As filed with the Securities and Exchange Commission on January 24, 2022

Registration No. 333-261059

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Amendment No. 2
to

FORM S-1

REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

DIRECT DIGITAL HOLDINGS, INC.
(Exact name of registrant as specified in its charter)

Delaware	**7370**	**83-0662116**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

1233 West Loop South, Suite 1170
Houston, TX 77027
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Mark Walker
Chairman and Chief Executive Officer
Keith Smith
President
1233 West Loop Suite 1170
Houston, TX 77027
(832) 402-1051
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Phyllis Young, Esq.
Stephen E. Older, Esq.
Rakesh Gopalan, Esq.
McGuireWoods LLP
1251 Avenue of the Americas, 20th Floor
New York, New York 10020
(212) 548-2100

Ben A. Stacke, Esq.
Jonathan R. Zimmerman, Esq.
Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
(612) 766-7000

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☒

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
		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 7(a)(2)(B) of the Securities Act. ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount To Be Registered[1]	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price[1][2]	Amount of Registration Fee[2]
Class A common stock, par value $0.001 per share	4,600,000	$ 9.00	$ 41,400,000	$ 3,837.78
Representatives' Warrants[3]				
Class A common stock underlying Representatives' Warrants	230,000	$ 10.80	$ 2,484,000	$ 230.27
Total	4,830,000	—	$ 43,884,000	$ 4,068.05[4]

(1) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(a) under the Securities Act of 1933, as amended.
(2) Includes 600,000 shares of Class A common stock that the underwriters have the option to purchase to cover over-allotments, if any.

(3) We have agreed to issue to the representatives of the several underwriters warrants to purchase the number of shares of our common stock (the "Representatives' Warrants") in the aggregate amount equal to five percent (5%) of the shares of our common stock to be issued and sold. The Representatives' Warrants are exercisable for a price per share equal to 120% of the public offering price.

(4) Previously paid.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

Direct Digital Holdings, Inc. is filing this Amendment No. 2 to its registration statement on Form S-1 (File No. 333-261059) (the "Registration Statement") as an exhibits-only filing. Accordingly, this amendment consists only of the facing note, this explanatory note, Item 16(a) of Part II of the Registration Statement, the signature page to the Registration Statement and the filed exhibits. The remainder of this Registration Statement is unchanged and has therefore been omitted.

Part II — **INFORMATION NOT REQUIRED IN PROSPECTUS**

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits. The list of exhibits is set forth below and is incorporated by reference herein.

Exhibit No.	Description
1.1	Form of Underwriting Agreement.
3.1*	Certificate of Incorporation of Direct Digital Holdings, Inc., as currently in effect.
3.2*	Bylaws of Direct Digital Holdings, Inc., as currently in effect.
3.3*	Form of Amended and Restated Certificate of Incorporation of Direct Digital Holdings, Inc., as in effect upon the consummation of this offering.
3.4*	Form of Bylaws of Direct Digital Holdings, Inc., as in effect upon the consummation of this offering.
4.1*	Specimen Certificate of Class A Common Stock.
4.2	Form of Representatives' Warrant (included in Exhibit 1.1)
5.1	Opinion of McGuireWoods LLP.
10.1	Form of Second Amended and Restated Limited Liability Company Agreement of Direct Digital Holdings, LLC.
10.2*	Form of Tax Receivable Agreement, to be effective upon the closing of this offering.
10.3+	Direct Digital Holdings, LLC 2022 Omnibus Incentive Plan.
10.4*	Credit Agreement, dated as of September 30, 2020, by and among Direct Digital Holdings, LLC, Colossus Media, LLC, Huddled Masses LLC, Orange142, LLC, Universal Standards for Digital Marketing, LLC, and East West Bank.
10.5*	Revolving Credit Note, dated as of September 30, 2020, by and among Direct Digital Holdings, LLC, Colossus Media, LLC, Huddled Masses, LLC, Orange142, LLC, and Universal Standards for Digital Marketing, LLC and East West Bank.
10.6*	Preferred Equity Subordination Agreement, entered into as of September 30, 2020, among East West Bank, USDM Holdings, Inc., and Direct Digital Holdings, LLC.
10.7*	Amendment to Credit Agreement, dated as of December 17, 2021, by and among Direct Digital Holdings, LLC, Colossus Media, LLC, Huddled Masses LLC, Orange142, LLC, Universal Standards for Digital Marketing, LLC and East West Bank.
10.8*	Secured Term Promissory Note, with a closing date of September 30, 2020, Direct Digital Holding LLC, Huddled Masses LLC, Colossus Media, LLC, Orange142, LLC and Universal Standards for Digital Marketing, LLC (collectively, the Borrower), jointly and severally promise to pay Silverpeak Credit Opportunities AIV LP (the Lender).
10.9*	Loan and Security Agreement, dated as of September 30, 2020, by and among Direct Digital Holdings, LLC and the other Borrower Entities identified therein, as Borrower, the Several Financial Institutions or Entities from time to time parties thereto, as Lenders and Silverpeak Credit Partners, LP as Agent.
10.10+*	Board Services and Consulting Agreement, made as of September 30, 2020, by and between Direct Digital Holdings, LLC and USDM Holdings, Inc.
10.11+*	Board Services and Consulting Agreement, made as of September 30, 2020, by and between Direct Digital Holdings, LLC and Mark Walker.
10.12+*	Board Services and Consulting Agreement, made as of September 30, 2020, by and between Direct Digital Holdings, LLC and Keith W. Smith.
10.13+*	Executive Employment Agreement, entered into as of March 3, 2021 by and between Direct Digital Holdings, LLC and Anu Pillai.
10.14+*	Redemption Agreement, dated as of November 14, 2021, by and between Direct Digital Holdings, LLC and USDM Holdings, Inc.
10.15+	Form of Executive Employment Agreement.

Exhibit No.	Description
10.16#*	Term Loan and Security Agreement, dated as of December 3, 2021, by and among Direct Digital Holdings, LLC, as borrower, Orange142, LLC, Huddled Masses LLC, Colossus Media, LLC, and Universal Standards for Digital Marketing, LLC, as guarantors, Lafayette Square Loan Servicing, LLC, as administrative agent, and the various financial institutions signatory to the Term Loan and Security Agreement as lenders.
10.17*	Intercreditor Agreement, dated as of December 3, 2021, by and between Lafayette Square Loan Servicing, LLC and East West Bank.
10.18*	Preferred Equity Subordination Agreement, dated as of December 3, 2021, by and among the Lafayette Square Loan Servicing, LLC, USDM Holdings, Inc., and Direct Digital Holdings, LLC.
21.1*	List of Subsidiaries.
23.1*	Consent of Marcum, LLP as to Direct Digital Holdings, Inc.
23.2*	Consent of Marcum, LLP as to Direct Digital Holdings, LLC (included in Exhibit 23.1).
23.3*	Consent of Baker Tilly US, LLP, as to Orange142, LLC.
23.4	Consent of McGuireWoods LLP (included in Exhibit 5.1).

24.1*	Power of Attorney (included on signature page of Amendment No. 1 of this Registration Statement).

* Previously filed.
\# Schedules and exhibits have been omitted pursuant to Item 601(b)(10) of Regulation S-K. The Company hereby agrees to furnish supplementary copies of any of the omitted schedules or exhibits upon request by the Commission.
\+ Indicates management contract or compensatory plan.

(b) Financial Statement Schedules. Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Houston, State of Texas, on this 24th day of January, 2022.

DIRECT DIGITAL HOLDINGS, INC.

By: /s/ Mark D. Walker
Mark D. Walker, Chairman and Chief Executive Officer

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities held on the dates indicated.

Signature	Title	Date
/s/ Mark D. Walker Mark D. Walker	Chairman, Chief Executive Officer, and Director (Principal Executive Officer)	January 24, 2022
* Susan Echard	Chief Financial Officer (Principal Financial Officer)	January 24, 2022
* Keith Smith	President and Director	January 24, 2022
* Richard Cohen	Director	January 24, 2022
* Antoinette R. Leatherberry	Director	January 24, 2022

* By: /s/ Mark Walker
Name: Mark Walker
Title: Attorney-in-fact

Exhibit 1.1

[•] Shares[1]

Direct Digital Holdings, Inc.

Class A Common Stock, par value $0.001 per share

UNDERWRITING AGREEMENT

[•], 2022

THE BENCHMARK COMPANY, LLC
ROTH CAPITAL PARTNERS, LLC
As Representatives of the several
Underwriters named in Schedule I hereto

c/o The Benchmark Company, LLC
150 East 58th Street, 17th Floor
New York, New York 10155

c/o Roth Capital Partners, LLC
888 San Clemente Drive, Suite 400
Newport Beach, CA 92660

Ladies and Gentlemen:

Direct Digital Holdings, Inc., a Delaware corporation (the ***"Company"***), proposes, subject to the terms and conditions stated herein, to sell to the several Underwriters named in Schedule I hereto (the ***"Underwriters"***) an aggregate of [•] shares (the ***"Firm Shares"***) of Class A common stock, par value $0.001 per share (the ***"Common Stock"***), of the Company. The Firm Shares consist of authorized but unissued shares of Common Stock to be issued and sold by the Company. The Company also proposes to grant to the several Underwriters an option to purchase up to [•] additional shares of Common Stock on the terms and for the purposes set forth in Section 3(b) hereof (the ***"Option Shares"***). The Firm Shares and any Option Shares purchased pursuant to this Underwriting Agreement (this ***"Agreement"***) are herein collectively called the ***"Securities."***

The Company and the several Underwriters hereby confirm their agreement as follows with respect to the sale of the Securities to the several Underwriters, for whom The Benchmark Company, LLC and Roth Capital Partners, LLC are acting as representatives (***"you"*** or the ***"Representatives"***). To the extent there are no additional underwriters named in Schedule I hereto other than you, the term Representatives as used herein shall mean you, as Underwriters, and the terms "Representatives" and "Underwriters" shall mean either the singular or the plural as the context requires.

[1] Plus an option to purchase up to[•] additional shares to cover over-allotments, if any.

1. ***Registration Statement and Prospectus***. A registration statement on Form S-1 (File No. 333-261059) with respect to the Securities, including a preliminary form of prospectus, has been prepared by the Company in conformity with the requirements of the Securities Act of 1933, as amended (the ***"Securities Act"***), and the rules and regulations (the ***"Rules and Regulations"***) of the U.S. Securities and Exchange Commission (the ***"Commission"***) thereunder and has been filed with the Commission. Such registration statement, including the amendments, exhibits and schedules thereto, as of the time it became effective, including the Rule 430A Information (as defined below), is referred to herein as the ***"Registration Statement."*** The Company will prepare and file a prospectus pursuant to Rule 424(b) of the Rules and Regulations that discloses the information previously omitted from the prospectus in the Registration Statement in reliance upon Rule 430A of the Rules and Regulations, which information will be deemed retroactively to be a part of the Registration Statement in accordance with Rule 430A of the Rules and Regulations (***"Rule 430A Information"***). If the Company has elected to rely upon Rule 462(b) of the Rules and Regulations to increase the size of the offering registered under the Securities Act, the Company will prepare and file with the Commission a registration statement with respect to such increase pursuant to Rule 462(b) of the Rules and Regulations (such registration statement, including the contents of the Registration Statement incorporated by reference therein, is the ***"Rule 462(b) Registration Statement"***). References herein to the ***"Registration Statement"*** will be deemed to include the Rule 462(b) Registration Statement at and after the time of filing of the Rule 462(b) Registration Statement. ***"Preliminary Prospectus"*** means the prospectus dated [•] included in the Registration Statement prior to the effective time of the Registration Statement. ***"Prospectus"*** means the prospectus that discloses the public offering price and other final terms of the Securities and the offering and otherwise satisfies Section 10(a) of the Securities Act. All references in this Agreement to the Registration Statement, the Preliminary Prospectus, the Prospectus or any amendment or supplement to any of the foregoing, is deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System or any successor system thereto (***"EDGAR"***).

All references herein to the Registration Statement, the Preliminary Prospectus or a Prospectus shall be deemed as of any time to include the documents and information incorporated therein by reference in accordance with the Rules and Regulations.

2. ***Representations and Warranties of the Company***.

(a) *Representations and Warranties of the Company*. The Company represents and warrants to, and agrees with, the several Underwriters as follows:

(i) *Registration Statement and Prospectuses*. No order preventing or suspending the use of the Preliminary Prospectus or the Prospectus (or any supplement thereto) has been issued by the Commission and no proceeding for that purpose has been initiated or is pending or, to the knowledge of the Company, threatened by the Commission. As of the time each part of the Registration Statement (or any post-effective amendment thereto) became or becomes effective, such part conformed or will conform in all material respects to the requirements of the Securities Act and the Rules and Regulations. Upon the filing or first use within the meaning of the Rules and Regulations, the Preliminary Prospectus and the Prospectus (or any supplement to either) conformed or will conform in all material respects to the requirements of the Securities Act and the Rules and Regulations. The Registration Statement and any post-effective amendment thereto has become effective under the Securities Act. The Company has complied to the Commission's satisfaction with all requests of the Commission for additional or supplemental information. No stop order suspending the effectiveness of the Registration Statement, any post-effective amendment or any part thereof is in effect, and no proceedings for such purpose have been instituted or are pending or, to the knowledge of the Company, are threatened by the Commission.

(ii) *Accurate Disclosure*. The Preliminary Prospectus, at the time of filing thereof or the time of first use within the meaning of the Rules and Regulations, did not contain an 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 light of the circumstances under which they were made, not misleading. Neither the Registration Statement nor any amendment thereto, at the effective time of each part thereof, at the First Closing Date (as defined below) or at the Second Closing Date (as defined below), contained, contains or will contain an untrue statement of a material fact or omitted, omits or will omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of the Time of Sale (as defined below), neither (A) the Time of Sale Disclosure Package (as defined below) nor (B) any issuer free writing prospectus, when considered together with the Time of Sale Disclosure Package, included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Neither the Prospectus nor any supplement thereto, as of its issue date, at the time of any filing with the Commission pursuant to Rule 424(b) of the Rules and Regulations, at the First Closing Date or at the Second Closing Date, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The representations and warranties in this Section 2(a)(ii) shall not apply to statements in or omissions from the Preliminary Prospectus, the Registration Statement (or any amendment thereto), the Time of Sale Disclosure Package or the Prospectus (or any supplement thereto) made in reliance upon, and in conformity with, written information furnished to the Company by you, or by any Underwriter through you, specifically for use in the preparation of such document, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 6(e).

"Time of Sale Disclosure Package" means the Preliminary Prospectus and the information on Schedule II, all considered together.

Each reference to a ***"free writing prospectus"*** herein means a free writing prospectus as defined in Rule 405 of the Rules and Regulations.

"Time of Sale" means [•]:00 [a/p].m. (Eastern time) on the date of this Agreement.

(iii) *No Other Offering Materials.* The Company has not distributed and will not distribute any prospectus or other offering material in connection with the offering and sale of the Securities other than the Registration Statement, the Preliminary Prospectus, the Time of Sale Disclosure Package or the Prospectus or other materials permitted by the Securities Act to be distributed by the Company; *provided,* further, that the Company has not made and will not make any offer relating to the Securities that would constitute a free writing prospectus and, except as set forth on Schedule III, the Company has not made and will not make any communication relating to the Securities that would constitute a Testing-the-Water Communication (as defined below), except in accordance with the provisions of Section 2(a)(v) of this Agreement.

(iv) *Emerging Growth Company*. From the time of initial confidential submission of the Registration Statement to the Commission (or, if earlier, the first date on which the Company engaged directly or through any person authorized to act on its behalf in any Testing-the-Waters Communication (as defined below)) through the date hereof, the Company has been and is an "emerging growth company," as defined in Section 2(a) of the Securities Act (an ***"Emerging Growth Company"***). ***"Testing-the-Waters Communication"*** means any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Securities Act.

(v) *Testing-the-Waters Materials* . The Company (i) has not alone engaged in any Testing-the-Waters Communications, other than Testing-the-Waters Communications with the prior consent of the Representatives with entities that are qualified institutional buyers within the meaning of Rule 144A under the Securities Act or institutions that are accredited investors within the meaning of Rule 501 under the Securities Act and (ii) has not authorized anyone other than the Representatives to engage in Testing-the-Waters Communications. The Company has not distributed any Written Testing-the-Waters Communications (as defined below) other than those listed on Schedule III hereto. ***"Written Testing-the-Waters Communication"*** means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 of the Rules and Regulations. Any individual Written Testing-the-Waters Communication does not conflict with the information contained in the Registration Statement or the Time of Sale Disclosure Package, complied in all material respects with the Securities Act, and when taken together with the Time of Sale Disclosure Package as of the Time of Sale, did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(vi) *Financial Statements*. The financial statements of the Company, together with the related notes and schedules, set forth in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus comply in all material respects with the requirements of the Securities Act and the Rules and Regulations and fairly present the financial condition of the Company and its consolidated subsidiaries as of the dates indicated and the results of operations and changes in cash flows and stockholders' equity for the periods therein specified. The financial statements of the Company, together with the related notes, set forth in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus are in conformity with generally accepted accounting principles in the United States (***"GAAP"***) consistently applied throughout the periods involved; all non-GAAP financial information included in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus complies with the requirements of Regulation G and Item 10 of Regulation S-K under the Securities Act; and, except as disclosed in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, there are no material off-balance sheet arrangements (as defined in Regulation S-K under the Securities Act, Item 303(a)(4)(ii)) or any other relationships with unconsolidated entities or other persons, that may have a material current or, to the Company's knowledge, material future effect on the Company's financial condition, results of operations, liquidity, capital expenditures, capital resources or significant components of revenue or expenses. No other financial statements or schedules are required to be included in the Registration Statement, the Time of Sale Disclosure Package or the Prospectus. Each of Marcum LLP and Baker Tilly US, LLP, which has expressed its opinion with respect to certain of the financial statements and schedules filed as a part of the Registration Statement and included in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, is (x) an independent public accounting firm within the meaning of the Securities Act and the Rules and Regulations, (y) a registered public accounting firm (as defined in Section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (the ***"Sarbanes-Oxley Act"***)) and (z) not in violation of the auditor independence requirements of the Sarbanes-Oxley Act.

(vii) *Organization and Good Standing*. Each of the Company and its subsidiaries has been duly organized and is validly existing as an entity in good standing under the laws of its jurisdiction of organization. Each of the Company and its subsidiaries has full corporate power and authority to own its properties and conduct its business as currently being carried on and as described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, and is duly qualified to do business as a foreign entity in good standing in each jurisdiction in which it owns or leases real property or in which the conduct of its business makes such qualification necessary and in which the failure to so qualify would have a material adverse effect upon the business, prospects, management, properties, operations, condition (financial or otherwise) or results of operations of the Company and its subsidiaries, taken as a whole (***"Material Adverse Effect"***).

(viii) *Absence of Certain Events.* Except as contemplated in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, subsequent to the respective dates as of which information is given in the Time of Sale Disclosure Package, neither the Company nor any of its subsidiaries has incurred any material liabilities or obligations, direct or contingent, or entered into any material transactions, or declared or paid any dividends or made any distribution of any

kind with respect to its capital stock; and there has not been any change in the capital stock (other than a change in the number of outstanding shares of Common Stock due to the issuance of shares upon the exercise of outstanding options or warrants or conversion of convertible securities), or any material change in the short-term or long-term debt (other than as a result of the conversion of convertible securities), or any issuance of options, warrants, convertible securities or other rights to purchase the capital stock of the Company or any of its subsidiaries, or any material adverse change in the general affairs, condition (financial or otherwise), business, prospects, management, properties, operations or results of operations of the Company and its subsidiaries, taken as a whole (***"Material Adverse Change"***), or any development which could reasonably be expected to result in any Material Adverse Change.

(ix) *Absence of Proceedings*. Except as set forth in the Time of Sale Disclosure Package and in the Prospectus, there is not pending or, to the knowledge of the Company, threat in writing of, any action, suit or proceeding (a) to which the Company or any of its subsidiaries is a party or (b) which has as the subject thereof any officer or director of the Company or any subsidiary, any employee benefit plan sponsored by the Company or any subsidiary or any property or assets owned or leased by the Company or any subsidiary before or by any court or Governmental Authority (as defined below), or any arbitrator, which, individually or in the aggregate, might result in any Material Adverse Change, or would materially and adversely affect the ability of the Company to perform its obligations under this Agreement or which are otherwise material in the context of the sale of the Securities. There are no current or, to the knowledge of the Company, pending, legal, governmental or regulatory actions, suits or proceedings (x) to which the Company or any of its subsidiaries is subject or (y) which has as the subject thereof any officer or director of the Company or any subsidiary, any employee plan sponsored by the Company or any subsidiary or any property or assets owned or leased by the Company or any subsidiary, that are required to be described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus by the Securities Act or by the Rules and Regulations and that have not been so described.

(x) *Disclosure of Legal Matters*. There are no statutes, regulations, contracts or documents that are required to be described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus or required to be filed as exhibits to the Registration Statement by the Securities Act or by the Rules and Regulations that have not been so described or filed.

(xi) *Authorization; No Conflicts; Authority*. This Agreement has been duly authorized, executed and delivered by the Company, and constitutes a valid, legal and binding obligation of the Company, enforceable in accordance with its terms, except as rights to indemnity hereunder may be limited by federal or state securities laws and except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally and subject to general principles of equity. This Representatives' Warrant Agreement has been duly authorized by the Company, and when executed and delivered, will constitute a valid, legal and binding obligation of the Company, enforceable in accordance with its terms, except as rights to indemnity may be limited by federal or state securities laws and except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally and subject to general principles of equity. The execution, delivery and performance of this Agreement and the Representatives' Warrant Agreement and the consummation of the transactions herein and therein contemplated will not (A) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to 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 is subject, (B) result in any violation of the provisions of the Company's charter or by-laws or (C) result in the violation of any law or statute or any judgment, order, rule, regulation or decree of any court or arbitrator or federal, state, local or foreign governmental agency or regulatory authority having jurisdiction over the Company or any of its subsidiaries or any of their properties or assets (each, a ***"Governmental Authority"***), except in the case of clause (A) or (C) as would not result in a Material Adverse Effect. No consent, approval, authorization or order of, or registration or filing with any Governmental Authority is required for the execution, delivery and performance of this Agreement or for the consummation of the transactions contemplated hereby, including the issuance or sale of the Securities and the Representatives' Securities (as defined below) by the Company, except such as may be required under the Securities Act, the rules of the Financial Industry Regulatory Authority, Inc. (***"FINRA"***), The Nasdaq Capital Market or state securities or blue sky laws; and the Company has full power and authority to enter into this Agreement and the Representatives' Warrant Agreement and to consummate the transactions contemplated hereby and thereby, including the authorization, issuance and sale of the Securities and the Representatives' Securities as contemplated by this Agreement and the Representatives' Warrant Agreement, respectively.

(xii) *Capitalization; the Securities; Registration Rights*. All of the issued and outstanding shares of capital stock of the Company, including the outstanding shares of Common Stock, are duly authorized and validly issued, fully paid and nonassessable, have been issued in compliance with all federal, state and foreign securities laws, were not issued in violation of or subject to any preemptive rights or other rights to subscribe for or purchase securities that have not been waived in writing (a copy of which, if any, has been delivered to counsel for the Underwriters), and the holders thereof are not subject to personal liability by reason of being such holders; the Securities and the Representatives' Securities have been duly authorized and, when issued, delivered and paid for in accordance with the terms of this Agreement and the Representatives' Warrant Agreement, respectively, will have been validly issued and will be fully paid and nonassessable, and the holders thereof will not be subject to personal liability by reason of being such holders; and the capital stock of the Company, including the Common Stock, the Securities and the Representatives' Securities, conforms to the description thereof in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus. Except as otherwise stated in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, (A) there are no preemptive rights or other rights to subscribe for or to purchase, or any restriction upon the voting or transfer of, any shares of Common Stock pursuant to the Company's charter, by-laws or any agreement or other 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; (B) neither the filing of the Registration Statement nor the offering or sale of the Securities or the Representatives' Securities as contemplated by this Agreement or the Representatives' Warrant Agreement, respectively, gives rise to any rights for or relating to the registration of any shares of Common Stock or other securities of the Company (collectively ***"Registration Rights"***); and (C) any person to whom the Company has granted Registration Rights has agreed not to exercise such rights until after expiration of the Lock-Up Period (as defined below). All of the issued and outstanding equity interests of each of the Company's subsidiaries have been duly and validly authorized and issued and are fully paid and nonassessable, and, except as otherwise described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, the Company owns of record and beneficially, free and clear of any security interests, claims, liens, proxies, equities or other encumbrances, all of the issued and outstanding equity interests of such subsidiaries. The Company has an authorized and outstanding capitalization as set forth in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus under the caption "Capitalization." The Common Stock (including the Securities and the Representatives' Securities) conforms in all material respects to the description thereof contained in the Time of Sale Disclosure Package and the Prospectus.

(xiii) *Stock Options*. Except as described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, there are no options, warrants, agreements, contracts or other rights in existence to purchase or acquire from the Company or any subsidiary of the Company any shares of the capital stock of the Company or any subsidiary of the Company. The description of the Company's stock option, stock bonus and other stock plans or arrangements (the

"Company Stock Plans"), and the options or other rights granted thereunder (collectively, the **"*Awards*"**), set forth in the Time of Sale Disclosure Package and the Prospectus accurately and fairly presents the information required to be shown with respect to such plans, arrangements and Awards. Each grant of an Award (A) was duly authorized no later than the date on which the grant of such Award was by its terms to be effective by all necessary corporate action, including, as applicable, approval by the board of directors of the Company (or a duly constituted and authorized committee thereof) and any required stockholder approval by the necessary number of votes or written consents, and the award agreement governing such grant (if any) was duly executed and delivered by each party thereto and (B) was made in accordance with the terms of the applicable Company Stock Plan, and all applicable laws and regulatory rules or requirements, including all applicable federal securities laws.

(xiv) *Compliance with Laws*. The Company and each of its subsidiaries holds, and is operating in compliance in all material respects with, all franchises, grants, authorizations, licenses, permits, easements, consents, certificates and orders of any Governmental Authority or self-regulatory body (each, a "***Permit***") required for the conduct of its business and all such franchises, grants, authorizations, licenses, permits, easements, consents, certifications and orders are valid and in full force and effect, except where the failure to hold such Permit would not result in a Material Adverse Effect; and neither the Company nor any of its subsidiaries has received notice of any revocation or modification of any such franchise, grant, authorization, license, permit, easement, consent, certification or order or has reason to believe that any such franchise, grant, authorization, license, permit, easement, consent, certification or order will not be renewed in the ordinary course; and the Company and each of its subsidiaries is in compliance in all material respects with all applicable federal, state, local and foreign laws, regulations, orders and decrees.

(xv) *Ownership of Assets*. The Company and its subsidiaries have good and marketable title to, or have valid rights to lease or otherwise use, all property (whether real or personal) described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus as being owned, leased or used by them, in each case free and clear of all liens, claims, security interests, other encumbrances or defects except such as are described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus. The property held under lease by the Company and its subsidiaries is held by them under valid, subsisting and enforceable leases with only such exceptions with respect to any particular lease as do not interfere in any material respect with the conduct of the business of the Company or its subsidiaries.

(xvi) *Intellectual Property*.

(A) The Company and each of its subsidiaries owns or has the right to use pursuant to a valid and enforceable written license or other legally enforceable right, all Intellectual Property (as defined below) necessary for the conduct of the Company's and its subsidiaries' businesses as now conducted or as described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus to be conducted, expect as such failure to own or right to use such rights would not result in a Material Adverse Effect (the ***"Company IP"***). ***"Intellectual Property"*** means all patents, patent applications, trade and service marks, trade and service mark registrations, trade names, copyrights, licenses, inventions, trade secrets, domain names, technology, know-how and other intellectual property.

(B) To the knowledge of the Company, there is no infringement, misappropriation or violation by third parties of any Company IP. There is no pending or, to the knowledge of the Company, threat in writing of any, action, suit, proceeding or claim by others challenging the Company's or its subsidiaries' rights in or to any Company IP, and the Company is unaware of any facts which would form a reasonable basis for any such claim. The Intellectual Property owned by the Company and its subsidiaries, and to the knowledge of the Company, the Intellectual Property licensed to the Company and its subsidiaries, has not been adjudged invalid or unenforceable, in whole or in part, and there is no pending or, to the knowledge of the Company, threat in writing of any, action, suit, proceeding or claim by others challenging the validity or scope of any Company IP, and the Company is unaware of any facts which would form a reasonable basis for any such claim. There is no pending or, to the knowledge of the Company, threat in writing of any, action, suit, proceeding or claim by others that the Company or its subsidiaries infringe, misappropriate or otherwise violate any Intellectual Property or other proprietary rights of others, and neither the Company nor any of its subsidiaries has received any written notice of such claim and the Company is unaware of any other fact which would form a reasonable basis for any such claim.

(C) To the Company's knowledge, no employee of the Company or any of its subsidiaries is in or has ever been in material violation of any term of any employment contract, patent disclosure agreement, invention assignment agreement, non-competition agreement, non-solicitation agreement, nondisclosure agreement or any restrictive covenant to or with a former employer where the basis of such violation relates to such employee's employment with the Company or any of its subsidiaries or actions undertaken by the employee while employed with the Company or any of its subsidiaries.

(D) The Company and its subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their material Intellectual Property.

(E) The Company has no patents or currently pending applications.

