forma adjustments giving effect to the Business Combination and related transactions are summarized below, and are discussed further in the footnotes to these unaudited pro forma condensed combined financial statements:

- the consummation of the Business Combination and reclassification of cash held in Chardan’s Trust Account to cash and cash equivalents, net of redemptions (see below);
- the Charter Amendment;
- the redemptions prior to Closing;
- the consummation of the Subscription Agreements;
- the consummation of the Term Loan;
- the repayment of existing debt; and
- the accounting for certain offering costs and transaction costs incurred by both Chardan and Dragonfly.

Prior to the Closing, Chardan’s public stockholders holding 2,031,910 ordinary shares elected to redeem such shares.

The following summarizes the pro forma ownership of common stock of New Dragonfly following the Business Combination and related transactions:

	Number of Shares	Percentage of Outstanding Shares
Dragonfly existing shareholders ⁽¹⁾⁽²⁾	38,576,648	85.0%
Chardan existing public stockholders ⁽³⁾⁽⁴⁾	576,438	1.3%
Initial Stockholders ⁽⁵⁾⁽⁶⁾	3,662,500	8.1%
Term Loan Lender ⁽⁷⁾	2,593,056	5.6%
Pro forma Common Stock⁽⁸⁾	45,408,642	100.0%

(1) Excludes 40,000,000 Earnout Shares of Common Stock as the earnout contingencies have not yet been met.

(2) Includes shares of Dragonfly common stock issued pursuant to the THOR Investment.

(3) Excludes 9,487,500 shares of Common Stock underlying the public warrants.

(4) Reflects the redemptions of 9,556,652 Public Shares in connection with the Charter Amendment and 2,031,910 Public Shares prior to Closing, and excludes 485,000 Public Shares purchased on the open market by an affiliate of the Sponsor pursuant to the PIPE Subscription.

(5) Excludes 4,627,858 shares of Common Stock underlying the private warrants.

(6) Includes 500,000 shares of Common Stock pursuant to the PIPE Subscription, of which 485,000 shares were purchased in the open market and the remaining 15,000 shares issued at Closing.

(7) Includes 2,593,056 shares of Common Stock underlying the Penny Warrants due to their nominal exercise price. The Penny Warrants are exercisable for 5.6% of fully-diluted outstanding shares of Common Stock post closing. For purposes of such calculation, 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. Excludes 1,600,000 shares of Common Stock underlying the \$10 Warrants.

(8) Excludes shares of common stock issuable pursuant to the Equity Facility after Closing.

UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET
AS OF JUNE 30, 2022
(in thousands, except share and per share amounts)

	CNTQ (Historical)	Dragonfly (Historical)	THOR Investment (Note 3)		Transaction Accounting Adjustments		Pro Forma Combined
ASSETS							
Current assets:							
Cash and cash equivalents	\$ 350	\$ 1,055	\$ 15,000	A	\$ 31,996	C	\$ 28,216
					73,486	D	
					(29,342)	E	
					(39,312)	F	
					(4,000)	J	
					(21,017)	L	
Restricted cash	—	3,044	—		(3,044)	F	—
Accounts receivable	—	4,659	—		—		4,659
Inventory	—	42,268	—		—		42,268
Prepaid expenses and other current assets	231	5,622	—		—		5,853
Prepaid inventory	—	3,153	—		—		3,153
Total current assets	581	59,801	15,000		8,767		84,149
Investments held in Trust Account	128,611	—	—		(96,337)	B	—
					(32,274)	C	
Deferred issuance costs	—	—	—		1,000	K	1,000
Property and equipment, net	—	8,829	—		—		8,829
Deferred tax asset	—	366	—		—		366
Operating lease right of use asset	—	5,158	—		—		5,158
Total assets	\$ 129,192	\$ 74,154	\$ 15,000		\$ (118,844)		\$ 99,502
LIABILITIES, TEMPORARY EQUITY AND STOCKHOLDERS' EQUITY (DEFICIT)							
Current liabilities:							
Accounts payable and accrued expenses	\$ 317	\$ 15,317	\$ —		\$ —		\$ 15,634
Customer deposits	—	251	—		—		251
Notes payable, current portion	—	5,212	—		(5,212)	F	—
Operating lease liability, current portion	—	1,131	—		—		1,131
Obligation to issue common stock	—	—	—		1,000	K	1,000
Total current liabilities	317	21,911	—		(4,212)		18,016
Operating lease liability, net of current portion	—	4,116	—		—		4,116
Notes payable-noncurrent, net of debt discount	—	34,912	—		48,244	D	47,676
					(568)	E	
					(34,912)	F	
Warrant liabilities	879	—	—		—		879
Total liabilities	1,196	60,939	—		8,552		70,687
Common stock subject to possible redemption	128,398	—	—		(96,337)	B	—
					(32,061)	G	
Convertible preferred stock	—	2,000	—		(2,000)	H	—
Stockholders' equity (deficit)							
Common stock	1	4	2	A	3	D	43
					3	G	
					33	H	
					(2)	L	
Additional paid-in capital	—	2,540	14,998	A	(678)	C	26,333
					25,239	D	
					(28,374)	E	
					32,058	G	
					1,967	H	
					(403)	I	
					(21,015)	L	
Accumulated (deficit) earnings	(403)	8,671	—		(2,232)	F	2,439
					403	I	
					(4,000)	J	
Total stockholders' equity (deficit)	(402)	11,215	15,000		3,002		28,815
Total liabilities, temporary equity and stockholders' equity (deficit)	\$ 129,192	\$ 74,154	\$ 15,000		\$ (118,844)		\$ 99,502

UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS
FOR THE SIX MONTHS ENDED JUNE 30, 2022
(in thousands, except share and per share amounts)

	CNTQ (Historical)	Dragonfly (Historical)	Transaction Accounting Adjustments	Pro Forma Combined
Net Sales	\$ —	\$ 39,925	\$ —	\$ 39,925
Cost of goods sold	—	27,402	—	27,402
Operating expenses:				
Formation and operating costs	624	—	—	624
Franchise tax expense	101	—	—	101
Research and development	—	1,198	—	1,198
General and administrative	—	7,421	—	7,421
Selling and marketing	—	5,973	—	5,973
Loss from operations	(725)	(2,069)	—	(2,794)
Other income (expense):				
Interest expense	—	(2,450)	2,450	(7,893)
			(7,893)	EE
Loss on disposition of assets	—	(62)	—	(62)
Net gain on investments held in Trust Account	189	—	(189)	AA
Change in fair value of warrant liability	1,157	—	—	1,157
Total other income (expense)	1,346	(2,512)	(5,632)	(6,798)
Income (loss) before income taxes	621	(4,581)	(5,632)	(9,592)
Income tax benefit	—	(814)	—	(814)
Net income (loss)	\$ 621	\$ (3,767)	\$ (5,632)	\$ (8,778)
Net income (loss) per share (Note 4):				
Weighted average shares outstanding - basic	15,812,500	20,952,757		
Net income per share - basic	\$ 0.04	\$ (0.18)		
Weighted average shares outstanding - diluted	15,812,500	20,952,757		
Net income per share - diluted	\$ 0.04	\$ (0.18)		
Weighted average shares outstanding - basic and diluted				45,408,642
Net loss per share - basic and diluted				\$ (0.19)

UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS
FOR THE YEAR ENDED DECEMBER 31, 2021
(in thousands, except share and per share amounts)