(xvii) *No Violations or Defaults*. (a) Neither the Company nor any of its subsidiaries is in violation of its respective charter, by-laws or other organizational documents, or in breach of or otherwise in default, and (b) no event has occurred which, with notice or lapse of time or both, would constitute such a default in the performance of any obligation, agreement or condition contained in any bond, debenture, note, indenture, loan agreement or any other material contract, lease or other instrument to which it is subject or by which any of them may be bound, or to which any of the material property or assets of the Company or any of its subsidiaries is subject, except in the case of clause (b), where such default would not have a Material Adverse Effect.

(xviii) *Taxes*. The Company and its subsidiaries have timely filed all federal, state, local and foreign income and franchise tax returns required to be filed and are not in default in the payment of any taxes which were payable pursuant to said returns or any assessments with respect thereto, other than any which the Company or any of its subsidiaries is contesting in good faith. There is no pending dispute with any taxing authority relating to any of such returns, and the Company has no knowledge of any proposed liability for any tax to be imposed upon the properties or assets of the Company or any of its subsidiaries for which there is not an adequate reserve reflected in the Company's financial statements included in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus.

(xix) *Exchange Listing and Exchange Act Registration*. The Securities and the Representatives' Securities have been approved for listing on The Nasdaq Capital Market upon official notice of issuance and, on the date the Registration Statement became effective, the Company's Registration Statement on Form 8-A or other applicable form under the Securities Exchange Act of 1934, as amended (the ***"Exchange Act"***), became or was effective. Except as previously disclosed to counsel for the Underwriters or as set forth in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, there are no affiliations with members of FINRA among the Company's officers or directors or, to the knowledge of the Company, any five percent or greater stockholders of the Company or any beneficial owner of the Company's unregistered equity securities that were acquired during the 180-day period immediately preceding the initial filing date of the Registration Statement. The Company is currently in compliance in all material respects with the applicable requirements of The Nasdaq Capital Market for maintenance

of inclusion of the Common Stock thereon and has not received any notice regarding the removal of the Company's listing, or the rejection of the Company's application for such listing, with such exchange.

(xx) *Ownership of Other Entities*. Other than the subsidiaries of the Company listed in Exhibit 21.1 to the Registration Statement or as otherwise disclosed in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, the Company, directly or indirectly, owns no capital stock or other equity or ownership or proprietary interest in any corporation, partnership, association, trust or other entity that is material to the business of the Company on a consolidated basis.

(xxi) *Internal Controls*. The Company and its subsidiaries maintain a system of internal accounting controls designed to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (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 existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as disclosed in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, the Company's board of directors and its audit committee is not aware of any "significant deficiencies" or "material weaknesses" (each as defined by the Public Company Accounting Oversight Board) in its internal control over financial reporting, or any fraud, whether or not material, that involves management or other employees of the Company or its subsidiaries who have a significant role in the Company's internal controls; and since the end of the latest audited fiscal year, there has been no change in the Company's internal control over financial reporting (whether or not remediated) that has materially and adversely affected, or is reasonably likely to materially and adversely affect, the Company's internal control over financial reporting. The Company's board of directors has, subject to the exceptions, cure periods and the phase in periods specified in the rules of The Nasdaq Capital Market, validly appointed an audit committee to oversee internal accounting controls whose composition satisfies the applicable requirements of The Nasdaq Capital Market and the Company's board of directors and/or the audit committee has adopted a charter that satisfies the requirements of The Nasdaq Capital Market.

(xxii) *No Brokers or Finders*. Other than as contemplated by this Agreement, the Company has not incurred and will not incur any liability for any finder's or broker's fee or agent's commission in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

(xxiii) *Insurance*. The Company and each of its subsidiaries carries, or is covered by, insurance from reputable insurers in such amounts and covering such risks as is reasonably adequate for the conduct of its business and the value of its properties and the properties of its subsidiaries; all policies of insurance and any fidelity or surety bonds insuring the Company or any of its subsidiaries or its business, assets, employees, officers and directors are in full force and effect; the Company and its subsidiaries are in compliance with the terms of such policies and instruments in all material respects; there are no claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; neither the Company nor any of its subsidiaries has been refused any insurance coverage sought or applied for; and neither the Company nor any of its subsidiaries has reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(xxiv) *Investment Company Act*. The Company is not and, after giving effect to the offering and sale of the Securities and the Representatives' Securities, will not be an "investment company," as such term is defined in the Investment Company Act of 1940, as amended.

(xxv) *Sarbanes-Oxley Act*. The Company is in compliance in all materials respects with all applicable provisions of the Sarbanes-Oxley Act and the rules and regulations of the Commission thereunder.

(xxvi) *Disclosure Controls*. The Company has established and maintains disclosure controls and procedures (as defined in Rules 13a-14 and 15d-14 under the Exchange Act) designed to ensure that material information relating to the Company, including its subsidiaries, is made known to the principal executive officer and the principal financial officer and such controls and procedures are effective to perform the functions for which they were established. The Company has utilized such controls and procedures in preparing and evaluating the disclosures in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus.

(xxvii) *Anti-Bribery and Anti-Money Laundering Laws*. Each of the Company, its subsidiaries, its affiliates and, to the Company's knowledge, any of their respective officers, directors, supervisors, managers, agents or employees has not violated, its participation in the offering will not violate and the Company and each of its subsidiaries has instituted and maintains policies and procedures designed to ensure continued compliance with each of the following laws: anti-bribery laws, including but not limited to, any applicable law, rule, or regulation of any locality, including but not limited to any law, rule, or regulation promulgated to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed December 17, 1997, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act 2010, or any other law, rule or regulation of similar purposes and scope, or anti-money laundering laws, including but not limited to, applicable federal, state, international, foreign or other laws, regulations or government guidance regarding anti-money laundering, including, without limitation, Title 18 U.S. Code Section 1956 and 1957, the Patriot Act, the Bank Secrecy Act, and international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur, all as amended, and any executive order, directive, or regulation pursuant to the authority of any of the foregoing, or any orders or licenses issued thereunder. The Company has instituted, maintains and enforces policies and procedures designed to ensure compliance with anti-bribery laws.

(xxviii) *OFAC*.

(A) Neither the Company nor any of its subsidiaries, nor any of their directors, officers or employees, nor, to the Company's knowledge, any agent, affiliate or representative of the Company or its subsidiaries, is an individual or entity that is, or is owned or controlled by an individual or entity that is:

(1) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively,

"Sanctions"), nor

(2) located, organized or resident in a country or territory that is the subject of an embargo by the foregoing authorities (including, without limitation, the Crimea Region of the Ukraine, Cuba, Iran, North Korea and Syria) (an ***"Embargo"***).

(B) Neither the Company nor any of its subsidiaries will, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other individual or entity:

(1) to fund or facilitate any activities or business of or with any individual or entity that, at the time of such funding or facilitation, is the subject of Sanctions or is located, organized or resident in a country or territory that is the subject of an Embargo; or

(2) in any other manner that will result in a violation of Sanctions or an Embargo by any individual or entity (including any individual or entity participating in the offering, whether as underwriter, advisor, investor or otherwise).

(C) For the past five years, neither the Company nor any of its subsidiaries has knowingly engaged in, and is not now knowingly engaged in, any dealings or transactions with any individual or entity that at the time of the dealing or transaction is or was the subject of Sanctions or is or was located, organized or resident in any country or territory that is the subject of an Embargo.

(xxix) *Compliance with Environmental Laws*. Except as disclosed in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, neither the Company nor any of its subsidiaries is in violation of any statute, rule, regulation, decision or order of any Governmental Authority or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, ***"Environmental Laws"***), owns or operates any real property contaminated with any substance that is subject to any Environmental Laws, is liable for any off-site disposal or contamination pursuant to any Environmental Laws, or is subject to any claim relating to any Environmental Laws, which violation, contamination, liability or claim would individually or in the aggregate, have a Material Adverse Effect; and the Company is not aware of any pending investigation which might lead to such a claim. Neither the Company nor any of its subsidiaries anticipates incurring any material capital expenditures relating to compliance with Environmental Laws.

(xxx) *Compliance with Occupational Laws*. The Company and each of its subsidiaries (A) is in compliance, in all material respects, with any and all applicable foreign, federal, state and local laws, rules, regulations, treaties, statutes and codes promulgated by any and all Governmental Authorities (including pursuant to the Occupational Safety and Health Act) relating to the protection of human health and safety in the workplace (***"Occupational Laws"***); (B) has received all material permits, licenses or other approvals required of it under applicable Occupational Laws to conduct its business as currently conducted; and (C) is in compliance, in all material respects, with all terms and conditions of such permits, licenses or approvals. No action, proceeding, revocation proceeding, writ, injunction or claim is pending or, to the Company's knowledge, threatened against the Company or any of its subsidiaries relating to Occupational Laws, and the Company does not have knowledge of any facts, circumstances or developments relating to its operations or cost accounting practices that could reasonably be expected to form the basis for or give rise to such actions, suits, investigations or proceedings.

(xxxi) *ERISA and Employee Benefits Matters*. (A) To the knowledge of the Company, except as would not result in a Material Adverse Effect, no "prohibited transaction" as defined under Section 406 of ERISA (as defined below) or Section 4975 of the Code (as defined below) and not exempt under ERISA Section 408 and the regulations and published interpretations thereunder has occurred with respect to any Employee Benefit Plan (as defined below). At no time has the Company or any ERISA Affiliate (as defined below) maintained, sponsored, participated in, contributed to or has or had any liability or obligation in respect of any Employee Benefit Plan subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA, or Section 412 of the Code or any "multiemployer plan" as defined in Section 3(37) of ERISA or any multiple employer plan for which the Company or any ERISA Affiliate has incurred or could incur liability under Section 4063 or 4064 of ERISA. No Employee Benefit Plan provides or promises, or at any time provided or promised, retiree health, life insurance, or other retiree welfare benefits except as may be required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or similar state law. Each Employee Benefit Plan is and has been operated in material compliance with its terms and all applicable laws, including but not limited to ERISA and the Code and, to the knowledge of the Company, no event has occurred (including a "reportable event" as such term is defined in Section 4043 of ERISA) and no condition exists that would subject the Company or any ERISA Affiliate to any material tax, fine, lien, penalty or liability imposed by ERISA, the Code or other applicable law. Each Employee Benefit Plan intended to be qualified under Code Section 401(a) is so qualified and has a favorable determination or opinion letter from the Internal Revenue Service upon which it can rely, and any such determination or opinion letter remains in effect and has not been revoked; to the knowledge of the Company, nothing has occurred since the date of any such determination or opinion letter that is reasonably likely to adversely affect such qualification; (B) with respect to each Foreign Benefit Plan (as defined below), such Foreign Benefit Plan (1) if intended to qualify for special tax treatment, meets, in all material respects, the requirements for such treatment, and (2) if required to be funded, is funded to the extent required by applicable law, and with respect to all other Foreign Benefit Plans, adequate reserves therefor have been established on the accounting statements of the applicable Company or subsidiary; (C) neither the Company nor any of its subsidiaries has any obligations under any collective bargaining agreement with any union and no organization efforts are underway with respect to employees of the Company or any of its subsidiaries. As used in this Agreement, ***"Code"*** means the Internal Revenue Code of 1986, as amended;***"Employee Benefit Plan"*** means any "employee benefit plan" within the meaning of Section 3(3) of ERISA, including, without limitation, all stock purchase, stock option, stock-based severance, employment, change-in-control, medical, disability, fringe benefit, bonus, incentive, deferred compensation, employee loan and all other employee benefit plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA, under which (1) any current or former employee, director or independent contractor of the Company or its subsidiaries has any present or future right to benefits and which are contributed to, sponsored by or maintained by the Company or any of its respective subsidiaries or (2) the Company or any of its subsidiaries has had or has any present or future obligation or liability; ***"ERISA"*** means the Employee Retirement Income Security Act of 1974, as amended; ***"ERISA Affiliate"*** means any member of the Company's controlled group as defined in Code Section 414(b), (c), (m) or (o); and ***"Foreign Benefit Plan"*** means any Employee Benefit Plan established, maintained or contributed to outside of the United States of America or which covers any employee working or residing outside of the United States.

(xxxii) *Labor Matters*. No labor dispute with the employees of the Company or any of its subsidiaries exists or is threatened or imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its or its subsidiaries' principal suppliers, contractors or customers, that could have a Material Adverse Effect.

(xxxiii) *Restrictions on Subsidiary Payments to the Company*. No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary's equity interests, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's property or assets to the Company or any other subsidiary of the Company, except as described in or contemplated by the Time of Sale Disclosure Package and the Prospectus.

(xxxiv) *Statistical Information*. Any third-party statistical and market-related data included in the Registration Statement, the Time of Sale

Disclosure Package and the Prospectus are based on or derived from sources that the Company believes to be reliable and accurate in all material respects.

(xxxv) *Forward-looking Statements*. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the Registration Statement, the Time of Sale Disclosure Package or the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(xxxvi) *No Ratings*. There are no debt securities or preferred stock issued or guaranteed by the Company or any of its subsidiaries that are rated by a "nationally recognized statistical rating organization," as such term is defined in Section 3(a)(62) under the Exchange Act.

(xxxvii) *Related-Party Transactions*. To the Company's knowledge, no transaction has occurred between or among the Company, on the one hand, and any of the Company's officers, directors or five percent or greater stockholders or any affiliate or affiliates of any such officer, director or five percent or greater stockholders that is required to be described that is not so described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus. The Company has not, directly or indirectly, extended or maintained credit, or arranged for the extension of credit, or renewed an extension of credit, in the form of a personal loan to or for any of its directors or executive officers in violation of applicable laws, including Section 402 of the Sarbanes-Oxley Act.

(xxxviii) *Cybersecurity.* There has been no security breach or other compromise of or relating to any of the information technology and computer systems, networks, hardware, software, data (including the data of its customers, employees, suppliers, vendors and any third party data maintained by or on behalf of the Company or any of its subsidiaries), equipment or technology owned, held or used by or for the Company or any of its subsidiaries (collectively, the "***IT Systems and Data***"), except for those that have been remedied without material cost or liability or the duty to notify any other person, nor are there any incidents under internal review or investigations relating to the same and (A) the Company has not been notified of, and has no knowledge of any event or condition that would reasonably be expected to result in, any material security breach or other material compromise to the IT Systems and Data; (B) the Company and its subsidiaries are presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or Governmental Authority or other regulatory authority, internal policies and contractual obligations relating to (x) the collection, use, transfer, storage, protection, disposal and/or disclosure of personally identifiable information collected from or provided by third parties, (y) the privacy and security of the IT Systems and Data and (z) the protection of the IT Systems and Data from unauthorized use, access, misappropriation or modification, except as would not, in the case of this clause (B), individually or in the aggregate, have a Material Adverse Effect; and (C) the Company and its subsidiaries have taken commercially reasonable steps to protect the IT Systems and Data, including by implementing backup, security and disaster recovery plans, procedures and technology consistent with industry standards and practices.

(b) *Effect of Certificates*. Any certificate signed by any officer of the Company and delivered to you or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

3. ***Purchase, Sale and Delivery of Securities***.

(a) *Firm Shares*. On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company agrees to issue and sell the Firm Shares to the several Underwriters, and each Underwriter agrees, severally and not jointly, to purchase from the Company the number of Firm Shares set forth opposite the name of such Underwriter in Schedule I hereto. The purchase price for each Firm Share shall be $[•] per share, which reflects a 7% discount to the offering price per share to the public. In making this Agreement, each Underwriter is contracting severally and not jointly; except as provided in paragraph (d) of this Section 3, the agreement of each Underwriter is to purchase only the respective number of Firm Shares specified in Schedule I.

(b) *Option Shares*. On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company hereby grants to the several Underwriters an option to purchase all or any portion of the Option Shares at the same purchase price as the Firm Shares, for use solely in covering any over-allotments made by the Underwriters in the sale and distribution of the Firm Shares. The option granted hereunder may be exercised in whole or in part at any time within 30 days after the effective date of this Agreement upon notice (confirmed in writing) by the Representatives to the Company setting forth the aggregate number of Option Shares as to which the several Underwriters are exercising the option and the date and time, as determined by you, when the Option Shares are to be delivered, but in no event earlier than the First Closing Date (as defined below) nor (unless otherwise agreed by you and the Company) earlier than the second business day or later than the tenth business day after the date on which the option shall have been exercised. The number of Option Shares to be purchased by each Underwriter shall be the same percentage of the total number of Option Shares to be purchased by the several Underwriters as the number of Firm Shares to be purchased by such Underwriter is of the total number of Firm Shares to be purchased by the several Underwriters, as adjusted by the Representatives in such manner as the Representatives deem advisable to avoid fractional shares. No Option Shares shall be sold and delivered unless the Firm Shares previously have been, or simultaneously are, sold and delivered.

(c) *Payment and Delivery*.

(i) The Securities to be purchased by each Underwriter hereunder, in book-entry form in such authorized denominations and registered in such names as you may request upon at least forty-eight hours' prior notice to the Company, shall be delivered by or on behalf of the Company to you, through the facilities of the Depository Trust Company (***"DTC"***), for the account of such Underwriter, with any transfer taxes payable in connection with the transfer of the Securities to the Underwriters duly paid, against payment by or on behalf of such Underwriter of the purchase price therefor by wire transfer of Federal (same-day) funds to the account specified by the Company to you at least forty-eight hours in advance. The time and date of such delivery and payment shall be, with respect to the Firm Shares, 9:30 a.m., New York City time, on [•], 2021, or such other time and date as you and the Company may agree upon in writing, and, with respect to the Option Shares, 9:30 a.m., New York City time, on the date specified by you in each written notice given by you of the election to purchase such Option Shares, or such other time and date as you and the Company may agree upon in writing. Such time and date for delivery of the Firm Shares is herein called the ***"First Closing Date,"*** each such time and date for delivery of the Option Shares, if not the First Closing Date, is herein called a ***"Second Closing Date,"*** and each such time and date for delivery is herein called a ***"Closing"*** or a ***"Closing Date."***

(ii) The documents to be delivered at each Closing by or on behalf of the parties hereto pursuant to Section 5 hereof, including the cross receipt for the Securities and any additional documents requested by the Underwriters pursuant to Section 5(l) hereof, will be delivered at the offices of the Company, and the Securities will be delivered to you, through the facilities of the DTC, for the account of such Underwriter, all at such Closing.

(d) *Purchase by Representative on Behalf of Underwriters*. It is understood that either Representative, individually and not as a Representative of the several Underwriters, may (but shall not be obligated to) make payment of the purchase price to the Company on behalf of any Underwriter for the Securities to be purchased by such Underwriter. Any such payment by you shall not relieve any such Underwriter of any of its obligations hereunder. Nothing herein contained shall constitute any of the Underwriters an unincorporated association or partner with the Company.

(e) *Representatives' Warrant*.

(i)The Company hereby agrees to issue and sell to the Representatives on each Closing Date an option (***"Representatives' Warrant"***) for the purchase of an aggregate number of shares of Common Stock representing five percent (5%) of the Securities sold in the offering on such Closing Date. The Representatives' Warrant agreement, in the form attached hereto as Exhibit A (the ***"Representatives' Warrant Agreement"***), shall be exercisable, in whole or in part, commencing on a date that is 180 days after the effective date of this Agreement and expiring on the five-year anniversary of such effective date at an initial exercise price per share of Common Stock equal to one hundred twenty percent (120%) of the initial public offering price of the Firm Shares, on a cashless basis in certain circumstances as set forth in the Representatives' Warrant Agreement. The Common Stock issuable upon exercise thereof is hereinafter referred to together as the ***"Representatives' Securities."*** The Representatives understand and agree that there are significant restrictions pursuant to FINRA Rule 5110 against transferring the Representatives' Warrant Agreement and the Representatives' Securities during the 180 days after the effective date of this Agreement and by its acceptance thereof shall agree that no Representative will sell, transfer, assign, pledge or hypothecate the Representatives' Warrant Agreement, or any portion thereof, or be the subject of any hedging, short sale, derivative, put or call transaction that would result in the effective economic disposition of such securities for a period of 180 days following the effective date of this Agreement to anyone other than (i) an Underwriter or a selected dealer in connection with the offering, or (ii) a bona fide officer or partner of a Representative or of any such Underwriter or selected dealer; and only if any such transferee agrees to the foregoing lock-up restrictions.

(ii) Delivery of the Representatives' Warrant Agreement shall be made oneach Closing Date and shall be issued in the name or names and in such authorized denominations as the Representatives may request.

4. ***Covenants***.

The Company covenants and agrees with the several Underwriters as follows:

(a) *Required Filings*. The Company will prepare and file a Prospectus with the Commission containing the Rule 430A Information omitted from the Preliminary Prospectus within the time period required by, and otherwise in accordance with the provisions of, Rules 424(b) and 430A of the Rules and Regulations. If the Company has elected to rely upon Rule 462(b) of the Rules and Regulations to increase the size of the offering registered under the Securities Act and the Rule 462(b) Registration Statement has not yet been filed and become effective, the Company will prepare and file the Rule 462(b) Registration Statement with the Commission within the time period required by, and otherwise in accordance with the provisions of, Rule 462(b) of the Rules and Regulations and the Securities Act. The Company will prepare and file with the Commission, promptly upon your request, any amendments or supplements to the Registration Statement or Prospectus that, in your opinion, may be necessary or advisable in connection with the distribution of the Securities by the Underwriters; and the Company will furnish you and counsel for the Underwriters a copy of any proposed amendment or supplement to the Registration Statement or Prospectus and will not file any amendment or supplement to the Registration Statement or Prospectus to which you shall reasonably object by notice to the Company after having been furnished a copy a reasonable time prior to the filing.

(b) *Notification of Certain Commission Actions*. The Company will advise you, promptly after it shall receive notice or obtain knowledge thereof, of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, or any post-effective amendment thereto, or preventing or suspending the use of the Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus or any issuer free writing prospectus, of the suspension of the qualification of the Securities or the Representatives' Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceeding for any such purpose; and the Company will promptly use its best efforts to prevent the issuance of any stop order or to obtain its withdrawal if such a stop order should be issued.

(c) *Continued Compliance with Securities Laws*.

(i) Within the time during which a prospectus (assuming the absence of Rule 172 of the Rules and Regulations) relating to the Securities or the Representatives' Securities is required to be delivered under the Securities Act by any Underwriter or any dealer, the Company will comply with all requirements imposed upon it by the Securities Act, as now and hereafter amended, and by the Rules and Regulations, as from time to time in force, so far as necessary to permit the continuance of sales of or dealings in the Securities and the Representatives' Securities as contemplated by the provisions hereof, the Time of Sale Disclosure Package and the Prospectus. If during such period any event occurs as a result of which the Prospectus (or if the Prospectus is not yet available to prospective purchasers, the Time of Sale Disclosure Package) would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary to amend the Registration Statement or supplement the Prospectus (or, if the Prospectus is not yet available to prospective purchasers, the Time of Sale Disclosure Package) to comply with the Securities Act, the Company promptly will (x) notify you of such untrue statement or omission, (y) amend the Registration Statement or supplement the Prospectus (or, if the Prospectus is not yet available to prospective purchasers, the Time of Sale Disclosure Package) (at the expense of the Company) so as to correct such statement or omission or effect such compliance and (z) notify you when any amendment to the Registration Statement is filed or becomes effective or when any supplement to the Prospectus (or, if the Prospectus is not yet available to prospective purchasers, the Time of Sale Disclosure Package) is filed.

(ii) If at any time following issuance of a Written Testing-the-Waters Communication there occurred or occurs an event or development as a result of which such Written Testing-the-Waters Communication conflicted or would conflict with the information contained in the Registration Statement, the Preliminary Prospectus or the Prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Company (x) has promptly notified or promptly will notify the Representatives of such conflict, untrue statement or omission, (y) has promptly amended or will promptly amend or supplement, at its own expense, such Written Testing-the-Waters Communication to eliminate or correct such conflict, untrue statement or omission and (z) has notified or promptly will notify you when such amendment or supplement was or is filed with the Commission where so required to be filed.

(d) *Blue Sky Qualifications*. The Company shall take or cause to be taken all necessary action to qualify the Securities and the Representatives' Securities for sale under the securities laws of such jurisdictions as you reasonably designate and to continue such qualifications in effect so long as required for the distribution of the Securities and the Representatives' Securities, except that the Company shall not be required in connection therewith to qualify as a foreign corporation or to execute a general consent to service of process in any state.

(e) *Provision of Documents*. The Company will furnish, at its own expense, to the Underwriters and counsel for the Underwriters copies of the Registration Statement, and to the Underwriters and any dealer the Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus, and all amendments and

supplements to such documents, in each case as soon as available and in such quantities as you may from time to time reasonably request.

(f) *Rule 158*. The Company will make generally available to its security holders as soon as practicable, but in no event later than 15 months after the end of the Company's current fiscal quarter, an earnings statement (which need not be audited) covering a 12-month period beginning after the effective date of the Registration Statement (which, for purposes of this paragraph, will be deemed to be the effective date of the Rule 462(b) Registration Statement, if applicable) that shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 of the Rules and Regulations.

(g) *Payment and Reimbursement of Expenses*. The Company shall be responsible for all documented, reasonable, necessary and accountable out-of-pocket expenses relating to the offering of the Securities including, but not limited to: (a) all filing fees and communication expenses associated with the review of this offering by FINRA; (b) all fees, expenses and disbursements relating to the registration, qualification or exemption of the Securities offered under the securities laws of foreign jurisdictions designated by the Representatives; (c) the documented and reasonable fees and expenses of the Underwriters' legal counsel (the "***Legal Expenses***") up to a maximum of $175,000; (e) the Underwriters' use of Ipreo's book-building, prospectus tracking and compliance software for the public offering of the Securities; (f) "road show" expenses for the offering; and (g) the costs associated with receiving commemorative mementos and lucite tombstones (collectively, the "***Actual Out-of-pocket Expenses***"). The expenses to be paid by the Company and reimbursed to the Underwriters under this Section 4(g) as Actual Out-of-pocket Expenses shall not exceed $200,000 in the aggregate, less the $50,000 retainer previously advanced by the Company to the Representatives. In addition to the forgoing, the Company shall be responsible for the costs of background checks on its senior management in an amount not to exceed $7,500 in the aggregate. The Legal Expenses shall be paid in cash by wire transfer of immediately available funds to an account designated by the Representatives out of the closing of the public offering. In the event the offer and sale of the Securities is not consummated hereunder, the Company shall reimburse the outstanding Actual Out-of-pocket Expenses up to a maximum of $125,000 in the aggregate within fifteen (15) calendar days of receipt by the Company of the documented expenses.

(h) *Use of Proceeds*. The Company will apply the net proceeds from the sale of the Securities to be sold by it hereunder for the purposes set forth in the Time of Sale Disclosure Package and in the Prospectus and will file such reports with the Commission with respect to the sale of the Securities and the application of the proceeds therefrom as may be required in accordance with Rule 463 of the Rules and Regulations.

(i) *Company Lock Up*. The Company will not, without the prior written consent of the Representatives, from the date of execution of this Agreement and continuing to and including the date that is 180 days after the date of the Prospectus (the ***"Lock-Up Period"***), (A) offer, pledge, announce the intention to sell, 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 shares of Common Stock or Class B Common Stock, par value $0.001 per share (the "***Class B Common Stock***"), or any securities convertible into or exercisable or exchangeable for Common Stock or Class B Common Stock, or (B) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock or Class B Common Stock, whether any such transaction described in clause (A) or (B) above is to be settled by delivery of Common Stock, Class B Common Stock or such other securities, in cash or otherwise, except to the Underwriters pursuant to this Agreement and (i) grants of options, shares of Common Stock and other awards to purchase or receive shares of Common Stock under any Company Stock Plan that is in effect as of or prior to the First Closing Date, (ii) issuances of shares of Common Stock upon the exercise of options or other awards granted under any Company Stock Plan, (iii) the issuance of securities in connection with mergers, acquisitions, joint ventures, licensing arrangements or any other similar non-capital raising transactions, provided that such securities shall be restricted from sale during the Lock-Up Period, (iv) the issuance of shares of Common Stock issuable upon the exchange of shares of the Company's Class B Common Stock as described in the Prospectus, provided that such Common Stock shall be restricted from sale during the Lock-Up Period, and (v) the filing of one or more registration statements on Form S-8. The Company agrees not to accelerate the vesting of any option or warrant or exercise any repurchase or expiry right in respect of any option, warrant or convertible promissory note prior to the expiration of the Lock-Up Period.

(j) *Stockholder Lock-Ups*. The Company has caused to be delivered to you prior to the date of this Agreement a letter, in the form of Exhibit B hereto (the ***"Lock-Up Agreement"***), from each individual or entity listed on Schedule IV. The Company will enforce the terms of each Lock-Up Agreement and issue stop-transfer instructions to the transfer agent and registrar for the Common Stock with respect to any transaction or contemplated transaction that would constitute a breach of or default under the applicable Lock-Up Agreement.

(k) *Lock-up Release or Waiver*. If the Representatives, in their sole discretion, agree to release or waive the restrictions set forth in a Lock-Up Agreement described in Section 4(j) hereof for an officer or director of the Company and provide the Company with notice of the impending release or waiver at least three business days before the effective date of the release or waiver, the Company agrees to announce the impending release or waiver by a press release substantially in the form of Exhibit C hereto through a major news service at least two business days before the effective date of the release or waiver.

(l) *No Market Stabilization or Manipulation*. The Company has not taken and will not take, directly or indirectly, any action designed to or which might reasonably be expected to cause or result in, or which has constituted, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities, and has not effected any sales of securities which are required to be disclosed in response to Item 701 of Regulation S-K under the Securities Act which have not been so disclosed in the Registration Statement.

(m) *SEC Reports*. The Company will file on a timely basis with the Commission such periodic and special reports as required by the Rules and Regulations.

(n) *Internal Controls*. The Company and its subsidiaries will 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 its principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure, to ensure that material information relating to the Company, including its subsidiaries, is made known to them by others within those entities.