	CNTQ (Historical)	Dragonfly (Historical)	Transaction Accounting Adjustments	Pro Forma Combined
Net Sales	\$ —	\$ 78,000	\$ —	\$ 78,000
Cost of goods sold	—	48,375	—	48,375
Operating expenses:				
Formation and operating costs	292	—	—	292
Franchise tax expense	66	—	—	66
Research and development	—	2,689	—	2,689
General and administrative	—	10,621	18,072	BB 32,693
			4,000	CC
Selling and marketing	—	9,848	—	9,848
(Loss) income from operations	(358)	6,467	(22,072)	(15,963)
Other income (expense):				
Other income	—	1	—	1
Interest expense	—	(519)	519	DD (14,685)
			(14,685)	EE
Loss on extinguishment of indebtedness	—	—	(2,232)	DD (2,232)
Warrant issuance costs	(19)	—	—	(19)
Loss on sale of private warrants	(1,254)	—	—	(1,254)
Net gain on investments held in Trust Account	24	—	(24)	AA —
Change in fair value of warrant liability	3,517	—	—	3,517
Total other income (expense)	2,268	(518)	(16,422)	(14,672)
Income (loss) before income taxes	1,910	5,949	(38,494)	(30,635)
Income tax expense	—	1,611	—	1,611
Net income (loss)	\$ 1,910	\$ 4,338	\$ (38,494)	\$ (32,246)
Net income (loss) per share (Note 4):				
Weighted average shares outstanding - basic	7,732,021	20,101,129		
Net income per share - basic	\$ 0.25	\$ 0.15		
Weighted average shares outstanding - diluted	7,991,952	21,931,108		
Net income per share - diluted	\$ 0.24	\$ 0.13		
Weighted average shares outstanding - basic and diluted				45,408,642
Net loss per share - basic and diluted				\$ (0.71)

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

Note 1. Basis of Presentation

The Business Combination has been accounted for as a reverse recapitalization, with no goodwill or other intangible assets recorded, in accordance with GAAP. Under this method of accounting, Chardan has been treated as the “accounting acquiree” and Dragonfly as the “accounting acquirer” for financial reporting purposes. Accordingly, for accounting purposes, the Business Combination has been treated as the equivalent of Dragonfly issuing shares for the net assets of Chardan, followed by a recapitalization. The net assets of Dragonfly have been stated at historical cost. Operations prior to the Business Combination are those of Dragonfly.

The unaudited pro forma condensed combined balance sheet as of June 30, 2022 gives effect to the Business Combination and related transactions as if they occurred on June 30, 2022. The unaudited pro forma condensed combined statements of operations for the six months ended June 30, 2022 and for the year ended December 31, 2021 give effect to the Business Combination and related transactions as if they occurred on January 1, 2021. These periods are presented on the basis that Dragonfly is the acquirer for accounting purposes.

The pro forma adjustments reflecting the consummation of the Business Combination and the related transaction are based on certain currently available information and certain assumptions and methodologies that Chardan management believes are reasonable under the circumstances. The unaudited condensed combined pro forma adjustments, which are described in the accompanying notes, may be revised as additional information becomes available and is evaluated. Therefore, it is likely that the actual adjustments will differ from the pro forma adjustments, and it is possible that the difference may be material. Chardan management believes that its assumptions and methodologies provide a reasonable basis for presenting all of the significant effects of the Business Combination and the related transactions based on information available to management at this time and that the pro forma adjustments give appropriate effect to those assumptions and are properly applied in the unaudited pro forma condensed combined financial information.

The unaudited pro forma condensed combined financial information does not give effect to any anticipated synergies, operating efficiencies, tax savings, or cost savings that may be associated with the Business Combination. The unaudited pro forma condensed combined financial information is not necessarily indicative of what the actual results of operations and financial position would have been had the Business Combination and related transactions taken place on the dates indicated, nor are they indicative of the future consolidated results of operations or financial position of the post-combination company. They should be read in conjunction with the historical financial statements and notes thereto of Chardan and Dragonfly.

Note 2. Accounting Policies and Reclassifications

Upon consummation of the Business Combination, management is performing a comprehensive review of the two entities’ accounting policies. As a result of the review, management may identify differences between the accounting policies of the two entities which, when conformed, could have a material impact on the financial statements of the post-combination company. Based on its initial analysis, management did not identify any differences that would have a material impact on the unaudited pro forma condensed combined financial information. As a result, the unaudited pro forma condensed combined financial information does not assume any differences in accounting policies.