(o) *Sarbanes-Oxley*. The Company and its subsidiaries will comply with all applicable provisions of the Sarbanes-Oxley Act and the rules and regulations

adopted thereunder.

(p) *Free Writing Prospectuses*. The Company represents and agrees that, unless it obtains the prior written consent of the Representatives, and each Underwriter severally represents and agrees that, unless it obtains the prior written consent of the Company and the Representatives, it has not made and will not make any offer relating to the Securities that would constitute an issuer free writing prospectus or that would otherwise constitute a free writing prospectus. Each Underwriter severally represents and agrees that (i) unless it obtains the prior written consent of the Company and the Representatives, it has not distributed, and will not distribute, any Written Testing-the-Waters Communication other than those listed on Schedule III, and (ii) any Testing-the-Waters Communication undertaken by it was with entities that are qualified institutional buyers within the meaning of Rule 144A under the Securities Act or institutions that are accredited investors within the meaning of Rule 501 under the Securities Act.

(q) *Emerging Growth Company.* The Company will promptly notify the Representatives if the Company ceases to be an Emerging Growth Company at any time prior to the later of (A) completion of the distribution of Securities within the meaning of the Securities Act and (B) completion of the Lock-Up Period.

(r) *Effectiveness.* The Company shall use its best efforts to cause the Registration Statement to remain effective with a current prospectus until the later of (a) the passage of nine (9) months after the Time of Sale and (b) the date on which the Representatives' Securities have all been issued upon exercise of the Representatives' Warrant or the Representatives' Warrant shall have expired by its terms.

5. ***Conditions of Underwriters' Obligations.*** The obligations of the several Underwriters hereunder are subject to the accuracy, as of the date hereof and at each of the First Closing Date and the Second Closing Date (as if made at such Closing Date), of and compliance with all representations, warranties and agreements of the Company contained herein, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) *Required Filings; Absence of Certain Commission Actions.* The Registration Statement shall have become effective not later than 5:30 p.m., New York City time, on the date of this Agreement, or such later time and date as you, as Representatives of the several Underwriters, shall approve, and all filings required by Rules 424, 430A and 433 of the Rules and Regulations shall have been timely made (without reliance on Rule 424(b)(8) or Rule 164(b)); no stop order suspending the effectiveness of the Registration Statement or any part thereof, any Rule 462(b) Registration Statement, or any amendment thereof, nor suspending or preventing the use of the Time of Sale Disclosure Package or the Prospectus shall have been issued; no proceedings for the issuance of such an order shall have been initiated or threatened; and any request of the Commission for additional information (to be included in the Registration Statement, the Time of Sale Disclosure Package, the Prospectus, or otherwise) shall have been complied with to your satisfaction.

(b) *Continued Compliance with Securities Laws.* No Underwriter shall have advised the Company that (i) the Registration Statement or any amendment thereof or supplement thereto contains an untrue statement of a material fact which, in your opinion, is material or omits to state a material fact which, in your opinion, is required to be stated therein or necessary to make the statements therein not misleading, or (ii) the Time of Sale Disclosure Package or the Prospectus, or any amendment thereof or supplement thereto, contains an untrue statement of fact which, in your opinion, is material, or omits to state a fact which, in your opinion, is material and is required to be stated therein, or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading.

(c) *Absence of Certain Events.* Except as contemplated in the Time of Sale Disclosure Package and the Prospectus, subsequent to the respective dates as of which information is given in the Time of Sale Disclosure Package and the Prospectus, neither the Company nor any of its subsidiaries shall have incurred any material liabilities or obligations, direct or contingent, or entered into any material transactions, or declared or paid any dividends or made any distribution of any kind with respect to its capital stock; and there shall not have been any change in the capital stock (subject to the requirements of Section 4(i) hereof, other than a change in the number of outstanding shares of Common Stock due to the issuance of shares upon the exercise of outstanding options or warrants or conversion of convertible securities), or any material change in the short-term or long-term debt of the Company (other than as a result of the conversion of convertible securities), or any issuance of options, warrants, convertible securities or other rights to purchase the capital stock of the Company or any of its subsidiaries, or any Material Adverse Change or any development involving a prospective Material Adverse Change (whether or not arising in the ordinary course of business), or any loss by strike, fire, flood, earthquake, accident or other calamity, whether or not covered by insurance, incurred by the Company or any subsidiary, the effect of which, in any such case described above, in your judgment, makes it impractical or inadvisable to offer or deliver the Securities on the terms and in the manner contemplated in the Time of Sale Disclosure Package and the Prospectus.

(d) *Opinion and 10b-5 Statement of Company Counsel*. On each Closing Date, there shall have been furnished to you, as Representatives of the several Underwriters, the opinion and negative assurance statement of McGuireWoods LLP, counsel for the Company, dated such Closing Date and addressed to you, in form and substance satisfactory to you.

(e) *Opinion and 10b-5 Statement of Underwriters' Counsel*. On each Closing Date, there shall have been furnished to you, as Representatives of the several Underwriters, such opinion and negative assurance statement from Faegre Drinker Biddle & Reath LLP, counsel for the several Underwriters, dated such Closing Date and addressed to you, with respect to such matters as you reasonably may request, and such counsel shall have received such papers and information as they request to enable them to pass upon such matters.

(f) *Comfort Letters.* On the date hereof, on the effective date of any post-effective amendment to the Registration Statement filed after the date hereof and on each Closing Date you, as Representatives of the several Underwriters, shall have received an accountant's "comfort" letter of each of Marcum LLP and Baker Tilly US, LLP, dated such date and addressed to you, in form and substance satisfactory to you.

(g) *Officers' Certificate*. On each Closing Date, there shall have been furnished to you, as Representatives of the several Underwriters, a certificate, dated as of such Closing Date and addressed to you, signed by the chief executive officer and by the chief financial officer of the Company, to the effect that:

(i) The representations and warranties of the Company in this Agreement are true and correct as if made at and as of such Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to such Closing Date;

(ii) No stop order or other order suspending the effectiveness of the Registration Statement or any part thereof or any amendment thereof or the qualification of the Securities for offering or sale nor suspending or preventing the use of the Time of Sale Disclosure Package, the Prospectus or any issuer free writing prospectus, has been issued, and no proceeding for that purpose has been instituted or, to the best of their knowledge, is contemplated by the Commission or any state or regulatory body; and

(iii) Affirms the accuracy of the matters set forth in Section 5(c).

(h) *Lock-Up Agreement*. The Representatives shall have received all of the Lock-Up Agreements referenced in Section 4 and the Lock-Up Agreements

shall remain in full force and effect.

(i) *FINRA No Objections*. FINRA shall have raised no objection to the fairness and reasonableness of the underwriting terms and arrangements.

(j) *Other Documents*. The Company shall have furnished to you and counsel for the Underwriters such additional documents, certificates and evidence as you or they may have reasonably requested.

(k) *CFO Certificate*. On the date hereof and on each Closing Date, the Company shall have furnished to you, as Representatives of the several Underwriters, a certificate, dated as of such date, signed on behalf of the Company by its chief financial officer, regarding certain financial information in the Preliminary Prospectus and the Prospectus, in form and substance satisfactory to you.

(l) *Exchange Listing*. The Securities to be delivered on such Closing Date have been approved for listing on The Nasdaq Capital Market, subject to official notice of issuance.

(m) *Representatives' Warrant Agreement*. The Company shall have delivered to the Representatives executed copies of the Representatives' Warrant Agreement.

All such opinions, certificates, letters and other documents will be in compliance with the provisions hereof only if they are reasonably satisfactory in form and substance to you, as Representatives for the several Underwriters, and counsel for the Underwriters. The Company will furnish you with such conformed copies of such opinions, certificates, letters and other documents as you shall reasonably request.

6. ***Indemnification and Contribution***.

(a) *Indemnification by the Company*. The Company agrees to indemnify and hold harmless each Underwriter, its affiliates, directors and officers and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any losses, claims, damages or liabilities, joint or several, to which such Underwriter may become subject, under the Securities Act or otherwise (including in settlement of any litigation if such settlement is effected with the written consent of the Company, subject to Section 6(c)), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon: (i) an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, including the Rule 430A Information and any other information deemed to be a part of the Registration Statement at the time of effectiveness and at any subsequent time pursuant to the Rules and Regulations, if applicable, the Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus, or any amendment or supplement thereto, any issuer free writing prospectus, any issuer information that the Company has filed or is required to file pursuant to Rule 433(d) of the Rules and Regulations, any Written Testing-the-Waters Communication, or any roadshow as defined in Rule 433(h) under the Securities Act (a ***"roadshow"***), or (ii) arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Underwriter for any legal or other expenses reasonably incurred by it in connection with investigating or defending against such loss, claim, damage, liability or action as such expenses are incurred; *provided, however,* that the Company will not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in strict conformity with written information furnished to the Company by you, or by any Underwriter through you, specifically for use in the preparation thereof; it being understood and agreed that the only such information furnished by an Underwriter consists of the information described as such in Section 6(e).

(b) *Indemnification by the Underwriters*. Each Underwriter will, severally and not jointly, indemnify and hold harmless the Company, its affiliates, directors and officers and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act, from and against any losses, claims, damages or liabilities to which the Company may become subject, under the Securities Act or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Underwriter, subject to Section 6(c)), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) (i) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus, or any amendment or supplement thereto, any issuer free writing prospectus, any issuer information that the Company has filed or is required to file pursuant to Rule 433(d) of the Rules and Regulations, any Written Testing-the-Waters Communication, or any roadshow, or (ii) arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in strict conformity with written information furnished to the Company by you, or by such Underwriter through you, specifically for use in the preparation thereof (it being understood and agreed that the only information furnished by an Underwriter consists of the information described as such in Section 6(e)), and will reimburse the Company for any legal or other expenses reasonably incurred and documented by the Company in connection with investigating or defending against any such loss, claim, damage, liability or action as such expenses are incurred.

(c) *Notice and Procedures*. Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve the indemnifying party from any liability that it may have to any indemnified party except to the extent such indemnifying party has been materially prejudiced by such failure (through the forfeiture of substantive rights or defenses). In case any such action shall be brought against any indemnified party, and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall assume the defense thereof, with counsel satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of the indemnifying party's assumption of the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; *provided, however,* that if, in the sole judgment of the Representatives, it is advisable for the Underwriters to be represented as a group by separate counsel, the Representatives shall have the right to employ a single counsel (in addition to local counsel) to represent the Representatives and all Underwriters who may be subject to liability arising from any claim in respect of which indemnity may be sought by the Underwriters under Section 6(a), in which event the reasonable fees and expenses of such separate counsel (and local counsel) shall be borne by the indemnifying party or parties and reimbursed to the Underwriters as incurred. An indemnifying party shall not be obligated under any settlement agreement, consent to judgment or other compromise relating to any action under this Section 6 to which it has not agreed in writing. In addition, no indemnifying party shall, without the prior written consent of the indemnified party (which consent shall not be unreasonably withheld or delayed), effect any settlement of any pending or threatened proceeding unless such settlement includes an unconditional release of such indemnified party for all liability on claims that are the subject matter of such proceeding and does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party. Notwithstanding the foregoing, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel pursuant to this Section 6(c), such indemnifying party agrees that it shall be liable for any settlement effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

(d) *Contribution; Limitations on Liability; Non-Exclusive Remedy*. If the indemnification provided for in this Section 6 is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Underwriters and the parties' relevant intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contributions pursuant to this subsection (d) were to be determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in the first sentence of this subsection (d). The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending against any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total underwriting discounts and commissions received by such Underwriter with respect to the Securities purchased by it hereunder exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint. The remedies provided for in this Section 6 are not exclusive and shall not limit any rights or remedies that might otherwise be available to any indemnified party at law or in equity.

(e) *Information Provided by the Underwriters*. The Underwriters severally confirm and the Company acknowledges and agrees that the statements with respect to the public offering of the Securities by the Underwriters set forth in the second, tenth, twelfth, thirteenth and fourteenth paragraphs under the caption "Underwriting" in the Time of Sale Disclosure Package and the Prospectus are correct and constitute the only information concerning such Underwriters furnished in writing to the Company by or on behalf of the Underwriters specifically for use or inclusion in the Registration Statement, the Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus or any issuer free writing prospectus.

7. ***Representations and Agreements to Survive Delivery.*** All representations, warranties, and agreements of the Company herein or in certificates delivered pursuant hereto, including but not limited to the agreements of the several Underwriters and the Company contained in Section 6 hereof, shall remain operative and in full force and effect regardless of any investigation made by or on behalf of any Underwriter or any controlling person thereof, or the Company or any of its officers, directors, or controlling persons, and shall survive delivery of, and payment for, the Securities to and by the Underwriters hereunder and any termination of this Agreement.

8. ***Termination of this Agreement.***

(a) *Right to Terminate*. You, as Representatives of the several Underwriters, shall have the right to terminate this Agreement by giving notice to the Company as hereinafter specified at any time at or prior to the First Closing Date, and the option referred to in Section 3(b), if exercised, may be cancelled at any time prior to the Second Closing Date, if (i) the Company shall have failed, refused or been unable, at or prior to such Closing Date, to perform any agreement on its part to be performed hereunder, (ii) any condition of the Underwriters' obligations hereunder is not fulfilled as of the First Closing Date or the Second Closing Date, as applicable, (iii) trading on the Nasdaq Stock Market or the New York Stock Exchange shall have been suspended, (iv) minimum or maximum prices for trading shall have been fixed, or maximum ranges for prices for securities shall have been required, on the Nasdaq Stock Market or the New York Stock Exchange, by such exchange or by order of the Commission or any other Governmental Authority having jurisdiction, (v) a banking moratorium shall have been declared by federal or New York state authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States, or (vi) there shall have occurred any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States, any declaration by the United States of a national emergency or war, any change in financial markets, any substantial change or development involving a prospective substantial change in United States or international political, financial or economic conditions, or any other calamity or crisis that, in your judgment, is material and adverse and makes it impractical or inadvisable to proceed with the completion of the sale of and payment for the Securities. Any such termination shall be without liability of any party to any other party except that the provisions of Section 4(g) and Section 6 hereof shall at all times be effective and shall survive such termination.

(b) *Notice of Termination*. If you elect to terminate this Agreement as provided in this Section 8, the Company shall be notified promptly by you by telephone, confirmed by letter.

9. ***Default by the Company.***

(a) *Default by the Company*. If the Company shall fail at the First Closing Date to sell and deliver the Securities which it is obligated to sell hereunder, then this Agreement shall terminate without any liability on the part of any Underwriter.

(b) *No Relief from Liability*. No action taken pursuant to this Section 9 shall relieve the Company from liability, if any, in respect of any default hereunder.

10. ***Notices***. Except as otherwise provided herein, all communications hereunder shall be in writing and, if to the Underwriters, shall be mailed via overnight delivery service, hand delivered via courier or sent via e-mail to the Representatives, c/o The Benchmark Company, LLC, 150 East 58th Street, 17th Floor, New York, New York 10155, Attention: John J. Borer (e-mail: jborer@benchmarkcompany.com) and c/o Roth Capital Partners, LLC, 888 San Clemente Drive, Suite 400, Newport Beach, California 92660, Attention: Equity Capital Markets (e-mail: rothecm@roth.com), with a copy (which shall not constitute notice) to Faegre Drinker Biddle & Reath LLP, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, Minnesota 55402, Attention: Ben A. Stacke (e-mail: ben.stacke@faegredrinker.com); if to the Company, shall be mailed or delivered to it at 1233 West Loop South, Suite 1170, Houston, Texas 77027, Attention: Chief Executive Officer (e-mail: mwalker@directdigitalholdings.com), with a copy (which shall not constitute notice) to McGuireWoods LLP, 2000 McKinney Avenue, Suite 1400, Dallas, Texas 75201, Attention: Phyllis Young (e-mail: pyoung@mcguirewoods.com); or in each case to such other address as the person to be notified may have requested in writing. Any party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose.

11. ***Persons Entitled to Benefit of Agreement***. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns and the controlling persons, officers and directors referred to in Section 6. Nothing in this Agreement is intended or shall be construed to give to any other person, firm or corporation any legal or equitable remedy or claim under or in respect of this Agreement or any provision herein contained. The term "successors and assigns" as herein used shall not include any purchaser, as such purchaser, of any of the Securities from any of the several Underwriters.

12. ***Absence of Fiduciary Relationship***. The Company acknowledges and agrees that: (a) the Underwriters have been retained solely to act as underwriters in connection with the sale of the Securities and that no fiduciary, advisory or agency relationship between the Company and the Underwriters has been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether the Underwriters have advised or are advising the Company on other matters; (b) the price and other terms of the Securities set forth in this Agreement were established by the Company following discussions and arms-length negotiations with the Underwriters and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (c) it has been advised that the Underwriters and their affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that the Underwriters have no obligation to disclose such interest and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; (d) it has been advised that the Underwriters are acting, in respect of the transactions contemplated by this Agreement, solely for the benefit of the Underwriters, and not on behalf of the Company; and (e) it waives to the fullest extent permitted by law, any claims it may have against the Underwriters for breach of fiduciary duty or alleged breach of fiduciary duty in respect of any of the transactions contemplated by this Agreement and agrees that the Underwriters shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

13. ***Governing Law; Waiver of Jury Trial***. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) and each of the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

14. ***Counterparts***. This Agreement may be executed and delivered (including by electronic mail attaching a portable document file (.pdf)) in one or more counterparts and, if executed in more than one counterpart, the executed counterparts shall each be deemed to be an original and all such counterparts shall together constitute one and the same instrument.

15. ***General Provisions.*** This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof, including that certain engagement letter (other than Sections 3(e), 4, 7, 10, 11, 12 and 14 thereof), dated January 17, 2022, by and between the Company and the Representatives. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement. The invalidity or unenforceability of any section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other section, paragraph or provision hereof. If any section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

[*Signature Page Follows*]

Please sign and return to the Company the enclosed duplicates of this letter whereupon this letter will become a binding agreement between the Company and the several Underwriters in accordance with its terms.

Very truly yours,

Direct Digital Holdings, Inc.

By: _____
Name: Mark D. Walker
Title: Chief Executive Officer

Confirmed as of the date first above mentioned, on behalf of itself and the other several Underwriters named in Schedule I hereto.

The Benchmark Company, LLC

By: _____
Name:
Title:

Roth Capital Partners, LLC

By: _____
Name:
Title:

SCHEDULE I

Underwriters

Underwriter	Number of Firm Shares (1)
The Benchmark Company, LLC	[•]
Roth Capital Partners, LLC	[•]
[•]	[•]
Total	[•]

(1) The Underwriters may purchase up to an additional [•] Option Shares, to the extent the option described in Section 3(b) of the Agreement is exercised, in the proportions and in the manner described in the Agreement.

SCHEDULE II

Pricing Information

Firm Shares: [•] shares

Option Shares: [•] shares

Price to the Public: $[•] per share

Price to the Underwriters: $[•] per share

SCHEDULE III

Written Testing-the Waters Communications

[•]

SCHEDULE IV

List of Individuals and Entities Executing Lock-Up Agreements

Direct Digital Management, LLC
Mark D. Walker
Keith W. Smith
Anu Pillai
Susan Echard
Richard Cohen
Tonie Leatherberry

EXHIBIT A

Form of Representatives' Warrant Agreement

Form of Representatives' Warrant Agreement

THE REGISTERED HOLDER OF THIS WARRANT BY ITS ACCEPTANCE HEREOF, AGREES THAT THIS WARRANT SHALL NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED, OR HYPOTHECATED, OR BE THE SUBJECT OF ANY HEDGING, SHORT SALE, DERIVATIVE, PUT, OR CALL TRANSACTION THAT WOULD RESULT IN THE EFFECTIVE ECONOMIC DISPOSITION OF THE SECURITIES FOR A PERIOD OF ONE HUNDRED EIGHTY (180 DAYS) IMMEDIATELY FOLLOWING THE EFFECTIVE DATE, AS HEREAFTER DEFINED. THIS WARRANT IS NOT EXERCISABLE AFTER [•], 2027.

WARRANT

FOR THE PURCHASE OF

[•] SHARES OF COMMON STOCK OF

DIRECT DIGITAL HOLDINGS, INC.

[•], 2022

1. Purchase Option.

THIS CERTIFIES THAT, [The Benchmark Company, LLC] [Roth Capital Partners, LLC] (" **Holder**"), as registered owner of this Warrant, is entitled, at any time or from time to time commencing six months from the date hereof (the "**Commencement Date**"), and at or before 5:00 p.m., New York City local time, [•], 2027 ("**Expiration Date**"), but not thereafter, to subscribe for, purchase and receive, in whole or in part, up to [•] [1] shares of common stock ("**Shares**"), par value $0.001 per share (the "**Common Stock**"), of Direct Digital Holdings, Inc. ("**Company**"). If the Expiration Date is a day on which banking institutions are authorized by law to close, then this Warrant may be exercised on the next succeeding day which is not such a day in accordance with the terms herein. During the period ending on the Expiration Date, the Company agrees not to take any action that would terminate this Warrant. This Warrant is initially exercisable at $[•] [2] per Share so purchased; *provided, however,* that upon the occurrence of any of the events specified in Section 6 hereof, the rights granted by this Warrant, including the exercise price per Share and the number of Shares to be received upon such exercise, shall be adjusted as therein specified. The term "Exercise Price" shall mean $[•] or the adjusted exercise price, depending on the context.

2. Exercise.

2.1 Exercise Form. In order to exercise this Warrant, the exercise form (the "**Exercise Form**") attached hereto must be duly executed and completed and delivered to the Company, together with this Warrant and payment of the Exercise Price for the Shares being purchased payable in cash or by certified check or official bank check or wire transfer. If the subscription rights represented hereby shall not be exercised at or before 5:00 p.m., New York City local time, on the Expiration Date this Warrant shall become and be void without further force or effect, and all rights represented hereby shall cease and expire.

[1] Insert up to 5.0% of the number of shares sold in the Company's initial public offering on the date of this Warrant.

[2] The exercise price of the Warrant will be equal to 120.0% of the price to the public per share in the Company's initial public offering.

2.2 Cashless Exercise. If a registration statement under the Securities Act of 1933, as amended (the "**Securities Act**"), covering the issuance or resale of the Shares for which the Holder has delivered an Exercise Form is not available for the issuance or resale of such Shares, the Holder may, in its sole discretion, exercise this Warrant in whole or in part and, in lieu of the payment of the Exercise Price multiplied by the number of Shares for which this Warrant is exercisable (and in lieu of being entitled to receive Shares) in the manner required by Section 2.1, the Holder shall have the right (but not the obligation) to convert any exercisable but unexercised portion of this Warrant into a number of Shares ("**Cashless Exercise Right**") equal to the product of (i) X and (ii) the quotient obtained by dividing [A-B] by (A):

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Exercise Form if such Exercise Form is (1) both executed and delivered pursuant to Section 2.1 on a day that is not a Trading Day or (2) both executed and delivered pursuant toSection 2.1 on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(68) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Exercise Form or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. as of the time of the Holder's execution of the applicable Exercise Form if such Exercise Form is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2.1, which Bid Price shall be shown on supporting documents provided by the Holder to the Company within two Trading Days of delivery of the Exercise Form, or (iii) the VWAP on the date of the applicable Exercise Form if the date of such exercise form is a Trading Day and such Exercise Form is both executed and delivered pursuant to Section 2.1 after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price, as adjusted hereunder; and

(X) = the number of Shares that would be issuable upon exercise of this Warrant to the extent being exercised in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

"Bid Price" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock is then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Common Stock then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"Trading Day" means a day on which the Common Stock is traded on a Trading Market.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, or the New York Stock Exchange (or any successors to any of the foregoing).

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the holders of a majority in interest of the Common Stock then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Subject to the foregoing, the Cashless Exercise Right may be exercised by the Holder on any business day on or after the Commencement Date and not later than the Expiration Date by delivering the Warrant with the duly executed Exercise Form attached hereto with the cashless exercise section completed to the Company, exercising the Cashless Exercise Right and specifying the total number of Shares the Holder will purchase pursuant to such Cashless Exercise Right.

2.3 No Obligation to Net Cash Settle. Notwithstanding anything to the contrary contained in this Warrant, in no event will the Company be required to net cash settle the exercise of the Warrant.

3. Transfer.

3.1 General Restrictions. The registered Holder of this Warrant, by its acceptance hereof, agrees that it will not sell, transfer, assign, pledge or hypothecate this Warrant for a period of one hundred eighty (180) days from effective date (the "**Effective Date**") of the Company's registration statement on Form S-1 filed with the U.S. Securities and Exchange Commission (file number 333-261059) to anyone other than (i) a sales agent or selected dealer in connection with the public offering, or (ii) a bona fide officer or partner of such sales agent or selected dealer. Additionally, pursuant to Rule 5110(g), the Holder shall not subject this Warrant (or the Shares underlying this Warrant) to any hedging, short sale, derivative, put or call transaction that would result in the economic disposition of the securities by any person for a period of 180 days immediately following the Effective Date. On and after the 181-day anniversary of the Effective Date, transfers to others may be made subject to compliance with or exemptions from applicable securities laws. In order to make any permitted assignment, the Holder must deliver to the Company the assignment form attached hereto duly executed and completed, together with the Warrant and payment of all transfer taxes, if any, payable in connection therewith. The Company shall within five business days transfer this Warrant on the books of the Company and shall execute and deliver a new Warrant or Warrants of like tenor to the appropriate assignee(s) expressly evidencing the right to purchase the aggregate number of Shares purchasable hereunder or such portion of such number as shall be contemplated by any such assignment.

3.2 Restrictions Imposed by the Act. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

4. New Warrants to be Issued.

4.1 Partial Exercise or Transfer. Subject to the restrictions in Section 3, this Warrant may be exercised or assigned in whole or in part. In the event of the exercise or assignment hereof in part only, upon surrender of this Warrant for cancellation, together with the duly executed exercise or assignment form and funds sufficient to pay any Exercise Price and/or transfer tax, the Company shall cause to be delivered to the Holder without charge a new Warrant of like tenor to this Warrant in the name of the Holder evidencing the right of the Holder to purchase the number of Shares purchasable hereunder as to which this Warrant has not been exercised or assigned.

4.2 Lost Certificate. Upon receipt by the Company of evidence satisfactory to it of the loss, theft, destruction or mutilation of this Warrant and of reasonably satisfactory indemnification or the posting of a bond, the Company shall execute and deliver a new Warrant of like tenor and date. Any such new Warrant executed and delivered as a result of such loss, theft, mutilation or destruction shall constitute a substitute contractual obligation on the part of the Company.

5. Adjustments.

5.1 Adjustments to Exercise Price and Number of Securities. The Exercise Price and the number of Shares underlying the Warrant shall be subject to adjustment from time to time as hereinafter set forth:

5.1.1 Stock Dividends - Split-Ups. If after the date hereof, and subject to the provisions of Section 5.2 below, the number of outstanding shares of Common Stock is increased by a stock dividend payable in Common Stock or by a split-up of shares of Common Stock or other similar event, then the number of shares of Common Stock underlying each of the Shares purchasable hereunder shall be increased in proportion to such increase in outstanding shares. In such event the Exercise Price shall be proportionately decreased.

5.1.2 Aggregation of Shares. If after the date hereof, and subject to the provisions of Section 5.2, the number of outstanding shares of Common Stock is decreased by a consolidation, combination or reclassification of Common Stock or other similar event, then the number of shares of Common Stock underlying each of the Shares purchasable hereunder shall be decreased in proportion to such decrease in outstanding shares. In such event the Exercise Price shall be proportionately increased.

5.1.3 Replacement of Securities upon Reorganization, etc. In case of any reclassification or reorganization of the outstanding Common Stock other than a change covered by Section 5.1.1 or 5.1.2 hereof or that solely affects the par value of such Common Stock, or in the case of any merger or consolidation of the Company with or into another corporation (other than a consolidation or merger in which the Company is the continuing corporation and that does not result in any reclassification or reorganization of the outstanding Common Stock), or in the case of any sale or conveyance to another corporation or entity of the property of the Company as an entirety or substantially as an entirety in connection with which the Company is dissolved, the Holder of this Warrant shall have the right thereafter (until the expiration of the right of exercise of this Warrant) to receive upon the exercise hereof, for the same aggregate Exercise Price payable hereunder immediately prior to such event, the kind and amount of shares of stock or other securities or property (including cash) receivable upon such reclassification, reorganization, merger or consolidation, or upon a dissolution following any such sale or transfer, by a Holder of the number of shares of Common Stock of the Company obtainable upon exercise of this Warrant immediately prior to such event; and if any reclassification also results in a change in the shares of Common Stock covered by Section 5.1.1 or 5.1.2, then such adjustment shall be made pursuant to Sections 5.1.1, 5.1.2 and this Section 5.1.3. The provisions of this Section 5.1.3 shall similarly apply to successive reclassifications, reorganizations, mergers or consolidations, sales or other transfers.

5.1.4 Changes in Form of Warrant. This form of Warrant need not be changed because of any change pursuant to this Section, and Warrants issued after such change may state the same Exercise Price and the same number of Shares as are stated in the Warrants initially issued pursuant to this Agreement. The acceptance by any Holder of the issuance of new Warrants reflecting a required or permissive change shall not be deemed to waive any rights to an adjustment occurring after the Commencement Date or the computation thereof.