Preferred Stock Conversion

Immediately prior to the consummation of the Business Combination, each share of Dragonfly’s pre-merger preferred stock has been converted into one share of Dragonfly common stock. Upon the closing of the Business Combination (after giving effect to the conversion of Dragonfly preferred stock into Dragonfly common stock), all shares of Dragonfly common stock outstanding have been converted into shares of New Dragonfly common stock.

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

Accounting for Stock Option Conversion

The Company accounts for stock-based compensation arrangements with employees and non-employee consultants using a fair value method which requires the recognition of compensation expense for costs related to all stock-based payments, including stock options. As of the Effective Time, each Dragonfly option prior to the business combination that was then outstanding has been converted into an option to purchase shares of New Dragonfly common stock upon substantially the same terms and conditions as were in effect with respect to such option immediately prior to the Effective Time, subject to specific terms and conditions. As the Dragonfly post-merger options will contain only service-based vesting conditions, management will recognize the incremental fair value related to the portion of the fully vested post-merger option and subject to service-based vesting conditions as consideration transferred. As there was no change in the terms of the options, management does not expect to recognize any incremental fair value.

Note 3. Adjustments to Unaudited Pro Forma Condensed Combined Financial Information

The unaudited pro forma condensed combined financial information has been prepared to illustrate the effect of the Business Combination and related transactions and has been prepared for informational purposes only.

The following unaudited pro forma condensed combined financial information has been prepared in accordance with Article 11 of Regulation S-X as amended by the final rule, Release No. 33-10786 “Amendments to Financial Disclosures about Acquired and Disposed Businesses.” Release No. 33-10786 replaces the existing pro forma adjustment criteria with simplified requirements to depict the accounting for the transaction (“Transaction Accounting Adjustments”) and present the reasonably estimable synergies and other transaction effects that have occurred or are reasonably expected to occur (“Management’s Adjustments”). Chardan has elected not to present Management’s Adjustments and will only be presenting Transaction Accounting Adjustments in the unaudited pro forma condensed combined financial information. Chardan and Dragonfly have not had any historical relationship prior to the Business Combination. Accordingly, no pro forma adjustments were required to eliminate activities between the companies.

The pro forma basic and diluted earnings per share amounts presented in the unaudited pro forma condensed combined statement of operations are based upon the number of Dragonfly’s ordinary shares outstanding, assuming the Business Combination and related transactions occurred on January 1, 2021.

THOR Investment

In July 2022, Dragonfly entered into a certain Stock Purchase Agreement with THOR Industries, whereby THOR purchased 1,267,502 shares of Dragonfly common stock for \$15,000,000 in cash. The Business Combination Agreement was amended to reflect the increase in consideration to be issued in the business combination as a result of the THOR Investment. The shares issued pursuant to the THOR Investment converted into 1,500,000 shares of New Dragonfly common stock at the closing of the Business Combination.

Adjustments to Unaudited Pro Forma Condensed Combined Balance Sheet

The adjustments included in the unaudited pro forma condensed combined balance sheet as of June 30, 2022 are as follows:

Adjustments related to the THOR Investment

- A. Represents cash proceeds of \$15.0 million pursuant to the THOR Investment and related Stock Purchase Agreement to which THOR Industries purchased 1,267,502 shares of Dragonfly common stock at a purchase price of \$11.8343 per share. The shares issued pursuant to the THOR Investment converted into 1,500,000 shares of New Dragonfly Common Stock at the closing of the Business Combination.