5.2 Substitute Warrant. In case of any consolidation of the Company with, or merger of the Company with, or merger of the Company into, another corporation (other than a consolidation or merger which does not result in any reclassification or change of the outstanding Common Stock), the corporation formed by such consolidation or merger shall execute and deliver to the Holder a supplemental Warrant providing that the holder of each Warrant then outstanding or to be outstanding shall have the right thereafter (until the stated expiration of such Warrant) to receive, upon exercise of such Warrant, the kind and amount of shares of stock and other securities and property receivable upon such consolidation or merger, by a holder of the number of shares of Common Stock of the Company for which such Warrant might have been exercised immediately prior to such consolidation, merger, sale or transfer. Such supplemental Warrant shall provide for adjustments which shall be identical to the adjustments

provided in Section 5. The above provision of this Section shall similarly apply to successive consolidations or mergers.

5.3 Elimination of Fractional Interests. The Company shall not be required to issue certificates representing fractions of shares of Common Stock upon the exercise of the Warrant, nor shall it be required to issue scrip or pay cash in lieu of any fractional interests, it being the intent of the parties that all fractional interests shall be eliminated by rounding any fraction up to the nearest whole number of shares of Common Stock or other securities, properties or rights.

6. Reservation and Listing. The Company shall at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issuance upon exercise of this Warrant, such number of shares of Common Stock or other securities, properties or rights as shall be issuable upon the exercise thereof. The Company covenants and agrees that, upon exercise of this Warrant and payment of the Exercise Price therefor, all shares of Common Stock shall be duly and validly issued, fully paid and non-assessable and not subject to preemptive rights of any shareholder. As long as this Warrant shall be outstanding, the Company shall use its best efforts to cause all Shares issuable upon exercise of this Warrant to be listed (subject to official notice of issuance) on all securities exchanges (or, if applicable on the OTC Market or any successor trading market) on which the Shares issued to the public in connection the Company's registration statement on Form S-1 filed with the U.S. Securities and Exchange Commission (file number 333-261059) may then be listed and/or quoted.

7. Certain Notice Requirements.

7.1 Holder's Right to Receive Notice. Nothing herein shall be construed as conferring upon the Holders the right to vote or consent as a shareholder for the election of directors or any other matter, or as having any rights whatsoever as a shareholder of the Company. If, however, at any time prior to the expiration of this Warrant and its exercise, any of the events described in Section 7.2 shall occur, then, in one or more of said events, the Company shall give written notice of such event at least fifteen (15) days prior to the date fixed as a record date or the date of closing the transfer books for the determination of the shareholders entitled to such dividend, distribution, conversion or exchange of securities or subscription rights, or entitled to vote on such proposed dissolution, liquidation, winding up or sale. Such notice shall specify such record date or the date of the closing of the transfer books, as the case may be. Notwithstanding the foregoing, the Company shall deliver to each Holder a copy of each notice given to the other shareholders of the Company at the same time and in the same manner that such notice is given to the shareholders.

7.2 Events Requiring Notice. The Company shall be required to give the notice described in thisSection 7 upon one or more of the following events: (i) if the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or distribution payable otherwise than in cash, or a cash dividend or distribution payable otherwise than out of retained earnings, as indicated by the accounting treatment of such dividend or distribution on the books of the Company, or (ii) the Company shall offer to all the holders of its Common Stock any additional shares of capital stock of the Company or securities convertible into or exchangeable for shares of capital stock of the Company, or any option, right or warrant to subscribe therefor, (iii) a dissolution, liquidation or winding up of the Company (other than in connection with a consolidation or merger) or a sale of all or substantially all of its property, assets and business shall be proposed, or (iv) if the Company shall deliver a notice to the Holder pursuant to Section 5.

7.3 Notice of Change in Exercise Price. The Company shall, promptly after an event requiring a change in the number of Shares and Exercise Price pursuant to Section 5, send notice to the Holders of such event and change ("**Price Notice**"). The Price Notice shall describe the event causing the change and the method of calculating same and shall be certified as being true and accurate by the Company's President or Chief Financial Officer.

7.4 Transmittal of Notices. All notices, requests, consents and other communications under this Warrant shall be in writing and shall be mailed (registered or certified mail, return receipt requested), personally delivered or sent by electronic mail (email) and confirmed and shall be deemed given when so delivered or sent via email and confirmed or if mailed, two (2) days after such mailing:

(i) if to the registered Holder of this Warrant, to the address of such Holder as shown on the books of the Company, with a copy to:

Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center
90 S. Seventh Street
Minneapolis, MN 55402
Attn: Ben A. Stacke, Esq.
Email: ben.stacke@faegredrinker.com

or (ii) if to the Company, to the following address or to such other address as the Company may designate by notice to the Holders:

Direct Digital Holdings, Inc.
1233 West Loop South, Suite 1170
Houston, TX 77027
Attn: Mark Walker, Chairman and Chief Executive Officer
Email: mwalker@directdigitalholdings.com

With a copy to:

McGuireWoods LLP
1251 Avenue of the Americas, 20th Floor
New York, NY 10020
Attn: Stephen E. Older, Esq.
Rakesh Gopalan, Esq.
David S. Wolpa, Esq.
Email: solder@mcguirewoods.com
rgopalan@mcguirewoods.com
dwolpa@mcguirewoods.com

8. Miscellaneous.

8.1 Amendments. The Company and the Holder may from time to time supplement or amend this Warrant without the approval of any of the Holders in order to cure any ambiguity, to correct or supplement any provision contained herein that may be defective or inconsistent with any other provisions herein, or to make any other provisions in regard to matters or questions arising hereunder that the Company and the Holder may deem necessary or desirable and that the Company and the Holder deem shall not adversely affect the interest of the Holders. All other modifications or amendments shall require the written consent of and be signed by the party against whom enforcement of the modification or amendment is sought.

8.2 Headings. The headings contained herein are for the sole purpose of convenience of reference and shall not in any way limit or affect the meaning or interpretation of any of the terms or provisions of this Warrant.

8.3 Entire Agreement. This Warrant (together with the other agreements and documents being delivered pursuant to or in connection with this Warrant) constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings of the parties, oral and written, with respect to the subject matter hereof.

8.4 Binding Effect. This Warrant shall inure solely to the benefit of and shall be binding upon, the Holder and the Company and their permitted assignees, respective successors, legal representative and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Warrant or any provisions herein contained.

8.5 Governing Law; Submission to Jurisdiction. This Warrant shall be governed by and construed and enforced in accordance with the laws of the State of New York, without giving effect to conflict of laws. The Company hereby agrees that any action, proceeding or claim against it arising out of, or relating in any way to this Warrant shall be brought and enforced in the courts of the State of New York or of the United States of America for the Southern District of New York, and irrevocably submits to such jurisdiction, which jurisdiction shall be exclusive. The Company hereby waives any objection to such exclusive jurisdiction and that such courts represent an inconvenient forum. Any process or summons to be served upon the Company may be served by transmitting a copy thereof by registered or certified mail, return receipt requested, postage prepaid, addressed to it at the address set forth in Section 7.4. Such mailing shall be deemed personal service and shall be legal and binding upon the Company in any action, proceeding or claim. The Company and the Holder agree that the prevailing party(ies) in any such action shall be entitled to recover from the other party(ies) all of its reasonable attorneys' fees and expenses relating to such action or proceeding and/or incurred in connection with the preparation therefor.

8.6 Waiver, Etc. The failure of the Company or the Holder to at any time enforce any of the provisions of this Warrant shall not be deemed or construed to be a waiver of any such provision, nor to in any way affect the validity of this Warrant or any provision hereof or the right of the Company or any Holder to thereafter enforce each and every provision of this Warrant. No waiver of any breach, non-compliance or non-fulfillment of any of the provisions of this Warrant shall be effective unless set forth in a written instrument executed by the party or parties against whom or which enforcement of such waiver is sought; and no waiver of any such breach, non-compliance or non-fulfillment shall be construed or deemed to be a waiver of any other or subsequent breach or non-compliance.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to be signed by its duly authorized officer as of the date first set forth above.

Direct Digital Holdings, Inc.

By: _____
Name:
Title:

Form to be used to exercise Warrant:

Direct Digital Holdings, Inc.
1233 West Loop South, Suite 1170
Houston, TX 77027
Attn: Mark Walker, Chairman and Chief Executive Officer

Date: _____, 202__

The undersigned hereby elects irrevocably to exercise all or a portion of the within Warrant and to purchase _____shares of Common Stock of Direct Digital Holdings, Inc. and hereby makes payment of $ _____ (at the rate of $ _____ per Share) in payment of the Exercise Price pursuant thereto. Please issue the shares of Common Stock as to which this Warrant is exercised in accordance with the instructions given below and issue a new Warrant pursuant to the terms of Section 4.1 of the Warrant if applicable.

or

Subject to the terms of Section 2.2 of the Warrant, the undersigned hereby elects irrevocably to convert its right to purchase _____ Shares purchasable under the within Warrant by surrender of the applicable unexercised portion of the attached Warrant in payment of the Exercise Price pursuant thereto (with a value based of $ _____ based on a market price of $_____). Please issue the Shares as to which this Warrant is exercised in accordance with the instructions given below and issue a new Warrant pursuant to the terms of Section 4.1 of the Warrant if applicable.

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

Signature(s) Guaranteed:

THE SIGNATURE(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).

INSTRUCTIONS FOR REGISTRATION OF SECURITIES

Name

(Print in Block Letters)

Address

Form to be used to assign Warrant:

ASSIGNMENT

(To be executed by the registered Holder to effect a transfer of the within Warrant):

FOR VALUE RECEIVED, _____does hereby sell, assign and transfer unto_____ the right to purchase _____ shares of Common Stock of Direct Digital Holdings, Inc. ("**Company**") evidenced by the within Warrant and does hereby authorize the Company to transfer such right on the books of the Company.

Dated: _____, 202_

Signature

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

Signature(s) Guaranteed:

THE SIGNATURE(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).

EXHIBIT B

Form of Lock-Up Agreement

Date: _____

The Benchmark Company, LLC
Roth Capital Partners, LLC
As Representatives of the several Underwriters named
in the Underwriting Agreement

c/o The Benchmark Company, LLC
150 East 58th Street, 17th Floor
New York, New York 10155

c/o Roth Capital Partners, LLC
888 San Clemente Drive, Suite 400
Newport Beach, CA 92660

Ladies and Gentlemen:

As an inducement to The Benchmark Company, LLC and Roth Capital Partners, LLC to execute an underwriting agreement (the *"**Underwriting Agreement**"*) in their capacities as representatives for the several underwriters named in Schedule I thereto (the *"**Representatives**"*) providing for a public offering (the *"**Offering**"*) of Class A common stock, par value $0.001 per share (the *"**Class A Common Stock**"*), or other securities, of Direct Digital Holdings, Inc., a Delaware corporation, and any successor (by merger or otherwise) thereto (the *"**Company**"*), the undersigned hereby agrees that without, in each case, the prior written consent of the Representatives, during the period specified in the second succeeding paragraph (the *"**Lock-Up Period**"*), the undersigned will not: (1) offer, pledge, announce the intention to sell, 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, lend, make any short sale or otherwise transfer or dispose of, directly or indirectly, any shares of Class A Common Stock or Class B common stock, par value $0.001 per share (the *"**Class B Common Stock**,"* and together with the Class A Common Stock, the "***Common Stock***"), or any securities convertible into, exercisable or exchangeable for or that represent the right to receive Common Stock (including without limitation, Common Stock which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the U.S. Securities and Exchange Commission (the *"**SEC**"*) and securities which may be issued upon exercise of a stock option or warrant) whether now owned or hereafter acquired (the *"**Undersigned's Securities**"*); (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Undersigned's Securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise; (3) make any demand for or exercise any right with respect to, the registration of any Common Stock or any security convertible into or exercisable or exchangeable for Common Stock; or (4) publicly disclose the intention to do any of the foregoing.

The undersigned agrees that the foregoing restrictions preclude the undersigned from engaging in any hedging or other transaction which is designed to, or which reasonably could be expected to lead to or result in a sale or disposition of the Undersigned's Securities, even if such securities would be disposed of by someone other than the undersigned. Such prohibited hedging or other transactions would include without limitation any short sale or any purchase, sale or grant of any right (including without limitation any put or call option) with respect to any of the Undersigned's Securities or with respect to any security that includes, relates to, or derives any significant part of its value from the Undersigned's Securities.

The Lock-Up Period will commence on the date of this Lock-Up Agreement (this "***Lock-Up Agreement***") and continue and include the date one hundred eighty (180) days after the date of the final prospectus used to sell the Class A Common Stock (or other securities) in the Offering pursuant to the Underwriting Agreement.

Notwithstanding the foregoing, the undersigned may transfer the Undersigned's Securities (i) as a *bona fide* gift or gifts, (ii) to any trust for the direct or indirect benefit of the undersigned or the immediate family (as defined below) of the undersigned, (iii) transfers or dispositions of the Undersigned's Securities by operation of law, such as pursuant to a qualified domestic order, divorce settlement, divorce decree, separation agreement or other court order, (iv) transfers or dispositions of the Undersigned's Securities to any corporation, partnership, limited liability company, trust or other entity all of the beneficial ownership interests of which are held by the undersigned or the immediate family of the undersigned, (v) if the undersigned is a corporation, partnership, limited liability company, trust or other business entity (1) transfers to another corporation, partnership, limited liability company, trust or other business entity that is a direct or indirect affiliate (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of the undersigned or (2) distributions of shares of Common Stock or any security convertible into or exercisable for Common Stock to limited partners, limited liability company members or stockholders of the undersigned, (vi) if the undersigned is a trust, transfers to the beneficiary of such trust, or (vii) transfers by testate succession or intestate succession, (viii) pursuant to the Underwriting Agreement; *provided,* in the case of clauses (i) through (vii), that (x) such transfer shall not involve a disposition for value, (y) the transferee agrees in writing with the Representatives to be bound by the terms of this Lock-Up Agreement, and (z) no filing by any party under Section 16(a) of the Securities Exchange Act of 1934, as amended (the *"**Exchange Act**"*), shall be required or shall be made voluntarily in connection with such transfer prior to the expiration of the Lock-Up Period. For purposes of this Lock-Up Agreement, "immediate family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin.

In addition, the foregoing restrictions shall not apply to (i) the exercise of stock options granted pursuant to the Company's equity incentive plans;*provided* that such restrictions shall apply to any of the Undersigned's Securities issued upon such exercise, (ii) the establishment of any contract, instruction or plan (a *"**Plan**"*) that satisfies all of the requirements of Rule 10b5-1(c)(1)(i)(B) under the Exchange Act; *provided* that no sales of the Undersigned's Securities shall be made pursuant to such a Plan prior to the expiration of the Lock-Up Period, and such a Plan may only be established if no public announcement of the establishment or existence thereof and no filing with the SEC or other regulatory authority in respect thereof or transactions thereunder or contemplated thereby, by the undersigned, the Company or any other person, shall be required, and no such announcement or filing is made voluntarily, by the undersigned, the Company or any other person, prior to the expiration of the Lock-Up Period, or (iii) the contemplated reorganization of Direct Digital Holdings, LLC in connection with the Offering (the "***Reorganization Transactions***") and subsequent thereto in connection with an exchange of Direct Digital Holdings, LLC units for shares of Class A Common Stock, all as contemplated by and described the Company's Registration Statement on Form S-1 filed with the SEC; *provided* that such restrictions shall apply to any of the Undersigned's Securities received in connection with the Reorganization Transactions.

Further, this Lock-Up Agreement shall not restrict the transfer of the Undersigned's Securities pursuant to a bona fide Change of Control (as defined below) of the Company that has been approved by the board of directors of the Company, *provided* that all of the Undersigned's Securities that are not so transferred shall remain subject to the restrictions set forth in this Lock-Up Agreement, and *provided further* that it shall be a condition of such transfer that in the event that the Change of Control is not completed, the Undersigned's Securities shall remain subject to the restrictions set forth in this Lock-Up Agreement. "***Change of Control***" means the consummation of any *bona fide* third-party tender offer, merger, consolidation or other similar transaction or series of related transactions, the result of which is that any "person" (as defined in Rule 13d-3 of the Exchange Act), or group of persons, other than the Company, Direct Digital Management, LLC or any of their subsidiaries or affiliates, becomes the beneficial owner (as defined in Rule 13d-3 and 13d-5 of the Exchange Act) of 50% or more of the total voting power of the voting capital stock of the Company (or the surviving entity).

If the undersigned is an officer or director of the Company, the undersigned further agrees that the restrictions imposed by this Lock-Up Agreement shall be equally applicable to any issuer-directed shares of Class A Common Stock the undersigned may purchase in the Offering.

In furtherance of the foregoing, the Company and its transfer agent and registrar are hereby authorized to decline to make any transfer of shares of Common Stock if such transfer would constitute a violation or breach of this Lock-Up Agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Agreement and that upon request, the undersigned will execute any additional documents necessary to ensure the validity or enforcement of this Lock-Up Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that the undersigned shall be released from all obligations under this Lock-Up Agreement if (i) the Company notifies the Representatives that it does not intend to proceed with the Offering, (ii) the Underwriting Agreement does not become effective, or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Class A Common Stock (or other securities) to be sold thereunder, or (iii) the Offering is not completed by March 31, 2022, *provided*, in the case of clause (iii), that the Company may, by written notice to the undersigned prior to such date, extend such date for a period of up to three additional months.

The undersigned understands that the Representatives are entering into the Underwriting Agreement and proceeding with the Offering in reliance upon this Lock-Up Agreement.

This Lock-Up Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

[*The remainder of this page has intentionally been left blank.*]

Very truly yours,

_____

Printed Name of Holder

_____

Signature

_____

Printed Name and Title of Person Signing
(*if signing as custodian, trustee or on behalf of an entity*)

EXHIBIT C

Form of Company Press Release for Wavers of Releases of Officer/Director Lock-Up Agreements

Direct Digital Holdings, Inc.

[Date]

Direct Digital Holdings, Inc., a Delaware corporation (the "***Company***"), announced today that The Benchmark Company, LLC and Roth Capital Markets, LLC (the "***Representatives***"), as the representatives of the several underwriters pursuant to that certain Underwriting Agreement, dated as of [●], 2021, by and between the Company and the Representatives, are [waiving] [releasing] [a] lock-up restriction[s] with respect to an aggregate of [●] shares of common stock held by certain [officers] [directors] of the Company. These [officers] [directors] entered into lock-up agreements with the Representatives in connection with the Company's initial public offering.

This [waiver] [release] will take effect on [*date that is at least two business days following date of this press release*].

This press release is not an offer for sale of the securities in the United States or in any other jurisdiction where such offer is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the United States Securities Act of 1933, as amended.

McGUIREWOODS

January 24, 2022

Board of Directors
Direct Digital Holdings, Inc.
1233 West Loop South, Suite 1170
Houston, Texas 77027

Direct Digital Holdings, Inc.
Registration Statement on Form S-1

Ladies and Gentlemen:

We have acted as counsel to Direct Digital Holdings, Inc., a Delaware corporation (the "Company") in connection with the Registration Statement on Form S-1 (Reg. No. 333-261059), including a related prospectus filed with the Registration Statement and any subsequent registration statement on Form S-1 filed pursuant to Rule 462(b) (as amended, the "Registration Statement") being filed by the Company on the date of this opinion letter with the Securities and Exchange Commission (the "SEC") in connection with the registration under the Securities Act of 1933, as amended (the "Securities Act"), of the public offering of (i) up to 4,600,000 shares of Class A Common Stock (the "Shares") to The Benchmark Company, LLC and Roth Capital Partners, LLC, as representatives (the "Representatives") of the several underwriters (collectively, the "Underwriters") pursuant to the underwriting agreement to be entered into by and among the Company and the Underwriters (the "Underwriting Agreement") the form of which has been filed as Exhibit 1.1 to the Registration Statement and (ii) up to 230,000 shares of Class A Common Stock that may be issued upon exercise of warrants (the "Representatives' Warrants") issued to the Representatives (the "Warrant Shares," and together with the Shares, the "Securities"). The term "Shares" includes up to 600,000 shares issuable upon exercise of an option granted to the Underwriters by the Company and shall include any additional shares of Class A Common Stock the offering of which is registered by the Company pursuant to Rule 462(b) under the Securities Act in connection with the offering contemplated by the Registration Statement. This opinion letter is being furnished in accordance with the requirements of Item 16 of Form S-1 and Item 601(b)(5)(i) of Regulation S-K promulgated under the Securities Act.

Documents Reviewed

In connection with this opinion letter, we have examined the following documents:

(a) the Registration Statement, including the exhibits being filed therewith;

(b) the prospectus contained in the Registration Statement (the "Prospectus");

(c) the form of Underwriting Agreement; and

(d) the form of Representatives' Warrant.

Also, we have examined and relied upon the following:

(i)(A) true and correct copies of the certificate of incorporation and bylaws of the Company, each as in effect the date hereof and as amended, supplemented or modified to date, and (B) the resolutions of the Board of Directors of the Company authorizing (1) the filing of the Registration Statement by the Company and (2) the issuance of the Securities by the Company, subject to (x) specific further authorization for the issuance, execution, delivery and performance by proper action of the Company's Board of Directors or a pricing committee thereof (the "Authorizing Resolutions") with respect to such Securities and (y) the other qualifications set forth therein, including the filling of the amended and restated certificate of incorporation with the Secretary of State of the State of Delaware, substantially in the form filed as Exhibit 3.3 to the Registration Statement;

(ii)a certificate dated January 24, 2022 issued by the Secretary of State of the State of Delaware, attesting to the corporate status of the Company in the State of Delaware; and

(iii)originals, or copies identified to our satisfaction as being true copies, of such other records, documents and instruments as we have deemed necessary for the purposes of this opinion letter.

"Applicable Law" means the Delaware General Corporation Law.

Assumptions Underlying Our Opinions

For all purposes of the opinions expressed herein, we have assumed, without independent investigation, the following:

(a) Factual Matters. To the extent that we have reviewed and relied upon certificates of the Company or authorized representatives thereof and certificates and assurances from public officials, all of such certificates, representations and assurances are accurate with regard to factual matters.

(b) Signatures. The signatures of individuals who have signed the documents we have reviewed are genuine and authorized.

(c) Authentic and Conforming Documents. All documents submitted to us as originals are authentic, complete and accurate, and all documents submitted to us as copies conform to authentic original documents.

(d) Registration. The Registration Statement shall have been declared effective under the Securities Act and such effectiveness shall not have been terminated or rescinded.

Our Opinion

Based on and subject to the foregoing and the exclusions, qualifications, limitations and other assumptions set forth in this opinion letter, we are of the opinion that:

1. upon the effectiveness of the amended and restated certificate of incorporation to be filed with the Secretary of State of the State of Delaware, substantially in the form filed as Exhibit 3.3 to the Registration Statement, the Shares, when (a) Authorizing Resolutions with respect to the Shares have been adopted, (b) the terms for the issuance and sale of the Shares have been established in conformity with such Authorizing Resolutions, (c) the Shares have been issued and sold as contemplated by the Registration Statement, (d) the Company has received the consideration provided for in the Registration Statement and the Underwriting Agreement and (e) such consideration for the Shares is not less than the amount specified in the applicable Authorizing Resolutions, such Securities will be validly issued, fully paid and non-assessable; and

2. when (a) Authorizing Resolutions with respect to the Representatives' Warrants and the Warrant Shares have been adopted, (b) the terms for the issuance and sale of the Representatives' Warrants have been established in conformity with such Authorizing Resolutions, (c) the Representatives' Warrants have been issued and sold as contemplated by the Underwriting Agreement and (d) the Warrant Shares, when issued and delivered by the Company upon exercise of the Representatives' Warrants against payment therefor as set forth in the Registration Statement, the Underwriting Agreement and the Representatives' Warrants, will be duly authorized and validly issued, fully paid and non-assessable.

Qualification and Limitation Applicable to Our Opinions

Our opinions are limited to Applicable Law, and we do not express any opinion concerning any other law.

Miscellaneous

The foregoing opinions are being furnished only for the purpose referred to in the first paragraph of this opinion letter. Our opinions are based on statutes, regulations and administrative and judicial interpretations which are subject to change. We undertake no responsibility to update or supplement these opinions subsequent to the effective date of the Registration Statement. Headings in this opinion letter are intended for convenience of reference only and shall not affect its interpretation. We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement and to the reference to our firm in the Registration Statement under the caption "Legal Matters." In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act or the rules and regulations of the SEC promulgated thereunder.

Very truly yours,

/s/ McGuireWoods LLP

McGuireWoods LLP

Exhibit 10.1

SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

OF

DIRECT DIGITAL HOLDINGS, LLC

(a Texas limited liability company)

January [--], 2022

THE UNITS REPRESENTED BY THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH UNITS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM.

THE UNITS REPRESENTED BY THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER SPECIFIED IN THIS AGREEMENT, AND THE COMPANY RESERVES THE RIGHT TO REFUSE THE TRANSFER OF SUCH UNITS UNTIL SUCH RESTRICTIONS HAVE BEEN SATISFIED WITH RESPECT TO ANY TRANSFER. A COPY OF SUCH RESTRICTIONS SHALL BE FURNISHED BY THE COMPANY TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE.

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SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT
of
DIRECT DIGITAL HOLDINGS, LLC

This SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (the "**Agreement**") of Direct Digital Holdings, LLC, a Texas limited liability company (the "**Company**"), dated as of January [__], 2022, by and among the Company, Direct Digital Holdings, Inc., a Delaware corporation ("**PubCo**"), and each of the Members listed on the signature pages hereto, and is made effective as of the Effective Time. Capitalized terms used herein without definition shall have the meanings assigned to such terms in Appendix A.

RECITALS

WHEREAS, the Company was formed as a Texas limited liability company on March 13, 2018 (the "**Formation Date**"), under and pursuant to the TBOC and the issuance of a certificate of formation for the Company by the Secretary of State of Texas effective March 13, 2018 bearing filing number 802960795;

WHEREAS, the Company has been governed since September 30, 2020, by that certain Amended and Restated Limited Liability Company Agreement of the Company (the "**Original Agreement**");

WHEREAS, on January 17, 2022, the Board (as defined in the Original Agreement) of the Company approved an "Up-C IPO structure" pursuant to which PubCo desires to effect a proposed underwritten initial public offering of shares of its Class A Common Stock (the "**IPO**");

WHEREAS, prior to the Effective Time and in contemplation of the IPO, all outstanding Preferred Units (as defined in the Original Agreement) and all outstanding Common Units (as defined in the Original Agreement) held by the USDM Investor were redeemed by the Company pursuant to that certain Redemption Agreement, dated as of November 14, 2021, by and between the Company and the USDM Investor (the "**USDM Redemption**");

WHEREAS, at the Effective Time, all Common Units are, automatically without any further action on the part of the Company and the Members, reclassified and changed into Class A Common Units paired with a corresponding number of Class B Voting Units as set forth herein, and shall cease to exist as Common Units (the conversions described in this recital, together with the USDM Redemption, the "**Recapitalization**");

WHEREAS, after the Effective Time and prior to the effectiveness of PubCo's initial public offering (the "**Pre-IPO Effective Time**"), the holders of Class B Voting Units will contribute all of their Class B Voting Units to PubCo in exchange for Class B Common Stock (the exchanges described in this recital, the "**Pre-IPO Exchanges**," and the agreements pursuant to which the Pre-IPO Exchanges are effected, the "**Exchange Agreements**");

WHEREAS, immediately following the Pre-IPO Exchanges, (i) PubCo, as holder of all the Class B Voting Units, designates itself as, and is hereby admitted to the Company as, Managing Member, and in such capacity shall have the rights and obligations as provided in this Agreement, and (ii) PubCo shall use the net proceeds received from the IPO to purchase Class A Common Units from the Company;

WHEREAS, the Company, PubCo, and the Members desire to amend and restate the Original Agreement in its entirety as set forth herein effective as of the Effective Time, at which time the Original Agreement will be superseded entirely by this Agreement, including the rights, preferences and obligations in respect of their membership interests, in accordance with the terms hereof; and

WHEREAS, this Agreement shall constitute a company agreement within the meaning of Section 101.001(1) of the TBOC.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereby agree to amend and restate the Original Agreement as follows:

SECTION 1
FORMATION, NAME, PURPOSE, MEMBERS, DEFINITIONS, ETC.

Section 1.1 **General**.

(a) Formation. The Members acknowledge that the Company was formed as a Texas limited liability company on the Formation Date, by the filing of the Certificate with the Texas Secretary of State and the Members hereby ratify such filings and registration.

(b) Further Actions. The Managing Member shall cause the Company (or duly appointed officer or other authorized representative of the Company) to execute, deliver and/or file such documents and/or take such other actions as may be necessary to maintain the Company's status as a limited liability company under the TBOC and as a "partnership" under the Code, and to carry out the business purposes of the Company as set forth in **Section 1.3**, including, causing the Company to be (or become and remain) qualified, formed or registered under assumed or fictitious name statutes, qualification to do business statutes and similar laws in any jurisdiction in which the Company transacts business and executing, delivering and/or filing all certificates or other instruments (and any amendments and restatements thereof) which may be required in connection therewith. The Members shall, at the request of the Managing Member, promptly execute such documents and furnish such information as may be necessary to enable the Managing Member to perform, on behalf of the Company, or to enable the Company to perform those actions contemplated under this **Section 1.1(b)**.

(c) Conflicts. In the event of any conflict between the terms or provisions of this Agreement and the Certificate (as the same may be amended from time to time) or between this Agreement and any of the terms or provisions of the TBOC (except any provisions of the TBOC which, by their terms, may not be superseded by the terms of this Agreement), the terms or provisions of this Agreement shall control.

Section 1.2 **Name; Principal Office**. The name of the Company is "Direct Digital Holdings, LLC." The principal office of the Company shall be located at any place as the Managing Member may designate by written notice to the Members from time to time.