Transaction Accounting Adjustments

- B. Reflects the redemption payment totaling approximately \$96.8 million as a result of the redemption of 9,516,652 Chardan public shares in connection with the Charter Amendment, inclusive of a \$0.4 million deposit to the Trust Account, \$0.1 million of available interest at August 8, 2022, and net of a \$0.4 million tax withdrawal.
 - C. Reflects the reclassification of \$32.0 million held in the Trust Account, inclusive of interest earned on the Trust Account, to cash and cash equivalents that is available at closing of the Business Combination, prior to additional redemptions before the closing.
 - D. Represents cash proceeds of \$73.5 pursuant to the Term Loan. The Term Loan involves issuance of \$75.0 million in principal amount of term loans (with an original issue discount of 3%) and the related issuance of the Term Loan Lender Warrants (the Penny Warrants and the \$10 Warrants) for net proceeds of \$73.5 million. Interest will accrue on all outstanding principal amount of the term loans at approximately 13.5% per annum, partially payable quarterly and paid-in-kind. The Company determined that the Term Loan Lender Warrants will be equity-classified instruments. For purposes of the unaudited pro forma condensed combined balance sheet, the estimated fair value of the Term Loan Lender Warrants of \$38.0 million (\$25.2 million based on their combined relative fair values to the Term Loan) has been recorded as debt issuance costs offset against the debt with an offset to additional-paid-in capital. The fair value of the Term Loan Lender Warrants was based on a Black-Scholes simulation with key inputs and assumptions such as stock price, term, dividend yield, risk-free rate, and volatility. An additional \$0.6 million of transaction costs incurred by Dragonfly have been allocated to the Term Loan as debt issuance costs offset against the debt.
 - E. Represents the payment estimated transaction costs of \$28.9 million in relation to the Business Combination and reimbursements to related parties of Chardan for providing working capital to Chardan of \$0.4 million. Certain transaction costs totaling \$10.9 million, which include legal, accounting, and other services incurred related to the Business Combination have been allocated between the following newly issued financial instruments based on their anticipated relative fair values at Closing: shares of Chardan common stock, the Earnout Shares, the Term Loan, the Penny Warrants and the \$10 Warrants. The allocation of these costs resulted in \$0.6 million recognized as debt issuance costs offset against the Term Loan, and \$2.7 million recognized as equity issuance costs offset to additional paid-in capital. Chardan incurred an estimated \$18.1 million, inclusive of \$4.1 million pursuant to a Business Combination Marketing Agreement with Chardan Capital Markets, \$0.9 million and \$2.6 million pursuant to financing commitment fee agreements with Chardan Capital Markets and Stifel, respectively, \$7.1 million in legal costs, and \$3.0 million of printing, legal, insurance, and accounting services including the Duff & Phelps fairness opinion, all of which were expensed and recognized to Chardan's accumulated deficit and reclassified to additional paid-in capital at Closing to reflect the reclassification of Chardan's historical accumulated deficit.
 - F. Represents repayment of outstanding principal indebtedness of Dragonfly totaling \$42.4 million and the write off of unamortized debt discount and other settlement fees incurred totaling \$2.2 million.
 - G. Reflects the reclassification of approximately \$32.1 million of Common Stock subject to possible redemption to permanent equity.
 - H. Represents recapitalization of Dragonfly's outstanding equity as a result of the reverse recapitalization and the issuance of Common Stock to Dragonfly Equity Holders as consideration for the reverse recapitalization.
 - I. Reflects the reclassification of Chardan's historical accumulated deficit into additional paid-in capital as part of the reverse recapitalization.
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- J. Represents transaction bonus payments of \$4.0 million to certain Dragonfly executives. The bonus payments were contingent on the cash remaining after the Business Combination after the payment of transaction expenses and repayment of existing indebtedness of Dragonfly, as well as the amount of public warrants exercised following completion of the Business Combination.
- K. Represents an obligation to issue shares of New Dragonfly common stock approximately 30 days after Closing and having a value of \$1 million as commitment consideration for the Equity Facility.
- L. Reflects the additional redemptions of 2,031,910 Public Shares prior to closing, for aggregate payments to redeeming Public Shareholders of \$21.0 million at a redemption price of \$10.34 per share allocated to Common Stock and additional paid-in capital using par value \$0.001 per share.