Section 1.3 **Purposes**. The purpose and business of the Company shall be engaging in any lawful act or activity for which limited liability companies may be formed under the TBOC. Notwithstanding anything herein to the contrary, nothing set forth herein shall be construed as authorizing the Company to possess any purpose or power, or to do any act or thing, forbidden by law to a limited liability company organized under the laws of the State of Texas. Subject to the TBOC and the provisions of this Agreement the Company may, with the approval of the Managing Member, enter into and perform under any and all documents, agreements and instruments, all without any further act, vote or approval of any Member.

Section 1.4 **Registered Agent; Registered Office**. The Company's registered agent and registered office in the State of Texas are specified in the Certificate. The Managing Member, on behalf of the Company, may change the registered office and/or the registered agent of the Company (in any state or other jurisdiction where appointment of a registered agent is required) from time to time.

Section 1.5 **Commencement and Term**. The term of the Company commenced on the filing of its Certificate and shall thereafter continue in perpetuity unless sooner dissolved, liquidated and terminated as provided in **Section 9** hereof.

Section 1.6 **Income Tax Classification**. The Company is classified as a "partnership" for federal income tax purposes. The Members acknowledge and agree that it is not the purpose or intent of the Members to cause the Company to be treated (or elect to be treated) for federal income tax purposes as an association taxable as a corporation.

Section 1.7 **Members**. The names and addresses of the Members and their respective Units are listed on **Schedule 1.7** attached hereto. Except as otherwise permitted by, and subject to the terms of, this Agreement, including **Section 2** and **Section 8** hereof, additional or substitute "members" of the Company may be admitted only in relation to an issuance of Membership Interests as permitted by and made pursuant to **Section 2** hereof or a Transfer of Membership Interests as permitted by and made pursuant to **Section 8** hereof. The Managing Member shall cause **Schedule 1.7** attached hereto to be amended from time to time to reflect any sale or other disposition by a Member of all or any portion of such Member's Units or the admission of any additional or substitute "members" of the Company in accordance with the express terms hereof, or, otherwise, to reflect any change in the information of any Member set forth therein (to the extent known or made known to the Managing Member).

Section 1.8 **Definitions**. Words and phrases capitalized throughout this Agreement, but which are not otherwise defined herein (or in the Recitals hereto or the opening paragraph hereof), shall have the respective meanings ascribed thereto in **Appendix A** or **Appendix B** attached hereto and made a part hereof.

SECTION 2
CAPITALIZATION AND MEMBERS

Section 2.1 **Capitalization**.

(a) Each Member shall hold Units, and the relative rights, powers, privileges, preferences and obligations with respect to each Member's Units shall be determined under this Agreement and the TBOC based upon the number and the class of Units held by such Member. The number and the class of Units held by each Member shall be set forth on **Schedule 1.7**. The classes of Units as of the Effective Time are as follows: "Class A Common Units" and "Class B Voting Units." The Members shall have no right to vote on any matter, except as specifically set forth in this Agreement, or as may be required under the TBOC. Any such vote shall be at a meeting of the Members entitled to vote or in writing as provided herein.

(i) Class A Common Units. The Class A Common Units shall have all the rights, powers, privileges and obligations as are specifically provided for in this Agreement for Class A Common Units, and as may otherwise be generally applicable to all classes of Units, unless such application is specifically limited to one or more other classes of Units. Notwithstanding anything to the contrary contained herein, the holders of Class A Common Units shall not be entitled to vote on any matter subject to a vote of the Members, except as otherwise required by law and on any such matter the holders of Class A Common Units shall be entitled to one (1) vote per Class A Common Unit.

(ii) Class B Voting Units. The holders of Class B Voting Units shall be entitled to one (1) vote per Class B Voting Unit with respect to any designation of the Managing Member pursuant to **Section 5.1** or designation of an additional Managing Member or substitute Managing Member pursuant to **Section 5.3**, and shall not be entitled to any other rights, powers, privileges or obligations under this Agreement.

(b) On the date hereof and in connection with the IPO, the following shall have occurred or will occur:

(i) Prior to the Effective Time, the USDM Redemption was consummated.

(ii) At the Effective Time, the Recapitalization is hereby consummated.

(iii) Immediately after the Effective Time, the Pre-IPO Exchanges shall be consummated.

(iv) The Members agree that immediately following the Effective Time, no fractional Class A Common Unit will remain outstanding and any fractional Class A Common Unit held by a Member shall be rounded up to the nearest whole number.

(c) Subject to the terms of this Agreement (including this **Section 2.1** and **Section 2.2**), the Managing Member in its sole discretion may establish and issue, from time to time in accordance with such procedures as the Managing Member shall determine from time to time, additional Units, in one or more classes or series of Units, or other Company securities, at such price, and with such designations, preferences and relative, participating, optional or other special rights, powers and duties (which may be senior to existing Units, classes and series of Units or other Company securities), as shall be determined by the Managing Member without the approval of any Member or any other Person who may acquire an interest in any of the Units, including (i) the right of such Units to share in Profits and Losses or items thereof; (ii) the right of such Units to share in Company distributions; (iii) the rights of such Units upon dissolution and winding up of the Company; (iv) whether, and the terms and conditions upon which, the Company may or shall be required to redeem such Units (including sinking fund provisions); (v) whether such Units are issued with the privilege of conversion or exchange and, if so, the terms and conditions of such conversion or exchange; (vi) the terms and conditions upon which such Units will be issued, evidenced by certificates and assigned or transferred; (vii) the terms and conditions of the issuance of such Units (including, without limitation, the amount and form of consideration, if any, to be received by the Company in respect thereof, the Managing Member being expressly authorized, in its sole discretion, to cause the Company to issue such Units for less than fair market value); and (viii) the right, if any, of the holder of such Units to vote on Company matters, including matters relating to the relative designations, preferences, rights, powers and duties of such Units. Notwithstanding any other provision of this Agreement, the Managing Member in its sole discretion, without the approval of any Member or any other Person, is authorized (i) to issue Units or other Company securities of any newly established class or any existing class to Members or other Persons who may acquire an interest in the Company; (ii) to amend this Agreement to reflect the creation of any such new class, the issuance of Units or other Company securities of such class, and the admission of any Person as a Member which has received Units or other Company securities; and (iii) to effect the combination, subdivision and/or reclassification of outstanding Units as may be necessary or appropriate to give economic effect to equity investments in the Company by the Managing Member that are not accompanied by the issuance by the Company to the Managing Member of additional Units and to update the books and records of the Company accordingly. Except as expressly provided in this Agreement to the contrary, any reference to "**Units**" shall include the Class A Common Units, Class B Voting Units, and Units of any other class or series that may be established in accordance with this Agreement. All Units of a particular class shall have identical rights in all respects as all other Units of such class, except in each case as otherwise specified in this Agreement.

(d) All Units issued hereunder shall be uncertificated unless otherwise determined by the Managing Member; *provided*, that to the extent such Units are certificated after the date hereof, each certificate evidencing Units and each certificate issued in exchange for or upon the Transfer of any Units (if such securities remain Units as defined herein after such Transfer) shall be stamped or otherwise imprinted with a legend in substantially as set forth in **Section 7**.

(e) To the extent information is required to be disclosed to any Member pursuant to this Agreement or the TBOC, each Member acknowledges and agrees that portions of this Agreement may be redacted by the Managing Member or information herein may otherwise be aggregated by the Managing Member to prevent disclosure of confidential information with respect to individual allocations of employee Equity Interests.

(f) Each Member who is issued Units by the Company pursuant to the authority of the Managing Member pursuant to **Section 5.1** shall make the Capital Contributions to the Company determined by the Managing Member pursuant to the authority of the Managing Member pursuant to **Section 5.1** in exchange for such Units.

(g) Each Member, to the extent having the right to consent thereto, by executing this Agreement, hereby confirms, ratifies and approves the transactions contemplated by this Agreement and the other agreements and transactions referred to herein.

Section 2.2 **Provisions with Respect to Units**.

(a) New PubCo Issuances.

(i) Subject to **Section 8.6** and **Section 2.2(a)(ii)**, if, at any time after the Effective Time, PubCo issues shares of its Class A Common Stock or any other Equity Interest of PubCo (other than shares of Class B Common Stock), (x) the Company shall concurrently issue to PubCo an equal number of Class A Common Units (if PubCo issues shares of Class A Common Stock), or an equal number of such other Equity Interest of the Company corresponding to the Equity Interests issued by PubCo (if PubCo issues Equity Interests other than Class A Common Stock), and with the same rights to distributions (including distributions upon liquidation) and other economic rights as those of such Equity Interests of PubCo so issued and (y) PubCo shall concurrently contribute to the Company the net proceeds or other property received by PubCo, if any, for such share of Class A Common Stock or other Equity Interest.

(ii) Notwithstanding anything to the contrary contained in **Section 2.2(a)(i)** or **Section 2.2(a)(iii)**, this **Section 2.2(a)** shall not apply to (x) the issuance and distribution to holders of shares of PubCo Equity Interests of rights to purchase Equity Interests of PubCo under a "poison pill" or similar shareholder rights plan (and upon exchange of Class A Common Units for Class A Common Stock, such Class A Common Stock shall be issued together with a corresponding right under such plan) or (y) the issuance under PubCo's employee benefit plans of any warrants, options, stock appreciation right, restricted stock, restricted stock units, performance based award or other rights to acquire Equity Interests of PubCo or rights or property that may be converted into or settled in Equity Interests of PubCo, but shall in each of the foregoing cases apply to the issuance of Equity Interests of PubCo in connection with the exercise or settlement of such warrants, options, stock appreciation right, restricted stock units, performance based awards or the vesting of restricted stock (including as set forth in clause (iii) below, as applicable).

(iii) In the event any outstanding Equity Interest of PubCo is exercised or otherwise converted and, as a result, any shares of Class A Common

Stock or other Equity Interests of PubCo are issued, (x) the corresponding Equity Interest outstanding at the Company, if any, shall be similarly exercised or otherwise converted, if applicable, (y) an equivalent number of Class A Common Units or equivalent Equity Interests of the Company shall be issued to PubCo as required by the first sentence of **Section 2.2(a)(i)**, and (z) PubCo shall as soon as practicable following such exercise or conversion contribute to the Company the net proceeds received by PubCo from any such exercise or conversion.

(b) New Company Issuances; Additional Members.

(i) Except pursuant to **Section 8.6**, (x) the Company may not issue any additional Class A Common Units to PubCo or any of its Subsidiaries (other than the Company and its Subsidiaries) unless (i) substantially simultaneously therewith PubCo or such Subsidiary issues or transfers an equal number of newly-issued shares of Class A Common Stock (or relevant Equity Interest of such Subsidiary) to another Person or Persons, and (ii) such issuance is in accordance with **Section 2.2(a)**, and (y) the Company may not issue any other Equity Interests of the Company to PubCo or any of its Subsidiaries (other than the Company and its Subsidiaries) unless (i) substantially simultaneously therewith PubCo or such Subsidiary issues or transfers, to another Person, an equal number of newly-issued shares of Equity Interests of PubCo or such Subsidiary with substantially the same rights to dividends and distributions (including distributions upon liquidation) and other economic rights as those of such Equity Interests of the Company, and (ii) such issuance is in accordance with **Section 2.2(a)**

(ii) Subject to the provisions of **Section 8** hereof, a Person may be admitted to the Company as an additional Member only upon furnishing to the Company (x) counterparts of this Agreement or an executed joinder to this Agreement in a form acceptable to the Managing Member and (y) such other documents or instruments as may be necessary or appropriate to effect such Person's admission as a Member (including entering into such documents as the Managing Member may deem appropriate); *provided*, *however*, that PubCo, upon acquiring Units pursuant to the Exchange Agreements, shall, automatically without any further action on the part of the Company or PubCo, be admitted to the Company as an Additional Member. Such admission shall become effective on the date on which the Managing Member determines that such conditions have been satisfied and when any such admission is shown on the books and records of the Company.

(c) Repurchases and Redemptions.

(i) Subject to Section 2.2(c)(ii), PubCo or any of its Subsidiaries (other than the Company and its Subsidiaries) may redeem, repurchase or otherwise acquire (A) shares of Class A Common Stock pursuant to a Board approved repurchase plan or program (or otherwise in connection with a transaction approved by the Board) and, substantially simultaneously therewith, the Company shall redeem, repurchase or otherwise acquire from PubCo or such Subsidiary an equal number of Class A Common Units for the same price per security, if any, or (B) any other Equity Interests of PubCo or any of its Subsidiaries (other than the Company and its Subsidiaries) pursuant to a Board approved repurchase plan or program (or otherwise in connection with a transaction approved by the Board) and, substantially simultaneously therewith, the Company shall redeem, repurchase or otherwise acquire from PubCo or such Subsidiary an equal number of the corresponding class or series of Equity Interests of the Company with the same rights to dividends and distributions (including distributions upon liquidation) and other economic rights as those of such Equity Interests of PubCo or such Subsidiary for the same price per security, if any.

(ii) In the event that a tender offer, share exchange offer, or take-over bid or similar transaction with respect to Class A Common Stock, if any (a "**PubCo Offer**"), is proposed by PubCo or is proposed to PubCo or its stockholders, the holders of Class A Common Units shall be permitted to participate in such PubCo Offer by delivery of an Exchange Notice (which Exchange Notice shall be effective immediately prior to the consummation of such PubCo Offer (and, for the avoidance of doubt, shall be contingent upon such PubCo Offer and not be effective if such PubCo Offer is not consummated)). In the case of a PubCo Offer proposed by PubCo, PubCo shall use its reasonable best efforts to take all such actions and do all such things as are necessary or desirable to enable and permit the holders of Class A Common Units to participate in such PubCo Offer to the same extent or on an economically equivalent basis as the holders of shares of Class A Common Stock without discrimination; *provided* that, without limiting the generality of this sentence (and without limiting the ability of any Member holding Class A Common Units to consummate an Exchange at any time pursuant to the terms of this Agreement), the Managing Member shall use its reasonable best efforts to ensure that such holders of Class A Common Units may participate in such PubCo Offer without being required to Exchange their Class A Common Units and cancel their shares of Paired Voting Stock, as the case may be, (or, if so required, to ensure that any such Exchange and cancelation shall be effective only upon, and shall be conditional upon, the closing of the transactions contemplated by the PubCo Offer). For the avoidance of doubt, in no event shall the holders of Class A Common Units be entitled to receive in such PubCo Offer aggregate consideration for each Class A Common Unit and share of Paired Voting Stock, taken together, that is greater than or less than the consideration payable in respect of each share of Class A Common Stock in connection with such PubCo Offer (it being understood that payments under or in respect of the Tax Receivable Agreement shall not be considered part of any such consideration).

(iii) The Company may not redeem, repurchase or otherwise acquire (x) any Class A Common Units from PubCo or any of its Subsidiaries (other than the Company and its Subsidiaries) unless substantially simultaneously PubCo or such Subsidiary redeems, repurchases or otherwise acquires pursuant to a Board approved repurchase plan or program (or otherwise in connection with a transaction approved by the Board) an equal number of shares of Class A Common Stock for the same price per security from holders thereof or (y) any other Equity Interests of the Company from PubCo or any of its Subsidiaries (other than the Company and its Subsidiaries) unless substantially simultaneously PubCo or such Subsidiary redeems, repurchases or otherwise acquires pursuant to a Board approved repurchase plan or program (or otherwise in connection with a transaction approved by the Board) for the same price per security an equal number of Equity Interests of PubCo (or such Subsidiary) of a corresponding class or series with substantially the same rights to dividends and distributions (including distributions upon liquidation) and other economic rights as those of such Equity Interests of PubCo or such Subsidiary.

(iv) Notwithstanding the foregoing clauses (i) through (iii), to the extent that any consideration payable by PubCo in connection with the redemption, repurchase or acquisition of any shares of Class A Common Stock or other Equity Interests of PubCo or any of its Subsidiaries (other than the Company and its Subsidiaries) consists (in whole or in part) of shares of Class A Common Stock or such other Equity Interests (including in connection with the cashless exercise of an option or warrant (or other convertible right or security)) other than under PubCo's employee benefit plans for which there is no corresponding Class A Common Units or other Equity Interests of the Company, then the redemption, repurchase or acquisition of the corresponding Class A Common Units or other Equity Interests of the Company shall be effectuated in an equivalent manner.

(d) Equity Subdivisions and Combinations.

(i) The Company shall not in any manner effect any subdivision (by any equity split, equity distribution, reclassification, recapitalization or otherwise) or combination (by reverse equity split, reclassification, recapitalization or otherwise) of the outstanding Class A Common Units unless accompanied by an identical subdivision or combination, as applicable, of the outstanding PubCo Class A Common Stock and Paired Voting Stock or other related class or series of Equity Interest of PubCo, with corresponding changes made with respect to any other exchangeable or convertible Equity Interests of the Company and PubCo.

(ii) Except in accordance with **Section 8.6(c)**, PubCo shall not in any manner effect any subdivision (by any equity split, equity distribution,

reclassification, recapitalization or otherwise) or combination (by reverse equity split, reclassification, recapitalization or otherwise) of the outstanding PubCo Class A Common Stock or any other class or series of Equity Interest of PubCo, unless accompanied by an identical subdivision or combination, as applicable, of the outstanding Class A Common Units or other related class or series of Equity Interest of the Company, with corresponding changes made with respect to any applicable exchangeable or convertible Equity Interests of the Company and PubCo.

(e) General Authority. For the avoidance of doubt, but subject to **Sections 2.1** and **2.2**, the Company and PubCo (including in its capacity as the Managing Member of the Company) shall be permitted to undertake all actions, including an issuance, redemption, reclassification, distribution, division or recapitalization, with respect to the Class A Common Units, that are necessary, in the Managing Member's determination, to maintain at all times a one-to-one ratio between (i) the number of Class A Common Units owned by PubCo, directly or indirectly, and the number of outstanding shares of Class A Common Stock, and (ii) the number of outstanding shares of applicable Paired Voting Stock held by any Person and the number of Class A Common Units held by such Person disregarding, for purposes of maintaining the one-to-one ratios in clauses (i) and (ii), (A) options, rights or securities of PubCo issued under any plan involving the issuance of any Equity Interests that are convertible into or exercisable or exchangeable for Class A Common Stock, (B) treasury stock, or (C) preferred stock or other debt or equity securities (including warrants, options or rights) issued by PubCo, that are convertible into or exercisable or exchangeable for Class A Common Stock (but in each case prior to such conversion or exchange).

Section 2.3 **Additional Capital Contributions**. No Member shall be required to make any additional Capital Contribution to the Company without the consent of such Member. No Member shall have the right to make any additional Capital Contribution to the Company except as expressly provided herein.

Section 2.4 **Member Loans**. Loans by Unitholders to the Company shall not be considered Capital Contributions. The amount of any such loans shall be a debt of the Company to such Unitholder and shall be payable or collectible in accordance with the terms and conditions upon which such loans are made.

Section 2.5 **Maintenance of Capital Accounts/Reports; Withdrawal of Capital; No Interest**

(a) Capital Accounts. An individual Capital Account shall be determined and maintained by the Company for each Member as provided in **Section I** of **Appendix B** attached hereto. Upon the sale, exchange or assignment of all or a portion of an interest in the Company, the Capital Account of the transferor, or the portion thereof that is attributable to the transferred interest, if the transferor disposed of less than the transferor's entire interest in the Company, shall be carried over to the transferee.

(b) No Right to Withdraw Capital/No Right to Interest. Except as otherwise provided in **Section 3** and **Section 8** hereof, no Member shall be entitled to withdraw all or any portion of such Member's Capital Contributions or the balance in such Member's Capital Account, in money or other property, prior to dissolution of the Company, and then only in accordance with the provisions of the TBOC and **Section 9.3** hereof. Neither the Board, nor any Member shall be personally liable for the payment or return of any portion of any Member's Capital Contributions. No interest will be paid on account of any Capital Contributions (or on the credit balance in any Member's Capital Account). No Member shall have the right to receive or demand property other than cash in return for such Member's Capital Contributions, and no Member shall have priority over any other Member, either as to the return of such Member's Capital Contributions or as to distributions, except to the extent otherwise expressly specified in this Agreement.

Section 2.6 **Representations and Warranties of Members**. By execution and delivery of this Agreement or a joinder hereto, as applicable, each of the Members (other than PubCo) represents and warrants to the Company and acknowledges that:

(a) Such Member has been advised that Units have not been registered under the Securities Act or the securities laws of any other jurisdiction, are issued in reliance upon federal and state exemptions for transactions not involving a public offering and cannot be disposed of unless (i) they are subsequently registered or exempted from registration under the Securities Act and (ii) the provisions of this Agreement have been complied with;

(b) Such Member is an "accredited investor" within the meaning of Rule 501 promulgated under the Securities Act, as amended by Section 413(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act;

(c) Such Member's Units are being acquired for its own account solely for investment and not with a view to resale or distribution thereof;

(d) Such Member has conducted its own independent review and analysis of the business, operations, assets, liabilities, results of operations, financial condition and prospects of the Company and the Company's subsidiaries and such Member acknowledges that it has been provided adequate access to the personnel, properties, premises and records of the Company and the Company's subsidiaries for such purpose;

(e) The determination of such Member to acquire Units has been made by such Member independent of any other Member and independent of any statements or opinions as to the advisability of such purchase or as to the business, operations, assets, liabilities, results of operations, financial condition and prospects of the Company and the Company's subsidiaries that may have been made or given by any other Member or by any agent or employee of any other Member;

(f) Such Member has such knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of an investment in the Company and making an informed decision with respect thereto;

(g) Such Member is able to bear the economic and financial risk of an investment in the Company for an indefinite period of time;

(h) The execution, delivery and performance of this Agreement have been duly authorized by such Member and do not require such Member to obtain any consent or approval that has not been obtained and do not contravene or result in a default in any material respect under any provision of any law or regulation applicable to such Member or other governing documents or any agreement or instrument to which such Member is a party or by which such Member is bound;

(i) This Agreement is valid, binding and enforceable against such Member in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws of general applicability relating to or affecting creditors' rights or general equity principles (regardless of whether considered at law or in equity); and

(j) Neither the issuance of any Units to any Member nor any provision contained herein will entitle the Member to remain in the employment of the Company or any of its subsidiaries or affect the right of the Company or any of its subsidiaries to terminate the Member's employment at any time for any reason, other than as otherwise provided in such Member's employment agreement or other similar agreement with the Company or any of its subsidiaries, if applicable.

SECTION 3
NON-LIQUIDATING DISTRIBUTIONS

Section 3.1 **Available Cash**. Prior to the Company's dissolution in accordance with **Section 9.1** hereof, subject to the following provisions of this **Section 3** and any restrictions on distributions to the Members otherwise specified in this Agreement, the Managing Member may from time to time cause the Company to distribute its Available Cash (after having first made any Tax Distributions permitted to be made under **Section 3.2(d)** for the current and all prior Taxable Years), if any, from time to time in such amounts as the Managing Member may determine, to the holders of Common Units (ratably among such holders based upon the number of Common Units held by each such holder immediately prior to such distribution).

Section 3.2 **Withholding/Deemed Loans to Members**.

(a) Tax Withholding; Treatment. If the Company is required (as determined in good faith by the Managing Member) to make a payment (a "**Tax Payment**") with respect to any Member to discharge any legal obligation of the Company (or the Managing Member) to make payments to any governmental authority with respect to any federal, foreign, state or local tax liability of such Member arising from such Member's ownership or disposition of a Membership Interest, then, notwithstanding any other provision of this Agreement to the contrary, the amount of such Tax Payment shall be treated as: (i) a distribution to such Member (and the payment by such Member of the tax to which such payment relates), which shall offset, in whole or part, the first distribution(s), if any, otherwise to be made by the Company to such Member as of the date thereof pursuant to **Section 3.1** or **Section 9.3** hereof, or (ii) to the extent such Tax Payment exceeds the distribution(s) otherwise then to be made to such Member (or if no distribution is then to be made to such Member), a loan by the Company to such Member, which loan shall bear interest at the Prime Rate (as determined as of the date such Tax Payment is made) and be payable upon demand by the Managing Member or, in the discretion of the Managing Member, by set off against the first distribution (or distributions) thereafter to be made by the Company to such Member, whether under **Section 3.1** or **Section 9.3** hereof.

(b) Right of Holdback. The Managing Member shall be entitled to hold back any distribution (including Company property to be distributed in-kind) otherwise payable by the Company to any Member if and to the extent the Managing Member believes, in good faith, that a Tax Payment is or will be required with respect to such Member in the future and the Managing Member believes that there will not be sufficient subsequent distributions to such Member to make such Tax Payment.

(c) Special Allocations of Gain or Loss from Sale of Retained Property. If applicable, in the event Company property, or a portion thereof, to be distributed in-kind to any Member is retained by the Company to make a Tax Payment for such Member, then such property, or applicable portion thereof, shall be deemed for purposes hereof to have been distributed to such Member as of the date such distribution in-kind was otherwise to be have been made and all gain or loss, as determined for federal income tax purposes, from the Company's sale of such property to fund such Tax Payment, shall be allocated, in full, to such Member.

(d) Tax Distributions. Notwithstanding the foregoing to the contrary, subject to the other limitations set forth herein, to the extent of the Company's Available Cash, the Managing Member shall cause tax distributions ("**Tax Distributions**") for any Taxable Year to be made to the Members during any such year, on a quarterly basis, as of the end of each calendar quarter, in an amount equal to the product of (i) the Assumed Tax Rate and (ii) the Company's net taxable income for such Taxable Year through the end of each such calendar quarter, taking into account losses of the Company from prior calendar quarters to the extent such losses did not previously offset net taxable income for purposes of calculating a Tax Distribution, and taking into account the aggregate prior Tax Distributions, if any, made to the Members under this section for such year; *provided*, *however*, that the Managing Member may make adjustments in its reasonable discretion to reflect transactions occurring during the Taxable Year. Tax Distributions shall be apportioned among and distributed to the Members in the same proportion as the aggregate amounts of net taxable income of the Company for such Taxable Year are allocated to the Members hereunder taking into account the adjustments set forth above. For the avoidance of doubt, for purposes of computing Tax Distributions, salaries, bonuses, and any other payments in the nature of compensation (including guaranteed payments for services) shall not be taken into account as allocable income. Any amounts distributed pursuant to this **Section 3.2(d)** as Tax Distributions shall be treated as an advance of the subsequent distributions otherwise distributable to a Member pursuant to **Section 3.1** or **Section 9.3(c)** (as applicable), and such subsequent distribution amounts pursuant to **Section 3.1** or **Section 9.3(c)** (as applicable) shall be reduced by the amount distributed as a Tax Distribution to such Member pursuant to this **Section 3.2(d)**. No Tax Distributions shall be made under this **Section 3.2(d)** with respect to the taxable year in which the Company liquidates or in which a Sale of the Company occurs (other than Tax Distributions made prior to the date of the actual Sale of the Company).

Section 3.3 **Limitations on Distributions/Liability for Repayment**.

(a) Statutory Restrictions. The Company shall not make any distributions (as such term is defined in TBOC Section 101.206, and other than in accordance with Chapter 11 of the TBOC) to any of the Members if, immediately following such distribution, the Company would not otherwise have sufficient remaining properties (based on the fair value of its remaining properties) to pay its then total outstanding liabilities, other than liabilities to its Members on account of their Membership Interests in the Company and liabilities of the Company for which the recourse of the applicable Company creditor(s) is or are limited to specified Company property. (For purposes of applying the preceding sentence, the fair value of any Company property that is subject to a liability for which the recourse of an applicable Company creditor is limited, shall be included in the assets of the Company only to the extent that the fair value of such property exceeds that liability.)

(b) Member Repayment Obligations. Any Member that receives a distribution made in violation of the terms of **Section 3.3(a)** above and Section 101.206 of the TBOC, and who knew at the time of such distribution that such distribution was made in violation thereof, shall be liable to the Company for the amount of such distribution; *provided*, that, unless otherwise agreed (or unless otherwise provided by the TBOC), such Member shall have no liability to the Company for such distribution after the expiration of one (1) year from the date thereof (or such longer or shorter period as may hereafter be required by the TBOC) unless an action to recover such distribution from such Member is or was commenced prior to the expiration of said one year (or other applicable) period and an adjudication of liability against such Member is made in said action.

Section 3.4 **Determination of Available Cash**. In determining the amount of Available Cash, the Managing Member shall make a determination, as a prudent business person, of the amount of cash reserves reasonably necessary or appropriate to be established and/or maintained by the Company in furtherance of its authorized business purposes, both considering current and future or anticipated operating needs, and the amount of such Available Cash shall be approved and made a part of the Company's budget pursuant to **Section 10.6**.

SECTION 4
ALLOCATIONS OF PROFITS AND LOSSES

Section 4.1 **General Allocation of Profits or Losses**. Subject to **Appendix B** attached hereto, Profits or Losses of the Company for each Allocation Period commencing on or after the Effective Date hereof, shall be allocated as follows:

(a) General. Except as otherwise provided in this Agreement, Profits and Losses, and to the extent necessary, any items thereof, for any Allocation Period shall be allocated among the Members in such a manner that, as of the end of such Allocation Period, the sum of (i) the Capital Account of each Member, (ii) such Member's share of Company Minimum Gain (as determined according to Regulations § 1.704-2(g)) and (iii) such Member's allocation of Member Nonrecourse Debt Minimum

Gain (as determined according to Regulations § 1.704-2(i)(3)) shall be equal to the respective net amounts, positive or negative, which would be distributed to them or for which they would be liable to the Company under this Agreement, determined as if the Company were to (A) liquidate the assets of the Company for an amount equal to their Book Value and (B) distribute the proceeds of liquidation pursuant to **Section 9.3(c)** hereof (treating unvested Units as vested solely for this purpose). If the Managing Member determines that it is necessary and permissible (under the Code and applicable regulations and rulings) to allocate items of gross income and gain separate from items of deduction or loss to achieve the target set forth in the first sentence of this **Section 4.1(a)**, then the Managing Member shall make such allocations to the extent required in such manner as it determines is reasonable.