Adjustments to Unaudited Pro Forma Condensed Combined Statements of Operations

The pro forma adjustments included in the unaudited pro forma condensed combined statement of operations for the six months ended June 30, 2022 and the year ended December 31, 2021 are as follows:

- AA. Reflects elimination of investment income on the Trust Account.
- BB. Reflects the transaction costs of \$18.1 million as if incurred on January 1, 2021, the date the Business Combination occurred for the purposes of the unaudited pro forma condensed combined statement of operations. This is a non-recurring item.
- CC. Represents transaction bonus payments of \$4.0 million to certain Dragonfly executives. The bonus payments were contingent on the cash remaining after the Business Combination after the payment of transaction expenses and repayment of existing indebtedness of Dragonfly, as well as the amount of public warrants exercised following completion of the Business Combination.
- DD. Represents the elimination of interest expense recognized on existing Dragonfly indebtedness and the recognition of a loss on extinguishment of existing Dragonfly indebtedness as if the Business Combination closed, and the indebtedness was settled, on January 1, 2021 (see adjustment F).
- EE. Represents the recognition of interest expense on the Term Loan as if the facility was executed on January 1, 2021, consisting of \$5.1 million and \$10.1 million of interest expense for the six months ended June 30, 2022 and the year ended December 31, 2021, respectively, calculated using an approximated rate of 13.50% per annum (as further detailed in the Term Loan agreement), and \$2.8 million and \$4.6 million of amortization of debt issuance costs related to the Term Loan for the six months ended June 30, 2022 and the year ended December 31, 2021, respectively. The amortization of debt issuance costs was calculated using an effective interest rate of 29.6% based on an estimated initial book value of the Term Loan of \$47.7 million after deducting the proceeds allocated to the Term Loan Lender Warrants of \$25.2 million, allocated transaction costs of \$0.6 million, and a \$1.5 million original issue discount (or 3% of proceeds).

Note 4. Net Loss per Share

Net loss per share was calculated using the historical weighted average shares outstanding, and the issuance of additional shares in connection with the Business Combination and the related transactions, assuming the shares were outstanding since January 1, 2021. As the Business Combination and the related transactions are being reflected as if they had occurred at the beginning of the period presented, the calculation of weighted average shares outstanding for basic and diluted net loss per share assumes that the shares issuable relating to the Business Combination and related have been outstanding for the entirety of all periods presented.

	Six Months Ended June 30, 2022 ⁽¹⁾	Year Ended December 31, 2021 ⁽¹⁾
Pro forma net loss	\$ (8,778)	\$ (32,246)
Weighted average shares outstanding - basic and diluted ⁽²⁾	45,408,642	45,408,642
Pro forma net loss per share - basic and diluted	\$ (0.19)	\$ (0.71)
<i>Excluded securities:⁽³⁾</i>		
Earnout Shares	40,000,000	40,000,000
Public Warrants	9,487,500	9,487,500
Private Warrants	4,627,858	4,627,858
Dragonfly Options	3,664,975	3,664,975
\$10 Warrants	1,600,000	1,600,000

(1) Pro forma income (loss) per share includes the related pro forma adjustments as referred to within the section “Unaudited Pro Forma Condensed Combined Financial Information.”

(2) Includes 2,593,056 shares of Common Stock underlying the Penny Warrants due to their nominal exercise price. The Penny Warrants are exercisable for 5.6% of fully-diluted outstanding shares of Common Stock post closing. For purposes of such calculation, 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. Excludes shares of common stock issuable after Closing pursuant to the Equity Facility.

(3) The potentially dilutive outstanding securities were excluded from the computation of pro forma net loss per share, basic and diluted, because their effect would have been anti-dilutive or the issuance or vesting of such shares is contingent upon the satisfaction of certain conditions which were not satisfied by the end of the periods presented.