(b) Limitation on Losses. The Losses allocated under **Section 4.1(a)** to any Member shall not exceed the maximum amount of Losses that can be so allocated without causing or increasing an Adjusted Capital Account Deficit with respect to such Member. If some but not all of the Members would have an Adjusted Capital Account Deficit as a consequence of an allocation of Losses pursuant to **Section 4.1(a)**, then the limitation set forth in this **Section 4.1(b)** shall be applied so as to allocate the maximum permissible Losses to each Member under the preceding sentence and Regulations § 1.704-1(b)(2)(ii)(d). In the event that the allocation of Losses to any Member is prohibited under the first sentence of this **Section 4.1(b)**, such Losses shall be allocated to the remaining Members in proportion to their respective positive Adjusted Capital Account balances. With respect to each Allocation Period (including Allocation Periods thereafter), Profits (or, to the extent necessary, gross income) shall be allocated to the Members up to the aggregate of, and in proportion to, any Losses previously allocated to each Member in accordance with this **Section 4.1(b)** in the reverse order in which such Losses were allocated.

Section 4.2 **Allocations of Certain Tax Items**.

(a) Code § 704(c). If any property, if applicable, contributed to the Company by any Member is subject to the provisions of Code § 704(c), the Members' distributive shares of income, gain, loss and deductions, as computed for income tax purposes, with respect to such property (and, to the extent permitted by the Regulations, with respect to other Company property), shall be determined in accordance with Code § 704(c), utilizing such method of accounting as determined by the Managing Member.

(b) Code § 704(c) Principles. In the event the Book Value of any Company asset is adjusted pursuant to **Section I.D.(2) of Appendix B**, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value utilizing such method of accounting as determined by the Managing Member.

(c) Other Allocation Rules. With regard to PubCo's acquisition of the Class A Common Units in conjunction with the IPO, Profits or Losses shall be allocated to the Members of the Company so as to take into account the varying interests of the Members in the Company using an "interim closing of the books" method in a manner that complies with the provisions of Section 706 of the Code and the Treasury Regulations thereunder. If during any Taxable Year there is any other change in any Member's Units in the Company, the Managing Member shall allocate the Profits or Losses to the Members of the Company so as to take into account the varying interests of the Members in the Company using any method that complies with the provisions of Section 706 of the Code and the Treasury Regulations thereunder.

Section 4.3 **Miscellaneous**.

(a) Earning of Profits and Losses. For all purposes of this Agreement, including the determination of the allocable share of the Profits or Losses (or items thereof) of a Member who acquires or disposes of a Membership Interest during any Taxable Year, Profits or Losses of the Company (or items thereof) for any Taxable Year shall be allocated to the periods of such Taxable Year on the "interim closing of the books" method of accounting unless otherwise agreed by the Managing Member (and, if applicable, a selling Member).

(b) Consistent Tax Reporting. Each Member agrees to report to the appropriate taxing authorities such Member's share of Company Profits or Losses (and, if different, share of the net taxable income or loss of the Company) consistent with this **Section 4** and **Appendix B** attached hereto.

SECTION 5
MANAGEMENT

Section 5.1 **Designation and Authority of Managing Member**. The Managing Member shall be designated by the holders of Class B Voting Units. Except for situations in which the approval of one or more of the Members is specifically required by the express terms of this Agreement, and subject to the provisions of this **Section 5**, (i) all management powers over the business and affairs of the Company shall be exclusively vested in the Managing Member, (ii) the Managing Member shall conduct, direct and exercise full control over all activities of the Company, and (iii) the Managing Member shall have the sole power to bind or take any action on behalf of the Company, or to exercise any rights and powers (including, without limitation, the rights and powers to take certain actions, give or withhold certain consents or approvals, or make certain determinations, opinions, judgments or other decisions) granted to the Company under this Agreement or any other agreement, instrument or other document to which the Company is a party. Without limiting the generality of the foregoing, but subject to any situations in which the approval of the Members is specifically required by this Agreement, (x) the Managing Member shall have discretion in determining whether to issue Equity Interests, the number of Equity Interests to be issued at any particular time, the purchase price for any Equity Interests issued, and all other terms and conditions governing the issuance of Equity Interests and (y) the Managing Member may enter into, approve, and consummate any Liquidity Event or other extraordinary or business combination or divestiture transaction, and execute and deliver on behalf of the Company or the Members any agreement, document and instrument in connection therewith (including amendments, if any, to this Agreement or adoptions of new constituent documents) without the approval or consent of any Member. The Managing Member shall operate the Company and its Subsidiaries in accordance in all material respects with an annual budget, business plan and financial forecasts for the Company and its Subsidiaries for each fiscal year. The Managing Member shall be the "manager" of the Company for the purposes of the TBOC. The Managing Member is hereby authorized to execute, deliver and file the certificate of formation of the Company and all other certificates (and any amendments and/or restatements hereof) required or permitted by the TBOC to be filed in the Office of the Secretary of State of the State of Texas. The Managing Member and Members hereby approve and ratify the filing of the following document with the Secretary of State of the State of Texas: Amendment to the Certificate of formation of the Company by an authorized person, as may be designated by the Managing Member from time to time. The Managing Member is hereby authorized to execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business. Notwithstanding any other provision of this Agreement to the contrary, without the consent of any Member or other Person being required, the Company is hereby authorized to execute, deliver and perform, and the Managing Member or any officer on behalf of the Company, is hereby authorized to execute and deliver (a) the Exchange Agreements, (b) the Tax Receivable Agreement; (c) any other document, certificate or contract relating to or contemplated by the Recapitalization; and (d) any amendment and any agreement, document or other instrument contemplated thereby or related thereto. The Managing Member or any officer is hereby authorized to enter into the documents described in the preceding sentence on behalf of the Company, but such authorization shall not be deemed a restriction on the power of the Managing Member or any officer to enter into other documents on behalf of the Company

Section 5.2 **Authority of the Managing Member; Delegation of Authority**.

(a) Unless otherwise provided in this Agreement, any decision, action, approval or consent required or permitted to be taken by the Managing Member may be taken by the Managing Member through any Person or Persons to whom authority and duties have been delegated pursuant to **Sections 5.2(b)**. The Managing Member shall not cease to be a Managing Member of the Company as a result of the delegation of any duties hereunder. No officer or agent of the Company, in its capacity as such, shall be considered a Managing Member of the Company by agreement, as a result of the performance of its duties hereunder or otherwise.

(b) The Managing Member may, from time to time, delegate to one or more Persons, including any officer or director of the Company or PubCo (or to PubCo's compensation committee or its designees), or to any other Person, such authority and duties as the Managing Member may deem advisable; *provided* that any such Person shall exercise such authority subject to the same duties and obligations to which the Managing Member would have otherwise been subject pursuant to the terms of this Agreement.

(c) The Managing Member may assign titles (including, without limitation, executive chairman, non-executive chairman, chief executive officer, president, vice president, secretary, assistant secretary, treasurer or assistant treasurer) and delegate certain authority and duties to such Persons. Any number of titles may be held by the same officer of the Company or other individual. The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Managing Member. Any delegation pursuant to this **Section 5.2** may be revoked at any time by the Managing Member.

Section 5.3 **Additional or Substitute Managing Member**. No Person may be admitted to the Company as an additional Managing Member or substitute Managing Member without the prior approval of the majority of the holders of Class B Voting Units. A Managing Member will not be entitled to resign as a Managing Member of the Company unless another Managing Member shall have been designated pursuant to **Section 5.1** (and not have previously been removed or resigned). Any additional Managing Member or substitute Managing Member admitted as a Managing Member of the Company pursuant to this **Section 5.3** is hereby authorized to, and shall, continue the Company without dissolution.

Section 5.4 **Fiduciary Duties; Indemnification**.

(a) Fiduciary Duties.

(i) In performing its duties, the Managing Member will be entitled to rely in good faith on the provisions of this Agreement and on information, opinions, reports, or statements (including financial statements and information, opinions, reports or statements as to the value or amount of the assets, liabilities, Profits or Losses of the Company or any facts pertinent to the existence and amount of assets from which distributions to the Members might properly be paid), are furnished by one or more of the following Persons or groups: (A) one or more officers or employees of the Company or its Subsidiaries; (B) any attorney, independent accountant, or other Person employed or engaged by the Company or its Subsidiaries; or (C) any other Person who has been selected with reasonable care by or on behalf of the Company or its Subsidiaries, in each case as to matters which such relying Person reasonably believes to be within any such other Person's or group's professional competence. The preceding sentence shall in no way limit any Person's right to rely on information to the extent provided in Section 3.102 or Section 3.105 of the TBOC. No Manager will be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a Manager.

(ii) The Managers and officers of the Company, in the performance of their duties as such, will owe to the Company duties of loyalty and due care of the type owed by the officers of a corporation to such corporation and its stockholders under the laws of the State of Texas.

(iii) If a Member is offered or presented or discovers a business, investment or acquisition opportunity of the type and character that is within the scope of the Company and its Subsidiaries' actual business within the geographic scope in which the Company and its Subsidiaries then operates, then such Member shall offer the Company an opportunity to consummate such business opportunity on terms and conditions reasonably satisfactory to the Company.

(b) Indemnification.

(i) The Company shall, to the fullest extent permitted by the TBOC, indemnify and defend each Person who was or is made a party or is threatened to be made a party to or is involved in or participates as a witness with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company), by reason of the fact that he or she, or a Person of whom he or she is the legal representative, is or was a Manager or officer, or is or was serving at the request of the Company as a director, officer, employee, fiduciary or agent of another limited liability company or of a corporation, partnership, joint venture, trust or other enterprise (each a "**Proceeding**"), against all expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Person if such Person acted in good faith, with reasonable care and in a manner such Person reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal Proceeding, had no reasonable cause to believe such Person's conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner which such Person reasonably believed to be in or not opposed to the best interests of the Company, or, with respect to any criminal Proceeding, that the Person had reasonable cause to believe that his or her conduct was unlawful.

(ii) The Company shall, to the fullest extent permitted by the TBOC, indemnify and defend any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that such Person, or a Person of whom he or she is the legal representative, is or was a Manager or officer, or is or was serving at the request of the Company as a director, officer, employee, fiduciary or agent of another limited liability company or of a corporation, partnership, joint venture, trust or other enterprise against expenses (including reasonable attorneys' fees) actually and reasonably incurred by such Person in connection with the defense or settlement of such action or suit if such Person acted in good faith, with reasonable care and in a manner such Person reasonably believed to be in or not opposed to the best interests of the Company and except that no indemnification shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable to the Company.

(iii) The rights to indemnification and the payment of expenses incurred in defending a Proceeding in advance of its final disposition conferred in this **Section 5.5(b)**, shall not be exclusive of any other right which any Person may have or hereafter acquire under any statute, provision of this Agreement, any other agreement, as determined by the Managing Member.

(c) Expenses. Subject to the Company having sufficient Available Cash, expenses incurred by any Manager or officer described in **Section 5.5(b)(i)** or **Section 5.5(b)(ii)** hereof in defending a Proceeding shall be paid by the Company in advance of such Proceeding's final disposition upon receipt of an undertaking by or on behalf of such Manager or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Company. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Managing Member deems reasonably appropriate.

(d) Employees and Agents. Persons who are not covered by the foregoing provisions of this **Section 5.5** and who are or were a Manager, officer,

employee or agent of the Company, or who are or were serving at the request of the Company, as an employee, officer or agent of a Subsidiary of the Company, may be indemnified, retroactively or prospectively, to the extent authorized at any time or from time to time by the Managing Member.

(e) Other Terms; Contract Rights.

(i) The provisions of this **Section 5.5** shall be deemed to be a contract right between the Company and each Manager or officer who serves in any such capacity at any time while this **Section 5.5** and the relevant provisions of the TBOC or other applicable law are in effect, and any repeal or modification of this **Section 5.5** or any such law shall not affect any then known (or knowable) right of any such Person or any obligation of the Company with respect to any act, omission, state of facts or Proceeding occurring prior to the time of such repeal or modification or otherwise then existing.

(ii) Except as provided in **Section 5.5**, the Company shall indemnify any such Person seeking indemnification in connection with a Proceeding initiated by such Person only if such Proceeding was authorized by the Managing Member.

(iii) If the TBOC is amended after the Effective Date to authorize further or greater limitations on the liability or fiduciary duties of the Managers or officers than that specified herein, then the limitations on liability or fiduciary duties of the Managers or officers, as applicable, shall be expanded to the fullest extent permitted by the TBOC. If the TBOC is amended to authorize greater indemnification of the Manager, officers or other Persons entitled to indemnification under the foregoing provisions of this **Section 5.5**, then the Company's indemnification obligations to such Person or Persons shall be expanded to the fullest extent permitted by the TBOC.

(iv) The indemnification and other rights provided for in this **Section 5.5** shall inure to the benefit of the heirs, executors and administrators of any Person entitled to indemnification in accordance with the foregoing provisions of this **Section 5.5**.

(f) **D&O Insurance**. The Company shall purchase, at its expense, and at all times maintain, insurance to cover Losses covered by the foregoing indemnification provisions and to otherwise cover Losses for any breach or alleged breach by the Managing Member, the officers of the Company, if any, and any other Persons to whom the Managing Member has delegated its authority pursuant to **Section 5.2** (individually, a "**Covered Person**") of such Covered Person's duties in such amount and with commercially reasonable deductibles; *provided*, that (i) all Covered Persons shall be treated equally under any such insurance policies and (ii) the failure to obtain such insurance shall not affect the right to indemnification of any Covered Person under the indemnification provisions contained herein, including the right to be reimbursed or advanced expenses or otherwise indemnified for Losses hereunder. If any Covered Person recovers any amounts in respect of any Losses from any insurance coverage, then such Covered Person shall, to the extent that such recovery is duplicative, reimburse the Company for any amounts previously paid to such Covered Person by the Company in respect of such Losses.

Section 5.5 **Compensation/Reimbursement**.

(a) The Managing Member shall not be entitled to any compensation for services rendered to the Company in its capacity as Managing Member.

(b) The Company shall pay, or cause to be paid, all costs, fees, operating expenses and other expenses of the Company (including the costs, fees and expenses of attorneys, accountants or other professionals) incurred in pursuing and conducting, or otherwise related to, the activities of the Company. The Company shall also, in the sole discretion of the Managing Member, bear and/or reimburse PubCo or the Managing Member for (i) any costs, fees or expenses incurred by the Managing Member in connection with serving as the Managing Member, (ii) operating, administrative and other similar costs incurred by the Managing Member, to the extent the proceeds are used or will be used by the Managing Member to pay expenses described in this clause (ii), and payments pursuant to any legal, tax, accounting and other professional fees and expenses (but, for the avoidance of doubt, excluding any tax liabilities of the Managing Member), (iii) any judgments, settlements, penalties, fines or other costs and expenses in respect of any claims against, or any litigation or proceedings involving, the Managing Member, (iv) fees and expenses (other than any underwriters' discounts and commissions that are economically recovered by the Managing Member as a result of acquiring Company Units at a discount) related to any securities offering, investment or acquisition transaction (whether or not successful) authorized by PubCo, as the managing member of the Managing Member, (v) other fees and expenses in connection with the maintenance of the existence of the Managing Member, and (vi) all other expenses allocable to the Company or otherwise incurred by PubCo or the Managing Member in connection with operating the Company's business (including expenses allocated to PubCo or the Managing Member by their Affiliates and expenses incurred by PubCo in its capacity as the Managing Member). To the extent that the Managing Member determines in its sole discretion that such expenses are related to the business and affairs of PubCo or the Managing Member that are conducted through the Company and/or its Subsidiaries (including expenses that relate to the business and affairs of the Company and/or its Subsidiaries and that also relate to other activities of PubCo or the Managing Member), the Managing Member may cause the Company to pay or bear all expenses of PubCo or the Managing Member, including, without limitation, compensation and meeting costs of any board of directors or similar body of PubCo or the Managing Member, any salary, bonus, incentive compensation and other amounts paid to any Person including Affiliates of PubCo or the Managing Member to perform services for the Company, litigation costs and damages arising from litigation, accounting and legal costs and franchise taxes, except to the extent such franchise taxes are based on or measured with respect to net income or profits; *provided* that the Company shall not pay or bear any income tax obligations of PubCo or the Managing Member or any obligations of PubCo or the Managing Member under the Tax Receivable Agreement. To the extent practicable, expenses incurred by PubCo or the Managing Member on behalf of or for the benefit of the Company shall be billed directly to and paid by the Company and, if and to the extent any reimbursements to PubCo or the Managing Member or any of their Affiliates by the Company pursuant to this **Section 5.5(b)** constitute gross income to such Person (as opposed to the repayment of advances made by such Person on behalf of the Company), such amounts shall be treated as "guaranteed payments" within the meaning of Section 707(c) of the Code and shall not be treated as distributions for purposes of computing the Members' Capital Account. Reimbursements pursuant to this **Section 5.5(b)** shall be in addition to any reimbursement to PubCo or the Managing Member as a result of indemnification pursuant to **Section 5.4(b)**.

Section 5.6 **Officers**. The Managing Member may (but need not), from time to time, designate and appoint one or more persons as an officer of the Company. No officer need be a resident of the State of Texas, a Member or a Manager. Any officers so designated shall have such authority and perform such duties as the Managing Member may, from time to time, delegate to them. Any such delegation may be revoked at any time by the Managing Member in its sole and absolute discretion. The Managing Member may assign titles to particular officers. Unless the Managing Member otherwise decides, if the title is one commonly used for officers of a corporation formed under TBOC, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office. Any number of officers may be held by the same individual. The salaries or other compensation, if any, of the officer and agents of the Company shall be fixed from time to time by the Managing Member.

SECTION 6
MEMBERS

Section 6.1 **Member Voting**. A Member entitled to vote may vote either in person or by written proxy signed by the Member or by his, her or its duly authorized attorney in fact. Persons present by telephone shall be deemed to present "in person" for purposes hereof. At each meeting of the Members, each Member entitled to

vote (or such Member's designated representative) may vote such Member's Membership Percentage of Class B Voting Units with respect to any matter to be considered at such meeting and which is subject to the vote, consent or approval of the Members. Except as may otherwise be provided herein to the contrary, any matter subject to the consent, approval or direction of the Members hereunder or under the TBOC, shall require the agreement or approval of the holders of a majority of the Class B Voting Units.

Section 6.2 **Written Consent to Action**. Any action required or permitted to be taken by the Members (or by any Members), whether at a meeting or otherwise, may be taken without a meeting, without prior notice and without a vote, if the action is evidenced by a written consent or other written instrument dated and signed (whether or not in counterparts and whether or not through facsimile or email copies) by all of the Members. All such written Member consent(s) shall be delivered to the Company at its principal office.

Section 6.3 **Members Lack of Authority**. No Member (other than the Managing Member), in a Member's capacity as such (other than in its capacity as a Person delegated authority pursuant to **Section 5.2**), shall participate in or have any control over the management of the Company's business or transact any business for the Company; and no Member, in a Member's capacity as a "member" of the Company, shall have any power to sign for or bind the Company.

Section 6.4 **No Right of Partition**. No Member shall have the right to seek or obtain partition by court decree or operation of law of any Company property, or the right to own or use particular or individual assets of the Company.

Section 6.5 **Limitation of Liability**. Except as provided in this Agreement or in the TBOC, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Member shall be obligated personally for any such debts, obligations or liabilities solely by reason of being a member of the Company. Except as otherwise provided in this Agreement or the TBOC, a Member's liability (in its capacity as such) for Company obligations, liabilities and Losses shall be limited to the Company's assets; *provided* that a Member may be required to return to the Company any distribution made to it pursuant to **Section 3.3**.

SECTION 7
UNREGISTERED SECURITIES

THE UNITS ISSUED BY THE COMPANY HAVE NOT BEEN REGISTERED, QUALIFIED, APPROVED OR DISAPPROVED UNDER ANY FEDERAL, STATE OR FOREIGN SECURITIES LAWS AND HAVE BEEN SOLD OR ISSUED IN BY THE COMPANY IN RELIANCE ON EXEMPTIONS FROM REGISTRATION AFFORDED BY APPLICABLE FEDERAL, STATE AND/OR FOREIGN SECURITIES LAWS.

THE UNITS ISSUED BY THE COMPANY MAY NOT BE OFFERED, SOLD, TRANSFERRED, PLEDGED, HYPOTHECATED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH UNITS UNDER APPLICABLE FEDERAL, STATE AND/OR FOREIGN SECURITIES LAWS, UNLESS SOLD OR OTHERWISE TRANSFERRED PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION AND, IF REQUESTED BY THE MANAGING MEMBER, THE TRANSFERRING MEMBER FIRST PROVIDES THE COMPANY WITH AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE MANAGING MEMBER TO SUCH EFFECT, WHICH OPINION SHALL BE AT THE COST AND EXPENSE OF THE COMPANY.

EACH MEMBER HEREBY REPRESENTS AND WARRANTS TO THE COMPANY, THE MANAGING MEMBER AND EACH OTHER MEMBER THAT EACH SUCH MEMBER HAS ACQUIRED SUCH MEMBER'S UNITS FOR INVESTMENT PURPOSES ONLY. IN ADDITION TO ANY OTHER CONDITIONS IMPOSED BY THIS AGREEMENT, EACH MEMBER ACKNOWLEDGES AND UNDERSTANDS THE ABOVE RESTRICTIVE LEGENDS AND AGREES TO ACCEPT AND ABIDE BY THE ABOVE DESCRIBED RESTRICTIONS ON THE TRANSFERABILITY OF SUCH MEMBER'S UNITS (AND RELATED MEMBERSHIP INTEREST).

The Company will imprint such legend on certificates (if any) evidencing Units. The legend set forth above will be removed from the certificates (if any) evidencing any units which cease to be Units in accordance with the definition thereof.

SECTION 8
TRANSFERS OF MEMBERSHIP INTERESTS

Section 8.1 **Transfers by Unitholders**.

(a) No Unitholder shall Transfer, or offer to agree to Transfer, directly or indirectly, all or any part of any interest in such Unitholder's Units or other Equity Interests, except (i) any Transfer of Units (A) from a Continuing Member to another Continuing Member or (B) Exchanges pursuant to and in accordance with **Section 8.6** (each being an "**Exempt Transfer**"), or (ii) (A) with the prior written consent of the Managing Member, and (B) then only in compliance with this **Section 8**. Notwithstanding the foregoing, no party hereto shall avoid the provisions of this Agreement by making one or more Transfers to one or more transferees permitted under clause (i)(A) above and then disposing of all or any portion of such party's interest in such transferee if such disposition would result in such transferee ceasing to be a permitted transferee. No Member may withdraw from the Company pursuant to Section 101.205 of the TBOC and no Member may withdraw from the Company except as provided in and pursuant to the terms of this Agreement.

(b) Except in connection with Exchanges pursuant to the Exchange Agreements, Transfers pursuant to **Section 8.6** or any other Transfer to the Company, each Transferee of Units shall, as a condition prior to such Transfer, execute and deliver to the Company a counterpart or joinder to this Agreement pursuant to which such Transferee shall agree to be bound by the provisions of this Agreement and such Transferee shall become a substituted Member on the effective date of such Transfer, which effective date shall not be earlier than the date of compliance with the conditions to such Transfer, and such admission shall be shown on the books and records of the Company

(c) Notwithstanding anything to the contrary in this **Section 8**, no Unitholder shall make a Transfer of Units to a competitor of the Company or any Subsidiary.

(d) The Members agree that the Managing Member and the Company shall not be required to recognize the interest or purported interest in the Company of any Person who has obtained an interest or a purported interest in the Company, directly or indirectly, as a result of a Transfer which is not authorized by this Agreement, and further agree that any such Transfer shall be null and void for all purposes (except to the extent otherwise provided by law or in this **Section 8**). If there is a doubt as to the ownership of an interest in the Company or who is entitled to a distribution of Available Cash or of other property, including liquidating proceeds, the Managing Member (or liquidating trustee, if applicable), may accumulate the Available Cash or liquidation proceeds or other property attributable to the interest(s) in question until the issue is resolved to the reasonable satisfaction of the Managing Member.

(e) Except as otherwise expressly provided herein, it shall be a condition precedent to any Transfer of any Class A Common Unit held by a Member other than PubCo that, concurrently with such Transfer such transferring Member shall also Transfer to the transferee the shares of Paired Voting Stock corresponding to such Transferred Class A Common Units.

Section 8.2 **Void Transfers**. Any Transfer by any Unitholder of any Units or other interest in the Company in contravention of this Agreement (including, without limitation, the failure of the Transferee to execute a counterpart in accordance with **Section 8.1(b)**) shall be void ab initio and ineffectual and shall not bind or be recognized by the Company or any other party. No such purported Transferee shall have any right to any distributions of the Company.

Section 8.3 **Effect of Transfer**.

(a) Any Member who shall Transfer any Units or other interest in the Company shall cease to be a Member of the Company with respect to such Units or other interest Transferred and shall no longer have any rights or privileges of a Member with respect to such Units or other interest Transferred.

(b) Notwithstanding anything to the contrary in this Agreement, no Member shall attempt to avoid the provisions of **Section 2.7** (Non-Competition and Non-Solicitation) or **Section 10.7** (Confidentiality) as result of making one (1) or more Transfers pursuant to **Section 8.2**, and the provisions of **Section 2.7** and **Section 10.7** shall be interpreted to apply to such Member as if such Transfers had not occurred.

(c) Any Person who acquires in any manner whatsoever any Units or other interest in the Company, irrespective of whether such Person has accepted and adopted in writing the terms and provisions of this Agreement, shall be deemed by the acceptance of the benefits of the acquisition thereof to have agreed to be subject to and bound by all of the terms and conditions of this Agreement that any predecessor in such Units or other interest in the Company of such Person was subject to or by which such predecessor was bound.

Section 8.4 **Additional Restrictions on Transfer**.

(a) In connection with the Transfer of any Units, the Unitholder holding such Units will deliver to the Company (a) a written notice describing in reasonable detail the Transfer or proposed Transfer and (b) to the extent required by the Managing Member, an opinion of counsel that (to the Managing Member's reasonable satisfaction) is knowledgeable in securities law matters or other documentation acceptable to the Managing Member to the effect that such Transfer of Units may be effected without registration of such Units under the Securities Act. In addition, if the holder of such Units delivers to the Company an opinion of such counsel, or other documentation acceptable to the Managing Member to the effect that no subsequent Transfer of such Units shall require registration under the Securities Act, the Company shall promptly deliver to such holder new certificates for such Units that do not bear the Securities Act legend set forth in Section 7.

(b) Notwithstanding any contrary provision in this Agreement, the Managing Member may impose such vesting requirements, forfeiture provisions, Transfer restrictions, minimum retained ownership requirements or other similar provisions with respect to any Units that are outstanding as of the date of this Agreement or are created thereafter, only with the written consent of the holder of such Units. Such requirements, provisions and restrictions need not be uniform and may be waived or released by the Managing Member in its sole discretion with respect to all or a portion of the Units owned by any one or more Members at any time and from time to time, and shall not, to the fullest extent permitted by law, constitute the breach of any duty hereunder or otherwise existing at law, in equity or otherwise.

(c) Notwithstanding any contrary provision in this Agreement, in no event may any Transfer of Units be made by any Member or Assignee if the Managing Member determines in good faith that:

(i) such Transfer is made to any Person who lacks the legal right, power or capacity to own such Units;

(ii) such Transfer would require the registration of such transferred Units or of any class of Units pursuant to any applicable U.S. federal or state securities laws (including, without limitation, the Securities Act or the Exchange Act) or other non-U.S. securities laws (including Canadian provincial or territorial securities laws) or would constitute a non-exempt distribution pursuant to applicable provincial or state securities laws;

(iii) such Transfer would cause (i) all or any portion of the assets of the Company to (A) constitute "plan assets" (under ERISA, the Code or any applicable similar law) of any existing or contemplated Member, or (B) be subject to the provisions of ERISA, Section 4975 of the Code or any applicable similar law, or (ii) the Managing Member to become a fiduciary with respect to any existing or contemplated Member, pursuant to ERISA, any applicable similar law, or otherwise;

(iv) to the extent requested by the Managing Member, the Company does not receive such legal and/or tax opinions and written instruments (including, without limitation, copies of any instruments of Transfer and such Assignee's consent to be bound by this Agreement as an Assignee) that are in a form satisfactory to the Managing Member, as determined by the Managing Member in good faith; or

(v) such Transfer would pose a material risk that the Company would be treated as a "publicly traded partnership" within the meaning of Section 7704 of the Code and the Treasury Regulations promulgated thereunder.

(d) In addition, notwithstanding any contrary provision in this Agreement, to the extent the Managing Member shall reasonably determine that interests in the Company do not meet the requirements of Treasury Regulation Section 1.7704-1(h) (determined taking into account the rules of Treasury Regulations Section 1.7704-1(h)(3), *provided* that, for such purpose, unless otherwise required by applicable Law, the Company and the Managing Member shall assume that each Member as of immediately after the Pre-IPO Exchanges is treated as a single partner within the meaning of Regulations Section 1.7704-1(h) (and none of the Member's beneficial owners is treated as a separate partner)), the Managing Member may impose such restrictions on the Transfer of Units or other interests in the Company as the Managing Member may reasonably determine to be necessary or advisable so that the Company is not treated as a "publicly traded partnership" within the meaning of Section 7704 of the Code and the Treasury Regulations promulgated thereunder.

Section 8.5 **Transfer Fees and Expenses**. The Transferor and Transferee of any Units or other interest in the Company shall be jointly and severally obligated to reimburse the Company for all reasonable expenses (including attorneys' fees and expenses) of any Transfer or proposed Transfer, whether or not consummated.

Section 8.6 **Redemption and Exchange Rights**.

(a) Exchange Procedures.

(i) Upon the terms and subject to the conditions set forth in this **Section 8.6** and the other provisions of this Agreement, after the expiration of the period commencing on the effectiveness of the S-1 related to PubCo's initial public offering and ending on the date that is six (6) months following such commencement date (the "**Lock-Up Period**"), each Class A Member (other than PubCo) shall be entitled, not more than once per month, to cause the Company to effect an Exchange by delivering an Exchange Notice to the Company with a copy to PubCo. Each Exchange Notice shall be in the form set forth on **Appendix D** and shall include all information required to be included therein. In the event that an Exchange is being exercised in order to participate in a Piggyback Registration, the Exchange Notice Date shall be prior to the expiration of the time period in which a holder of securities is required to notify PubCo that it wishes to participate in such Piggyback Registration in accordance with the Registration Rights Agreement.

(b) Exchange Payment. The Exchange shall be consummated on the Exchange Date. Unless PubCo has exercised its PubCo Call Right pursuant to **Section 8.6(f)**, on the Exchange Date (to be effective immediately prior to the close of business on the Exchange Date) (i) PubCo shall contribute to the Company for delivery to the Exchanging Member the Stock Exchange Payment with respect to any Exchanged Units not subject to a Cash Exchange Notice, (ii) the Exchanging Member shall transfer and surrender the Exchanged Units to the Company, free and clear of all liens and encumbrances, (iii) the Company shall issue to PubCo a number of Class A Common Units equal to the number of Class A Common Units surrendered pursuant to clause (ii), (iv) solely to the extent necessary in connection with an Exchange, PubCo shall undertake all actions, including an issuance, reclassification, distribution, division or recapitalization, with respect to the Class A Common Stock to maintain a one-to-one ratio between the number of Class A Common Units owned by PubCo, directly or indirectly, and the number of outstanding shares of Class A Common Stock and Class C Common Stock, taking into account the issuance in clause (iii), any Stock Exchange Payment, and any other action taken in connection with this **Section 8.6**, (v) the Company shall (x) cancel the redeemed Class A Common Units which were Exchanged Units held by the Exchanging Member and (y) transfer to the Exchanging Member the Stock Exchange Payment, as applicable, and (vi) PubCo shall cancel the surrendered shares of Paired Voting Stock. On or prior to the Exchange Date, and as a condition to the Exchange, the Exchanging Member shall make any applicable Certificate Delivery. Upon the Exchange of all of a Member's Units, such Member shall cease to be a Member of the Company.

(c) Splits, Distributions and Reclassifications. If there is any reclassification, reorganization, recapitalization or other similar transaction in which the shares of Class A Common Stock are converted or changed into another security, securities or other property, this **Section 8.6** shall continue to be applicable, *mutatis mutandis*, with respect to such security or other property. This **Section 8.6(c)** is intended to preserve the intended economic effect of **Section 2.1** and this **Section 8.6** and to put each Member in the same economic position, to the greatest extent possible, with respect to Exchanges as if such reclassification, reorganization, recapitalization or other similar transaction had not occurred and shall be interpreted in a manner consistent with such intent.

(d) PubCo Covenants. PubCo shall at all times keep available, solely for the purpose of issuance upon an Exchange, out of its authorized but unissued shares of Class A Common Stock, such number of shares of Class A Common Stock that shall be issuable upon the Exchange of all outstanding Class A Common Units (other than those Class A Common Units held by PubCo); *provided* that nothing contained in this Agreement shall be construed to preclude the Company or PubCo from satisfying their obligations with respect to an Exchange by delivery of shares of Class A Common Stock that are held in treasury of PubCo. PubCo covenants that all shares of Class A Common Stock that shall be issued upon an Exchange shall, upon issuance thereof, be validly issued, fully paid and non-assessable, free and clear of all liens and encumbrances. In addition, for so long as the shares of Class A Common Stock are listed on a stock exchange or automated or electronic quotation system, PubCo shall cause all shares of Class A Common Stock issued upon an Exchange to be listed on such stock exchange or automated or electronic quotation system at the time of such issuance. For purposes of this **Section 8.6(d)**, references to the "Class A Common Stock" shall be deemed to include any Equity Interests issued or issuable as a result of any reclassification, combination, subdivision or similar transaction of the Class A Common Stock that any Member would be entitled to receive pursuant to **Section 8.6(c)**.

(e) Exchange Taxes. PubCo, the Company and each Exchanging Member shall bear their own expenses in connection with the consummation of any Exchange, whether or not any such Exchange is ultimately consummated, except that the Company shall bear any transfer taxes, stamp taxes or duties, or other similar taxes in connection with, or arising by reason of, any Exchange; *provided*, *however*, that if any shares of Class A Common Stock are to be delivered in a name other than that of the Exchanging Member (subject to the restrictions in **Section 8**), then the Person or Persons in whose name the shares are to be issued shall pay to the Company or PubCo, as applicable, the amount of any additional tax that may be payable in respect of any Transfer involved in such issuance in excess of the amount otherwise due if such shares were issued in the name of the Exchanging Member or shall establish to the reasonable satisfaction of the Company or PubCo, as applicable, that such additional tax has been paid or is not payable.

(f) PubCo Call Rights. Notwithstanding anything to the contrary contained in this **Section 8.6(f)**, with respect to any Exchange Notice, an Exchanging Member shall be deemed to have offered to sell its Exchanged Units as described in any Exchange Notice directly to PubCo (rather than causing the Company to redeem such Exchanged Units), and PubCo may, by delivery of a written notice to the Exchanging Member no later than five (5) Business Days following the giving of an Exchange Notice, in accordance with, and subject to the terms of, this **Section 8.6(f)** (such notice, a "**PubCo Call Notice**"), elect to purchase directly and acquire such Exchanged Units on the Exchange Date by paying to the Exchanging Member (or such other Person specified in the Exchange Notice) the Stock Exchange Payment, whereupon PubCo shall acquire the Exchanged Units on the Exchange Date and be treated for all purposes of this Agreement as the owner of such Class A Common Units. Except as otherwise provided in this **Section 8.6(f)**, an exercise of the PubCo Call Right shall be consummated pursuant to the same timeframe and in the same manner as the relevant Exchange would have been consummated if PubCo had not given a PubCo Call Notice, in each case as relevant, including that **Section 8.6(a)(ii)** shall apply *mutatis mutandis* and that clauses (iv) and (vi) of **Section 8.6(b)** shall apply (notwithstanding that the other clauses thereof do not apply).

(g) Distribution Rights. No Exchange shall impair the right of the Exchanging Member to receive any Distributions payable on the Class A Common Units redeemed pursuant to such Exchange in respect of a record date that occurs prior to the Exchange Date for such Exchange. No Exchanging Member, or a Person designated by an Exchanging Member to receive shares of Class A Common Stock, shall be entitled to receive, with respect to such record date, Distributions or dividends both on Class A Common Units redeemed by the Company from such Exchanging Member and on shares of Class A Common Stock received by such Exchanging Member, or other Person so designated, if applicable, in such Exchange.

(h) Exchange Restrictions

(i) Notwithstanding any contrary provision in this Agreement, to the extent the Managing Member shall reasonably determine that interests in the Company do not meet the requirements of Treasury Regulation Section 1.7704-1(h) (determined taking into account the rules of Treasury Regulations Section 1.7704-1(h)(3), *provided* that, for such purpose, unless otherwise required by applicable Law, the Company and the Managing Member shall assume that each Member as of immediately following the Pre-IPO Exchanges is treated as a single partner within the meaning of Regulations Section 1.7704-1(h) (and none of the Member's beneficial owners is treated as a separate partner)), the Managing Member may impose such restrictions on Exchanges (including limiting Exchanges or creating priority procedures for Exchanges) as the Managing Member may reasonably determine to be necessary or advisable so that the Company is not treated as a "publicly traded partnership" within the meaning of Section 7704 of the Code and the Treasury Regulations promulgated thereunder. If the Managing Member determines in good faith that any such limitations or restrictions are necessary, then before imposing any such restrictions, the Managing Member shall first consult in good faith with the Continuing Member in order to attempt to ameliorate the cause of such restrictions. Notwithstanding anything to the contrary herein, no Exchange shall be permitted (and, if attempted, shall, to the fullest extent permitted by law, be void ab initio) if, in the good faith determination of the Managing Member, such Exchange would pose a material risk that the Company would be treated as a "publicly traded partnership" under Section 7704 of the Code.

(ii) For the avoidance of doubt, and notwithstanding anything to the contrary herein, a Member shall not be entitled to effect an Exchange to the extent PubCo or the Company reasonably determines that such Exchange (i) would be prohibited by law or regulation (including, without limitation, the unavailability of any requisite registration statement filed under the Securities Act or any exemption from the registration requirements thereunder) or (ii) would not be permitted under any other agreements with PubCo or its subsidiaries by which such Member is bound (including, without limitation, this Agreement) or any written policies of PubCo related to unlawful or inappropriate trading applicable to its directors, officers or other personnel. Upon such determination, PubCo shall notify the Member requesting the Exchange of such determination, which notice shall include an explanation in reasonable detail as to the reason that the Exchange has not been effected.

(i) Tax Matters

(i) In connection with any Exchange, the Exchanging Member shall, to the extent it is legally entitled to do so, deliver to PubCo or the Company, as applicable, a certificate, dated as of the Exchange Date and sworn under penalties of perjury, in a form reasonably acceptable to PubCo or the Company, as applicable, certifying as to such Exchanging Member's taxpayer identification number and that such Exchanging Member is a not a foreign person for purposes of Section 1445 and Section 1446(f) of the Code, which certificate may be an Internal Revenue Service Form W-9 if then sufficient for such purposes under applicable Law (such certificate a "**Non-Foreign Person Certificate**"). If an Exchanging Member is unable to provide a Non-Foreign Person Certificate in connection with an Exchange, then, at the Managing Member's option, (i) such Exchanging Member shall provide a certificate substantially in the form described in Treasury Regulations Section 1.1446(f)-2(c)(2)(ii)(B) or (ii) the Company shall deliver a certificate substantially in the form described in Regulations Section 1.1446(f)-2(c)(2)(ii)(C), in each case setting forth the liabilities of the Company allocated to the Exchanged Units under Section 752 of the Code, and PubCo or the Company, as applicable, shall be permitted to withhold on the amount realized by such Exchanging Partner in respect of such Exchange as provided in Section 1446(f) of the Code and Treasury Regulations thereunder and consistent with the certificate provided pursuant to clause (i) or (ii) of this sentence, as applicable.

(ii) For U.S. federal and applicable state and local income tax purposes, each of the Exchanging Member, the Company and PubCo agree to treat, to the maximum extent permitted by applicable law, each Exchange as a taxable sale by the Exchanging Member of the Exchanging Member's Class A Common Units (together with an equal number of shares of Paired Voting Stock, which shares shall not be allocated any economic value) to PubCo in exchange for (A) the payment by PubCo of the Stock Exchange Payment to the Exchanging Member, and (B) corresponding payments under the Tax Receivable Agreement. Within thirty (30) days following the Exchange Date, PubCo shall deliver a Section 743 notification to the Company in accordance with Treasury Regulations Section 1.743-1(k)(2).

(j) Withholding. Notwithstanding any other provision in this Agreement, with respect to any Exchange pursuant to **Section 8.6**, PubCo, the Company and their agents and affiliates shall have the right to deduct and withhold taxes (in cash or in kind, including Class A Common Stock with a fair market value determined in the sole discretion of the Managing Member equal to the amount of such taxes) from any payments to be made pursuant to such Exchange, if, in their opinion, such withholding is required by law. The Managing Member may, in its sole discretion, allow an Exchanging Member to pay such taxes owed on the Exchange in cash in lieu of the Company or PubCo, as applicable, withholding or deducting such taxes. To the extent that any of the aforementioned amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been delivered and paid to the recipient of the payments in respect of which such deduction and withholding was made. To the extent that any payment pursuant to this Agreement is not reduced by such deductions or withholdings, such recipient shall indemnify the applicable withholding agent for any amounts imposed by any taxing authority together with any costs and expenses related thereto.

(k) Representations and Warranties. In connection with any Exchange or exercise of a PubCo Call Right, (i) upon the issuance of the Class A Common Stock, the Exchanging Member shall represent and warrant that the Exchanging Member is the owner of the number of Class A Common Units that the Exchanging Member is electing to Exchange and that such Class A Common Units are not subject to any liens or restrictions on transfer (other than restrictions imposed by this Agreement, the certificate of incorporation, bylaws and any other governing documents of PubCo and applicable Law), and (ii) if the Managing Member elects a Stock Exchange Payment, the Managing Member shall represent that (A) the shares of Class A Common Stock issued to the Exchanging Member in settlement of the Stock Exchange Payment are duly authorized, validly issued, fully paid and non-assessable and were issued in compliance in all material respects with applicable securities laws, and (B) the issuance of such shares of Class A Common Stock issued to the Exchanging Member in settlement of the Stock Exchange Payment does not conflict with or result in any breach of the organizational documents of PubCo.

Section 8.7 **Indirect Ownership**. If any Unitholder holds Units through a Person other than an individual, then each beneficial owner of such Unitholder shall be deemed to be, together with such Unitholder, the Unitholder for the purposes of all covenants and obligations of such Unitholder under this Agreement and the agreements contemplated hereby, and such Unitholder shall cause such beneficial owners to comply with and perform such covenants. Any contrary provision in this Agreement or any corporate governing documents of any Unitholder that is not an individual notwithstanding, except as specifically permitted or required by this Agreement, such Unitholder and its equityholders, partners and beneficiaries may not, without full compliance with this **Section 8**, (a) directly or indirectly transfer any Units, (b) permit the transfer of any portion of the direct or indirect equity or beneficial interest in the Unitholder or (c) otherwise seek to avoid any transfer restriction or requirement in this **Section 8** by issuing, or permitting the issuance of, any direct or indirect equity or beneficial interest in such Unitholder in a manner that would fail to comply with this Agreement if such Person were a direct holder of Units. If any Unitholder holds Units through a Person other than an individual, then the beneficial owner of such Unitholder who is or was an employee or independent contractor of the Company or its subsidiaries shall be deemed to be, together with such Unitholder, the Unitholder for the purposes of this Agreement with respect to provisions addressing or impacted by the employment, engagement or conduct of the Unitholder in a way that refers to a Unitholder as an individual.

SECTION 9
DISSOLUTION, WINDING UP AND LIQUIDATING DISTRIBUTIONS

Section 9.1 **Events of Dissolution**. The Company shall be dissolved, and its assets liquidated pursuant to **Section 9.3** below, upon the first to occur of the following (each, an "**Event of Dissolution**"):

(a) the occurrence of any event that terminates the continued membership in the Company of the theretofore last remaining Member;

(b) the entry of a decree of judicial dissolution or the administrative dissolution of the Company, as provided in the TBOC;

(c) the occurrence of any other event which causes a dissolution of the Company as set forth in the TBOC; and

(d) the determination of the Managing Member in its sole discretion;*provided* that in the event of a dissolution pursuant to this clause (d), the relative economic rights of each class of Units immediately prior to such dissolution shall be preserved to the greatest extent practicable with respect to distributions made to Members pursuant to **Section 9.3** in connection with the winding up of the Company, taking into consideration tax and other legal constraints that may adversely affect one or more parties hereto and subject to compliance with applicable laws and regulations, unless, and to the extent that, with respect to any class of Units, holders of not less than 90% of the Units of such class consent in writing to a treatment other than as described above; *provided*, that if the dissolution of the Company pursuant to and in accordance with clauses (c) or (d) in this **Section 9.1** would have a material adverse effect on any Member, the dissolution of the Company shall require the prior written consent of such Member, which consent shall not be unreasonably withheld.

Section 9.2 **Winding Up**. Upon the dissolution of the Company, as provided by **Section 9.1** above, the Managing Member (or, as applicable, if none, the personal or other legal representative of the last remaining Member), shall immediately commence to wind up the Company's affairs and, except as provided in **Section 9.3** hereof, shall (a) cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which such event occurs or the final liquidation is completed, as applicable, (b) deliver to each known claimant of the Company the notice required by Section 11.052 of the TBOC, and (c) distribute all the assets of the Company, in accordance with **Section 9.3** hereof, in liquidation of the Company as soon as practicable. During the wind-up phase of the Company, the Managing Member (or, if none, the personal or other legal representative of the last remaining Member, as the case may be), may take all actions necessary or appropriate to winding up the business and affairs of the Company, including selling or causing the Company to sell or otherwise dispose of the Company's assets as promptly as possible, but in a manner which is consistent with obtaining the fair market value thereof.

Section 9.3 **Liquidating Distributions.** Upon the winding up of the Company, and its business and affairs following the dissolution of the Company, as provided in **Section 9.1** and **Section 9.2** hereof, the Managing Member (or, as applicable, if none, the personal or other legal representative of the last remaining Member), shall distribute, or cause the Company to distribute its cash, including the proceeds from the disposition of the Company's noncash assets, as promptly as possible, in the following order of priority:

(a) first, to the Company creditors, including Members (or Affiliates of any Members) (or former Members) who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Company;

(b) second, to set up any reserves which the Managing Member deems reasonably necessary for contingent or unforeseen liabilities or obligations of the Company arising out of or in connection with the business of the Company; and

(c) thereafter, to the Members in accordance with**Section 3.1**.

Section 9.4 **Liquidating Trust**. The Managing Member may cause the Company to establish a trust to receive the distributions to be made to the Members (or the successors or assigns of the last remaining Member) under **Section 9.3** hereof for the purposes of liquidating Company non-cash assets, collecting amounts owed to the Company, and paying liabilities or obligations of the Company. Distributions from this trust, if established, to the Members (in their capacity as such) (or successors or assigns of the last remaining Member) shall occur, from time to time, in the reasonable discretion of the trustee of the liquidating trust, in the same proportions as would have been distributed to the Members (or such successors and assigns) under **Section 9.3** hereof.

Section 9.5 **Certificate of Termination**. In accordance with the TBOC, following the dissolution, wind-up and liquidation of the Company, the Managing Member (or, if none, the personal or other legal representative of the last remaining Member), shall prepare and file, or cause to prepared and filed, a Certificate of Termination (to the Company's Certificate) with the Secretary of State of Texas, which certificate shall be in the form required by Section 11.101 of the TBOC, and take such other actions as may be necessary to terminate the Company.

SECTION 10
BOOKS AND RECORDS; INFORMATION RIGHTS; INSURANCE

Section 10.1 **Books and Records**. The Company shall maintain, at the Company's principal office, adequate books and records, including all records required to be maintained by the Company pursuant to Section 101.501 and Section 3.151 of the TBOC. The books of the Company, for tax and financial reporting purposes, shall be kept on the accrual method of accounting.

Section 10.2 **Accounting Decisions**. All decisions as to accounting matters, except as specifically provided to the contrary herein, to be made by the Managing Member, on behalf of the Company, shall be made consistent with the Company's method of accounting for federal income tax purposes.

Section 10.3 **Income Tax Elections**. Except as otherwise provided herein to the contrary, the Managing Member may cause the Company to make any income tax elections which are otherwise available to the Company under the Code or applicable Treasury Regulations, as determined in the discretion of the Managing Member. Without limiting the generality of the foregoing, the Managing Member shall cause the Company to have in effect (and to cause each direct or indirect subsidiary that is treated as a partnership for U.S. federal income tax purposes to have in effect) an election pursuant to Section 754 of the Code, to adjust the tax basis of Company properties, for the taxable year that includes the date of the initial public offering of shares of Class A Common Stock and for each taxable year in which an Exchange occurs. The Managing Member shall determine whether to make or revoke any other available election or decision relating to tax matters, including controversy in **Section 11.1** pursuant to the Code. Each Member will upon request supply any information necessary to give proper effect to any such election.

Section 10.4 **Taxes and Liens**. The Company shall, and shall cause its Subsidiaries to, (i) file all tax returns and appropriate schedules thereto that are required to be filed under applicable law, prior to the date of delinquency; (ii) pay and discharge all taxes, assessments, and governmental charges or levies imposed upon their income and profits or upon any properties belonging to them, prior to the date on which penalties attach thereto; and (iii) pay all taxes, assessments, and governmental charges or levies that, if unpaid, might become a lien or charge upon any of their properties; *provided*, that the Company shall have the right to contest in good faith and by appropriate proceedings the applicability or validity of any such tax, assessment, charge, or levy without paying such tax, assessment, charge, or levy so long as adequate reserves with respect thereto are maintained in accordance with GAAP.

Section 10.5 **Tax Reports**. Within one hundred twenty (120) days after the end of each fiscal year and at the expense of the Company, the Managing Member shall cause to be prepared a complete accounting of the affairs of the Company, together with the Company's federal and state tax returns and an associated Schedule K-1 for

each Member, together with such other information reasonably required by each Member for federal, state, and local income tax reporting purposes for that year, which accounting shall be completed and such information shall be furnished to each Member promptly after the close of such Taxable Year of the Company.

Section 10.6 **Insurance**. In addition to the insurance to be maintained in accordance with **Section 5.5(f)**, the Company shall, and shall cause its Subsidiaries to, maintain (i) full insurance on their assets which are of an insurable character against loss or damage by fire, flood, theft, explosion, sprinklers and all other hazards and risks ordinarily insured against under all risk policies in use in the jurisdiction where such assets are located, (ii) insurance against claims for general comprehensive liability (including without limitation products liability) relating to bodily injury, death or property damage in amounts as shall be reasonably satisfactory to the Managing Member and are consistent with industry standards in regard to the type and amounts of insurance customarily carried by similar companies and (iii) insurance under the workers' compensation laws of the states in which the Company and its Subsidiaries conduct business. The Company shall provide the Managing Member with copies of all such policies upon request, which policies shall be issued by financially sound and reputable insurers acceptable to the Managing Member in its reasonable discretion.

Section 10.7 **Confidentiality**.

(a) Each Member covenants and agrees that financial information, books, records, business strategies, business practices, methodologies, formula or process of the Company or its Affiliates disclosed to Member (collectively, the "**Confidential Information**") shall be maintained confidential by each such Member at all times. Each Member covenants and agrees that each Member shall not at any time divulge or reveal any of the Confidential Information to any Person or utilize any of the Confidential Information for the benefit of any Person, party or entity, except as expressly authorized by this Agreement or with the prior written consent of the Managing Member.

(b) Nothing contained in this **Section 10.7** shall prevent any Member from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iii) to the extent necessary in connection with the exercise of any remedy hereunder; (iv) to other Members; or (v) to such Member's representatives who, in the reasonable judgment of such Member, need to know such Confidential Information and agree to be bound by the provisions of this **Section 10.7** or who are already bound by confidentiality restrictions due to the nature of their representation of such Member; *provided*, that in the case of clause (i) or (ii), such Member shall notify the Company and other Member of the proposed disclosure as far in advance of such disclosure as practicable (but in no event make any such disclosure before notifying the Company and other Member) and use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Company, when and if available.

(c) The restrictions of this **Section 10.7** shall not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by a Member in violation of this Agreement; (ii) is or becomes available to a Member or any of its representatives on a non-confidential basis prior to its disclosure to the receiving Member and any of its representatives in compliance with this Agreement; (iii) is or has been independently developed or conceived by such Member without use of Confidential Information; or (iv) becomes available to the receiving Member or any of its representatives on a non- confidential basis from a source other than the Company, any other Member or any of their respective representatives; *provided*, that such source is not known by the recipient of the Confidential Information to be bound by a confidentiality agreement with the disclosing Unitholder or any of its representatives.

SECTION 11
PARTNERSHIP REPRESENTATIVE

Section 11.1 **Partnership Representative**.

(a) The Partnership Representative shall be the Managing Member or, if the Managing Member or any of its Affiliates no longer owns an interest in the Company, then such Member as shall be appointed by the Managing Member, as determined from time to time. If any state or local tax law provides for a tax matters partner, partnership representative or person having similar rights, powers, authority or obligations, the Partnership Representative shall also serve in such capacity. The Partnership Representative shall designate from time to time a "designated individual" to act on behalf of the Partnership Representative, and such designated individual shall be subject to replacement by the Partnership Representative in accordance with the Code and Treasury Regulations.

(b) The Partnership Representative is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services incurred in connection therewith. The Partnership Representative may employ experienced tax advisors to represent the Company in connection with any audit or investigation of the Company by any tax authority and in connection with all subsequent administrative and judicial proceedings arising out of such audit. All expenses reasonably incurred by the Partnership Representative in serving as the Partnership Representative (including but not limited to fees and expenses of counsel and tax advisors) shall be a Company expense and shall be paid or reimbursed, without interest, by the Company.

(c) The Partnership Representative shall keep the Members reasonably informed of all administrative and judicial proceedings involving the Company or any Company return, as required by the Code. The Partnership Representative shall notify the Members, within thirty (30) days after it receives any notice from the IRS or any state, local or foreign taxing authority, and shall forward to each Member copies of all material written communications it may receive in that capacity, of (a) any administrative or judicial proceedings with respect to an examination of, or proposed adjustments to, the income, deductions, gains, losses or credits of the Company, (b) any extension of the statute of limitations with respect to any taxable year of the Company, (c) filing of a request for administrative adjustment with respect to the Company, (d) filing of a suit concerning any tax refunds or deficiency relating to any Company administrative adjustment or (e) entering into any settlement agreement relating to any Company item of income, gain, loss, deduction or credit for any taxable period of the Company. Each Member agrees to cooperate with the Partnership Representative and to do or refrain from doing any or all things reasonably required by the Partnership Representative in connection with the conduct of all such proceedings.

(d) In the event of an audit of the Company that is subject to the partnership audit procedures enacted under Section 1101 of the Bipartisan Budget Act of 2015 (the "**BBA Procedures**"), the Partnership Representative, in its sole discretion, shall have the right to make any and all elections and to take any actions that are available to be made or taken by the Partnership Representative or the Company under the BBA Procedures (including any election under Code Section 6226) that the Partnership Representative believes to be in the best interest of the Company or all of the Members. If the IRS adjusts any items of Company taxable income, gain, loss, deduction or credit for a given year (a "**Review Year**"), and if the Company is permitted under the applicable provisions of the Code and Treasury Regulations to either pay tax at the Company level or to elect to pass the adjustment through to the Members (a "**Pass-Through Election**"), the Managing Member shall determine whether to make a Pass-Through Election. In any case where an adjustment of Company taxable income, gain, loss, deduction or credit for a Review Year results in the payment of tax by the Company (because no Pass-Through Election was made or because no Pass-Through Election was available), it is intended that the Members shall bear the economic responsibility for the payment of the tax, penalty and interest paid by the Company in proportion to the manner in which such adjustments made by the IRS would have been allocated to the Members based on their interests in the Company in the Review Year. If a Person who was a Member of the Company in the Review Year has withdrawn from the Company, such former Member shall remain obligated to indemnify the Company and the other Members for such former Member's proportionate share of the tax, penalties and interest paid by the Company with respect to the Review Year. Each Member hereby agrees to take all other actions as the Partnership Representative may reasonably direct with respect

to the Member's (or, in respect of the Member, the Company's) tax liabilities, including filing an amended return for any Review Year to account for all adjustments under Section 6225(a) of the Code properly allocable to the Member as provided in and otherwise contemplated by Section 6225(c) of the Code and any Treasury Regulations that may be promulgated thereunder. Notwithstanding anything to the contrary in this Agreement, the Partnership Representative shall not take any action or omit any action that would reasonably be expected to have a disproportionate, material adverse effect on a Member without such other Member's written consent, which such consent shall not be unreasonably withheld, delayed or conditioned.

(e) The provisions of this **Section 11.1** shall survive the termination or dissolution of the Company or the termination of any Member's interest in the Company, any transfer of a Member's interest in the Company or withdrawal as a Member and shall remain binding on the Member.

Section 11.2 **Indemnification**. The Company shall indemnify the Partnership Representative against judgments, fines, amounts paid in settlement and expenses (including attorneys' fees regardless of whether paid or incurred before or at trial or during any appellate proceeding) incurred by the Partnership Representative in any civil, criminal or investigative proceeding in which the Partnership Representative is involved or threatened to be involved solely by reason of being the Partnership Representative for the Company; *provided*, that the Partnership Representative acted reasonably and in good faith within what the Partnership Representative reasonably believed to be in the best interests of the Company or its Members, and in accordance with the terms of this Agreement. The Partnership Representative shall not be indemnified under this provision against any liability to the Company or the other Member(s) which the Partnership Representative would otherwise be subject by reason of its willful or intentional misconduct or bad faith.

SECTION 12
MISCELLANEOUS

Section 12.1 **Notices**. All notices or other communications given or made under this Agreement or pursuant to the TBOC shall be in writing. Notices or other communications to the Managing Member, any of the Members or the Company shall be deemed to have been given or received (i) upon personal delivery, (ii) emailed to the recipient if emailed before 5:00 p.m. Central Standard Time on a business day, and otherwise on the next business day, (iii) three (3) days after deposit in the United States mail, if sent by registered or certified mail, return receipt requested, postage prepaid or the next business day after deposit with Federal Express (or comparable nationally recognized overnight courier service) for guaranteed next business day delivery service, and addressed as follows:

(a) Members. To the Members (or any Member), at the address(es) set forth in **Schedule 1.7** hereto, or at such other address as any Member may specify in a writing given to the Company, the Managing Member and the other Members in accordance with this **Section 12.1**; or

(b) Company. To the Company at the principal office of the Company specified in **Section 1.2** above (all notices to the Company to be sent to the attention of the Managing Member).

Section 12.2 **Binding Effect**. Except as stated in this Agreement, every provision of this Agreement shall be binding upon and inure to the benefit each of the Members who are parties hereto and their respective successors and assigns, *provided*, that nothing in this **Section 12.2** shall be interpreted as permitting any Transfer by any Member (or other party hereto or other Person bound by the terms hereof) of any rights or obligations of any Member (or any such other Person) hereunder which is not otherwise expressly permitted under another provision of this Agreement.

Section 12.3 **Construction.** Any court or arbitrator shall construe every provision of this Agreement in accordance with its simple and fair meaning and not strictly for or against any Member. No court or arbitrator shall interpret any provision of this Agreement as a penalty upon, or a forfeiture by, any party to this Agreement. The parties hereto shared equally in the drafting of this Agreement and no court or arbitrator construing this Agreement shall construe it more strictly against one party than the other.

Section 12.4 **Entire Agreement; Amendments**.

(a) Entire Agreement. This Agreement, together with its schedules and appendices, those documents expressly referred to herein (including the Exchange Agreements and the Tax Receivable Agreement) and together with the Certificate constitutes the entire agreement between the Members with respect to its subject matter, and supersedes the Original Agreement and any and all other prior agreements and undertakings with respect to such subject matter among them. No Member is making any guarantee, promise, or undertaking any obligation to or with respect to the Company that is not expressly contained in this Agreement.

(b) Amendments.

(i) The Managing Member, without the consent of any holder of Units, may amend any provision of this Agreement, and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

(A) a change in the name of the Company or the location of the principal place of business of the Company;

(B) admission, substitution, removal or withdrawal or resignation of Members or Assignees in accordance with this Agreement;

(C) a change that does not adversely affect any holder of Units in any material respect in its capacity as an owner of Units and is necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any United States federal or state agency or judicial authority or contained in any United States federal or state statute; or

(D) amendments contemplated by **Section 2.1(c)**.

(ii) Except as provided in **Section 2.2** and **Section 12.4(b)(i)**, neither this Agreement nor the Certificate may be amended, unless such amendments are required or, otherwise, permitted by any of the terms hereof or shall have been first been consented to, in writing, by the Managing Member and, so long as the Continuing Member Ownership Percentage is at least 50%, the Continuing Member; *provided*, *however*, that an amendment or modification modifying the rights or obligations of any Member in a manner that is disproportionately adverse in any material respect to (A) such Member relative to the rights of other Members in respect of Units of the same class or series or (B) a class or series of Units relative to the rights of another class or series of Units, shall in each case be effective only with that Member's consent or the consent of the Members holding a majority of the Units in that class or series, as applicable. Notwithstanding the preceding sentence, (i) no consent or approval shall be required for the Company to admit a permitted transferee as a Member following an Exempt Transfer completed in compliance with this Agreement, and (ii) if the Continuing Member Ownership Percentage is less than 50%, the Continuing Member must also consent to or approve any amendments or modifications to **Section 3**, **Section 4** (and, for the avoidance of doubt, **Appendix B**), **Section 6.5**, **Section 8.1**, **Section 8.6**, **Section 9.3**, this **Section 12.4(b)** or related

definitions or any other amendments or modifications that affect the rights granted to Continuing Member in such sections in any material respect, including, without limitation, changes to the number of shares of Class A Common Stock issued upon an Exchange, either through an amendment to the definition of "Exchange Rate" or otherwise, or that otherwise increases the obligations or decreases the benefits to the Continuing Member. Notwithstanding the foregoing, any amendment which would materially and adversely affect the rights or duties of a Member on a discriminatory and non-pro rata basis shall require the consent of such Member, other than those actions set forth in **Section 12.4(b)(i)** above. In addition, the amendment of any specific approval, consent, voting right, or transfer rights of a specified Member shall require the approval of such Member, *provided* that such Member holds the number of Units, as applicable, required to exercise such rights. Any amendment or modification effected in accordance with this **Section 12.4(b)(ii)** shall be effective, in accordance with its terms, with respect to the rights and obligations of and binding upon all Members. For the avoidance of doubt, without any action or requirement of consent by any Member, the Company shall update the books and records of the Company to remove a Member's name therefrom once such Member no longer holds any Equity Interests, following which such Person shall cease to be a "Member" or have any rights or obligations under this Agreement.

(iii) Copies of any amendments to this Agreement shall be sent all Members as promptly as is reasonably possible following the adoption thereof.

Section 12.5 **Assignees**.

(a) Rights of Assignees to Profits/Losses/Distributable Cash. In the event that any transferee or other successor-in-interest to a Member or to a Membership Interest (resulting from a transfer not treated as null and void hereunder) is not admitted as an additional or substitute "member" of the Company in accordance with the provisions of this Agreement, such transferee or other successor-in-interest shall be treated as an assignee, and shall only have the right to be allocated or distributed the profits, losses or monies or other property, and shall be subject to all of the losses, liabilities, obligations and restrictions, to which the transferring Member (or other transferor) would otherwise be entitled or subject to, to the extent applicable to the transferred interest.

(b) Application of Agreement to Assignees. In applying the provisions of this Agreement, including **Section 3**, **Section 4** and **Appendix B** hereof or attached hereto, each successor to an interest in the Company, whether admitted as an additional or substitute "member" of the Company, shall be deemed to have made the aggregate Capital Contributions previously made with respect to the assigned interest by any predecessor owner thereof, and to have received the aggregate allocations or distributions previously made to each such predecessor owner, to the extent attributable to the assigned interest.

(c) Limits on Rights of Assignees. An assignee of an interest in the Company who is not otherwise admitted as an additional or substitute "member" of the Company shall not have: (i) voting, consent or approval rights otherwise afforded Members (or any Member) hereunder or under the TBOC; (ii) the right to interfere in the management or administration of the Company's business or affairs; or (iii) the right to acquire any information or account of Company transactions or inspect Company books or records during the continuance of the Company, unless expressly allowed by the TBOC pursuant to any provision thereof which, as a matter of law, cannot be superseded by the foregoing terms of this Agreement.

Section 12.6 **Headings**. Section and other headings contained in this Agreement are for reference purposes only and shall not be considered interpretive of the provisions thereof or hereof.

Section 12.7 **Severability**. Every provision of this Agreement is intended to be severable. If any term or provision is illegal or invalid for any reason, then its illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement.

Section 12.8 **Further Cooperation**. Each Member agrees to perform all such further acts, including executing and/or delivering any other documents or instruments, as may be reasonably requested from time to time by the Managing Member, to carry out (or better carry out) any of the provisions of this Agreement.

Section 12.9 **Governing Law; Venue**. The laws of the State of Texas, exclusive of its conflicts of laws provisions, shall govern this Agreement, the organization and internal affairs of the Company, the liability of the Managing Member (subject to the provisions hereof) and the limited liability of the Members. Venue for any legal or other action arising out of or in any way related to the Company or this Agreement shall lie exclusively in the courts of the State of Texas located in Harris County, Texas or in the United States District Court for the Southern District of Texas, and each of the Members (and each other party to this Agreement), on each such Member's (or other party's) behalf and on behalf of its or their successors and assigns, hereby consent to the exclusive personal jurisdiction of those courts and waive any other jurisdiction or venue.

Section 12.10 **Waiver of Action for Partition**. Each Member hereby waives any right such Member may have to maintain any action for partition with respect to any assets of the Company.

Section 12.11 **Counterpart Execution; Facsimile Execution**. This Agreement may be executed in any number of counterparts. These executions may be transmitted to the Company and/or the other parties by facsimile or other electronic transmission and shall have the effect of an original signature. All fully executed counterparts shall be construed together and shall constitute one agreement.

Section 12.12 **Time of the Essence**. Time is of the essence with respect to each term of this Agreement; *provided*, that, in the event that the day upon which any event specified herein is to take place falls on a Saturday, Sunday or other business holiday, then such event shall take place on the next succeeding business day.

Section 12.13 **Independent Legal Representation; Waiver of Conflict of Interests**. The Members all acknowledge that McGuireWoods LLP ("**Counsel**"), acted as legal counsel for the DDH Investor in connection with the preparation of this Agreement and that: (i) the Members have been advised by such Counsel's representation of the Company in connection therewith will or may conflict with the interests of one or more (or all) Members' individually, (ii) the Members have been advised, before their execution of this Agreement, to seek the advice of independent counsel on the merits and detriments to such Member of the terms of this Agreement, and (iii) each Member had the opportunity, prior to such Member's execution of this Agreement, to seek the advice of independent counsel. The Members hereby jointly and severally waive any claim that Counsel's representation of the Company in connection with the preparation of this Agreement constitutes or creates a conflict of interest.

Section 12.14 **References**. All references in this Agreement to articles, sections or other subdivisions refer to corresponding articles, sections or subdivisions of this Agreement unless expressly provided otherwise. The words "this Agreement," "herein," "hereof," "hereby," "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited (or limited by the context within which used). Words in the singular form shall be construed to include the plural and vice versa, and words of one gender shall be construed to include all genders, unless the context otherwise requires.

Section 12.15 **Third-Party Beneficiaries**. Except for (a) Members, Managers or officers in their capacities as such, (b) the indemnified parties in accordance with **Section 5.5**, and (c) the rights of Counsel to rely on the waivers in **Section 12.13**, any agreement contained herein to make any contribution or to otherwise pay any amount, and

any assumption of liability herein contained, express or implied, shall be only for the benefit of the Members who are parties to this Agreement (and their respective permitted successors and assigns), and to the Managers, and such agreements and assumptions shall not inure to the benefit of the obligees under any indebtedness, or to any other Person whomsoever, it being the intention of the Members that no one shall be deemed to be a third-party beneficiary of this Agreement or any portion hereof.

Section 12.15 **Dispute Resolution**.

(a) Scope. Except as provided in **Section 2.7(c)**, **Section 8.10**, and **Section 12.16(e)**, any and all claims, counterclaims, disputes and other matters in question arising out of or relating to this Agreement or the breach hereof (each, a "**Dispute**") will be resolved by the parties hereto in accordance with this Section of the Agreement.

(b) Negotiation. The parties shall attempt in good faith to resolve any Dispute promptly by negotiation between representatives of each of the parties who have authority to settle the controversy. Either party may give the other party(s) written notice of a Dispute ("**Notice of Dispute**"), which Notice of Dispute shall include (i) a statement of that party's position and a summary of arguments supporting that position, (ii) the dollar amount of the Dispute, if known, and the section(s) of the Agreement to which the Dispute relates and (iii) the name and title of the individual who will represent that party in any negotiations concerning the Dispute. Within thirty (30) days after delivery of the Notice of Dispute, the receiving party(s) shall submit to the other a written response (the "**Response to Dispute**"). The Response to Dispute shall include (y) a statement of that party's position and a summary of arguments including references to any section(s) of the Agreement, if applicable, supporting that position and (z) the name and title of the individual who will represent that party in any negotiations concerning the Dispute. Within ten (10) days after delivery of the Response to Dispute, the designated individuals of both parties shall meet at a mutually acceptable time and place or by telephone conference, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. All negotiations pursuant to this **Section 12.16(b)** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

(c) Mediation. If the Dispute has not been resolved by negotiation as provided under subparagraph (b) above within sixty (60) days after delivery of the initial Notice of Dispute, the party providing the Notice of Dispute may initiate mediation for the Dispute by written notice to the other party(s) (the "**Mediation Notice**"), in which case the parties shall thereafter attempt in good faith to settle the Dispute by mediation. The parties will attempt to select a mediator by mutual agreement within fifteen (15) days after delivery of the Mediation Notice. If the parties are unable to agree upon a mediator within this fifteen (15) day period, each party shall than identify one mediator by written notice to the other party(s) delivered within five (5) days after the expiration of such fifteen (15) day period, and the identified mediators shall, within ten (10) days after the end of such five (5) day period, jointly select a mediator who shall be appointed as mediator for the Dispute, subject to confirming that such mediator does not have a potential or actual conflict of interest that prevents the mediator from serving and subject to the mediator confirming that he/she can serve within the time allowed for mediation under this subparagraph. Unless otherwise agreed by the parties, the mediation conference shall be held within sixty (60) days after delivery of the Mediation Notice. The mediator shall be required to abide by the Model Standards of Conduct for Mediators then in effect. The parties shall ensure that appropriate representatives of each party, having authority to consummate a settlement, attend the mediation conference. All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise; *provided*, *however*, in the event the parties are unable to agree mutually upon a mediator and the parties use the process identified above to select a mediator, each party will be responsible for paying any amounts payable to the mediator such party identified as part of that process. The expenses of participant(s) for each side shall be paid by the party requesting the attendance of each such participant. All negotiations that occur in connection with any mediation held pursuant to this subparagraph (c) are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

(d) Arbitration. If the Dispute has not been resolved by mediation as provided under subparagraph (c) above within (60) days after delivery of the Mediation Notice, any party may elect to have the Dispute finally resolved by arbitration. To commence the arbitration process, the party must deliver a written demand for arbitration ("**Arbitration Notice**") to the other party(s). No demand for arbitration may be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitation. Once a party has provided an Arbitration Notice, the arbitration shall be conducted in accordance with the following:

(i) Location; Rules. The arbitration shall be conducted in Houston, Texas in accordance with the Commercial Arbitration Rules (including Procedures for Large, Complex Commercial Disputes) (the "**Arbitration Rules**") of the American Arbitration Association (the "**AAA**") then in effect, as applicable, subject to the modifications set forth in this Section.

(ii) Arbitrator. The arbitration will be held before one arbitrator who shall be a retired judge with at least 10 years of experience practicing business litigation. Within twenty (20) days following the delivery of an Arbitration Notice pursuant to this **Section 12.16(d)(ii)**, the parties shall jointly select an arbitrator who fulfills the requirements of this **Section 12.16**; *provided*, *however*, that, if the parties are unable to agree on the choice of arbitrator prior to the expiration of such twenty (20) day period, each party shall choose one arbitrator within five (5) days after the expiration of such twenty (20) day period, and the two selected arbitrators shall, within five (5) days after their appointment, jointly select a third arbitrator who fulfills the requirements of this **Section 12.16(d)(ii)** to conduct the arbitration proceedings. Notwithstanding the foregoing, any Dispute in which the claimed amount (as reflected on the Notice of Dispute, as the same may be amended) exceeds $1,000,000 will be heard before three such arbitrators, in which case each party shall choose one arbitrator, and the two selected arbitrators shall jointly select the third arbitrator.

(iii) Subject to delay as set forth below, the arbitration will be scheduled to commence within sixty 60 days of appointment of the arbitrator(s) and will be concluded as promptly as possible. The arbitrator(s) will be entitled to limit the evidence presented if the arbitrator(s) deem such limitation necessary to conclude the arbitration in a timely manner. Within ten (10) days following appointment, the arbitrator shall conduct a preliminary hearing as contemplated under the Arbitration Rules. The parties (and, if applicable, their counsel) must attend this preliminary hearing in person or via telephone. The parties shall be entitled at this preliminary hearing to, inter alia, request permission to conduct discovery, including serving requests for production of documents and conducting depositions, relating to the Dispute. Notwithstanding anything herein to the contrary, in the event the arbitrator determines at or following the preliminary hearing that more than sixty (60) days after appointment of the arbitrator are needed for the parties to exchange information, complete any necessary discovery, or otherwise prepare adequately to arbitrate the Dispute, the arbitrator may elect to delay the commencement of the arbitration until a date by which all preliminary matters may completed; *provided*, *however*, in no event may commencement of the arbitration be delayed longer than one hundred twenty (120) days following appointment of the arbitrator.

(iv) Decision and Appeal. The decision of the arbitrator(s) will be a reasoned decision reduced to writing and will be binding on all parties. The right of each party to arbitrate, and any other agreement or consent to arbitrate, will be specifically enforceable in any court having jurisdiction. The award rendered by the arbitrator(s) will be final and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal except to the extent permitted by Title 9 of the United States Code (the "**Federal Arbitration Act**"). The award of the arbitrator(s) may include an assessment of reasonable attorney's fees and expenses if, in the opinion of the arbitrator(s), a party has advanced a position that is without a reasonable basis in law or fact. Unless otherwise determined by the arbitrator(s), the administrative costs of the arbitration, including payment of the arbitrator, will be borne equally by the parties to the Dispute.

(v) Choice of Law. The arbitrator will apply the substantive law of the State of Texas, without reference to the law of conflicts of any other jurisdiction, except that the interpretation and enforcement of this Section will be governed by the Federal Arbitration Act.

(vi) Privilege; Confidentiality. In the arbitration, all privileges under state and federal law, including attorney/client and work product privileges, will be preserved and protected to the same extent that such privileges would be protected in a federal court in the United States applying the internal law of the State of Texas (without reference to the law of conflicts of any jurisdiction). The parties will keep the evidence, testimony and award in the arbitration confidential and will instruct their counsel and witnesses to do the same, except this information may be revealed to the extent necessary in any proceeding to confirm or challenge the arbitration award.

(e) Nothing in this Section or this Agreement shall bar any party to this Agreement from exercising any rights and or seeking any remedies in law or in equity that are available to any such party, including but not limited to seeking injunctive or other equitable relief in a court of competent jurisdiction, or seeking relief pursuant to **Section 2.7(c)** or **Section 8.10**.

Section 12.16 **Spousal Consent**. Each Member who has a Spouse on the date of this Agreement shall cause such Member's Spouse to execute and deliver to the Company a spousal consent in the form of **Appendix C** hereto (a "**Spousal Consent**"), pursuant to which the Spouse acknowledges that he or she has read and understood the Agreement and agrees to be bound by its terms and conditions. If any Member should marry or engage in a Marital Relationship following the date of this Agreement, such Member shall cause his or her Spouse to execute and deliver to the Company a Spousal Consent within 5 Business Days thereof.

Section 12.17 **Notice to Members of Provisions of this Agreement.** By executing this Agreement, each Member acknowledges that it has actual notice of (a) all of the provisions of this Agreement, including, without limitation, the restrictions on the transfer of Membership Interests set forth in **Section 8**, and (b) all of the provisions of the Certificate. Each Member hereby agrees that this Agreement constitutes adequate notice of all such provisions, including, without limitation, any notice requirement under Section 3.205 of the TBOC and Chapter 8 of the Texas Uniform Commercial Code, and each Member hereby waives any requirement that any further notice thereunder be given.

Section 12.18 **Creditors**. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company or any of its Affiliates, and no creditor who makes a loan to the Company or any of its Affiliates may have or acquire (except pursuant to the terms of a separate agreement executed by the Company in favor of such creditor) at any time as a result of making the loan any direct or indirect interest in Company profits, losses, distributions, capital or property other than as a secured creditor.

(*Signature Page Follows*)

The Company and undersigned Members have executed and delivered this Agreement as of the date set forth below.

COMPANY:

DIRECT DIGITAL HOLDINGS, LLC

By: _____
Name: _____
Title: _____

MANAGING MEMBER:

DIRECT DIGITAL HOLDINGS, INC.

By: _____
Name: _____
Title: _____

CONTINUING MEMBER:

DIRECT DIGITAL MANAGEMENT, LLC

By: _____
Name: _____
Title: _____

[Signature Page to Second A&R LLC Agreement – Direct Digital Holdings, LLC]

SCHEDULE 1.7
MEMBER INFORMATION – CAPITALIZATION[1]

Name	Class A Common Units	Class B Voting Units
Direct Digital Holdings, Inc.	[--]	[--]

Direct Digital Management, LLC	[--]	--
TOTAL	[--]	[--]

1 Note: to be updated.

SCHEDULE 1.7 (continued)
MEMBER INFORMATION – NOTICE ADDRESSES

Direct Digital Holdings, Inc.

1233 West Loop South, Suite 1170
Houston, TX 77027
Attention: Keith Smith and Mark Walker
Email: ksmith@directdigitalholdings.com
mwalker@directdigitalholdings.com

with a copy (not constituting notice) to:

McGuireWoods LLP
2000 McKinney Avenue, Suite 1400
Dallas, Texas 75201
Attention: Phyllis Y. Young
Email: pyoung@mcguirewoods.com

Direct Digital Management, LLC

1233 West Loop South, Suite 1170
Houston, TX 77027
Attention: Keith Smith and Mark Walker
Email: ksmith@directdigitalholdings.com
mwalker@directdigitalholdings.com

with a copy (not constituting notice) to:

McGuireWoods LLP
2000 McKinney Avenue, Suite 1400
Dallas, Texas 75201
Attention: Phyllis Y. Young
Email: pyoung@mcguirewoods.com

APPENDIX A
GENERAL DEFINITIONS

Capitalized words and phrases used in the Agreement, but which are not otherwise defined therein, shall have the following meanings (or the meanings set forth in **Appendix B** to the Agreement):

"**Affiliate**" means, with respect to any Person: (i) any other Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any other Person who is an officer, director, manager, general partner, trustee or holder of 50% or more of the voting stock or other voting securities of such Person (if a legal entity) or of any other Person (who is a legal entity) who is an Affiliate of such Person described in clause (i) above; and/or (iii) any spouse, ancestor, child (including by adoption) or other lineal descendant, sibling or in-law of such Person or of any other Person (who is a natural person) who is an Affiliate of such Person and described in either clause (i) or (ii) above.

"**Appraiser FMV**" means the fair market value of any Equity Interest as determined by an independent appraiser mutually agreed upon by the Managing Member and the relevant Exchanging Member, whose determination shall be final and binding for those purposes for which Appraiser FMV is used in this Agreement. Appraiser FMV shall be the fair market value determined without regard to any discounts for minority interest, illiquidity or other discounts. The cost of any independent appraisal in connection with the determination of Appraiser FMV in accordance with this Agreement shall be borne by the Company.

"**Assumed Tax Rate**" means the sum of the maximum effective federal, state and local income tax rates to which any Member (or any of such Member's direct or indirect owners to the extent such Member is a pass through entity for federal income tax purposes) is subject for such tax year, as determined from time to time by the Managing Member based on the information available to it. The Assumed Tax Rate shall be the same for each Member.

"**Available Cash**" means all cash of the Company on hand as of the last business day of any calendar month (or other fiscal period), as determined after payment of all then due or past due Company expenses and obligations, other than cash which is: (i) restricted from distribution under the terms of any agreement to which the Company is a party; or (ii) added to or retained in Company reserves pursuant to Company budgets approved pursuant to **Section 10.6** hereof.

"**Bankruptcy**" means, with respect to any Person, the occurrence of any of the following events:

(a) such Person makes an assignment for the benefit of such Peron's creditors;

(b) such Person files a voluntary petition in bankruptcy;

(c) such Person is adjudged a bankrupt or insolvent or has entered against such Person an order for any relief in any bankruptcy or insolvency proceeding;

(d) such Person files a petition or answer seeking for it any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(e) such Person files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Person in any proceeding of this nature;

(f) such Person seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of such Person or of all or any substantial part of such Person's properties; or

(g) after one hundred and twenty (120) days after the commencement of any proceeding against such Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed; or after ninety (90) days after the appointment, without such Person's consent or acquiescence, of a trustee, receiver or liquidator of such Person or of any substantial part of such Person's property, the appointment has not been vacated or stayed or, if stayed, ninety (90) days following the expiration of any such stay if the appointment has not been vacated.

"**Board**" means the board of directors of PubCo, as constituted at any given time.

"**Capital Contribution(s)**" means with respect to any Member, the amount of money and the initial Book Value of any property (other than money) contributed by such Member (or predecessor owner of such Member's Units) to the Company with respect to such Member's Units, in accordance with the terms of the Agreement (or the Original Agreement).

"**Certificate**" means the Certificate of Formation of the Company and any amendments thereto and restatement thereof filed on behalf of the Company with the Texas Secretary of State pursuant to the TBOC

"**Certificate Delivery**" means, in the case of any shares of Paired Voting Stock to be transferred and surrendered by an Exchanging Member in connection with an Exchange which are represented by a certificate or certificates, the process by which the Exchanging Member shall also present and surrender such certificate or certificates representing such shares of Paired Voting Stock during normal business hours at the principal executive offices of PubCo, or if any agent for the registration or transfer of shares of Paired Voting Stock is then duly appointed and acting, at the office of such transfer agent, along with any instruments of transfer reasonably required by the Managing Member or such transfer agent, as applicable, duly executed by the Exchanging Member or the Exchanging Member's duly authorized representative.

"**Class A 3-Day VWAP**" means, on any relevant measurement date, the VWAP for three (3) consecutive Trading Days ending on such date.

"**Class A Common Stock**" means the Class A common stock, par value $0.001 per share, of PubCo.

"**Class A Common Units**" means the limited liability company interests described in **Section 2.1(a)(i)** and having the rights, powers and preferences specified herein.

"**Class B Common Stock**" means the Class B common stock, par value $0.001 per share, of PubCo.

"**Class B Voting Units**" means the limited liability company interests described in **Section 2.1(a)(ii)** and having the rights, powers and preferences specified herein.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time.

"**Continuing Member**" means the DDH Investor, being the member receiving Class A Common Units in the Recapitalization for so long as such Member continues to hold such Class A Common Units after the Pre-IPO Exchanges.

"**Continuing Member Ownership Percentage**" means the percentage obtained by dividing (i) the total number of Class A Common Units owned by the Continuing Member by (ii) the aggregate number of Class A Common Units outstanding at such time.

"**DDH Investor**" means Direct Digital Management, LLC, a Delaware limited liability company, together with its permitted transferees.

"**DTC**" means The Depository Trust Company.

"**Effective Time**" means such time as is immediately prior to the Pre-IPO Effective Time.

"**Equity Interests**" means, with respect to any Person, all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person's capital, whether now outstanding or issued or acquired after the date hereof, including without limitation, common shares, preferred shares, membership interests in a limited liability company, limited or general partnership interests in a partnership, interests in a trust, interests in joint ventures, interests in other unincorporated organizations or any other equivalent of such ownership interest.

"**Exchange**" means (a) the redemption by the Company of vested Class A Common Units held by a Member (together with the surrender and cancellation of the same number of outstanding shares of Paired Voting Stock held by such Member) for the Stock Exchange Payment, or (b) the direct purchase by PubCo of vested Class A Common Units and Paired Voting Stock held by a Member in accordance with a PubCo Call Right, in each case in accordance with **Section 8.6(f)**.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Exchange Act shall be deemed to include any corresponding provisions of future law.

"**Exchange Agreements**" has the meaning set forth in the Recitals.

"**Exchange Blackout Period**" means (i) any "black out" or similar period under PubCo's policies covering trading in PubCo's securities to which the applicable Exchanging Member is subject (or will be subject at such time as it owns Class A Common Stock), which period restricts the ability of such Exchanging Member to immediately

resell shares of Class A Common Stock to be delivered to such Exchanging Member in connection with a Stock Exchange Payment and (ii) the period of time commencing on (x) the date of the declaration of a dividend by PubCo and ending on the first day following (y) the record date determined by the Board with respect to such dividend declared pursuant to clause (x), which period of time shall be no longer than 10 Business Days; *provided,* that in no event shall an Exchange Blackout Period which respect to clause (ii) of the definition hereof occur more than four (4) times per calendar year.

"**Exchange Conditions**" means any of the following conditions: (i) in the event of a valid request for registration pursuant to the Registration Rights Agreement, (a) PubCo shall have failed to cause any related prospectus to be supplemented by any required prospectus supplement necessary to effect such Exchange, (b) PubCo shall have exercised its right to defer, delay or suspend the filing or effectiveness of a Registration Statement and such deferral, delay or suspension shall affect the ability of such Exchanging Member to have its Class A Common Stock registered at or immediately following the consummation of the Exchange, (c) any stop order relating to the Registration Statement pursuant to which the Class A Common Stock was to be registered by such Exchanging Member at or immediately following the Exchange shall have been issued by the Securities and Exchange Commission, (d) there shall be in effect an injunction, a restraining order or a decree of any nature of any Governmental Entity that restrains or prohibits the Exchange, or (e) PubCo shall have failed to comply in any material respect with its obligations under the Registration Rights Agreement to the extent related to the resale of the Class A Common Stock of an Exchanging Member, and such failure shall have adversely affected the ability of such Exchanging Member to consummate the resale of Class A Common Stock to be received upon such Exchange pursuant to an effective Registration Statement; (ii) PubCo shall have disclosed in good faith to such Exchanging Member any material non-public information concerning PubCo, the receipt of which results in such Exchanging Member being prohibited or restricted from selling Class A Common Stock at or immediately following the Exchange without disclosure of such information (and PubCo does not permit disclosure); (iii) there shall have occurred a material disruption in the securities markets generally or in the market or markets in which the Class A Common Stock is then traded; (iv) there shall be in effect an injunction, a restraining order or a decree of any nature of any Governmental Entity that restrains or prohibits the Exchange; or (v) the Exchange Date would occur three (3) Business Days or less prior to, or during, an Exchange Blackout Period. For purposes of clarity, the matters contemplated in clauses (ii) through (v) above shall constitute an Exchange Condition regardless of the existence of a valid request for registration pursuant to the Registration Rights Agreement.

"**Exchange Date**" means the date that is five (5) Business Days after the Exchange Notice Date is given;*provided*, that if an Exchanging Member delays the consummation of an Exchange by delivering an Exchange Delay Notice, the Exchange Date shall occur on the date that is three (3) Business Days following the date on which the conditions giving rise to such delay cease to exist which shall in no event be prior to the date otherwise determined pursuant to this definition (or such earlier day as the Managing Member and such Exchanging Member may agree in writing); *provided*, *further*, that if the Exchange Date for any Exchange with respect to which PubCo elects to make a Stock Exchange Payment would otherwise fall within any Exchange Blackout Period, then the Exchange Date shall occur on the next Business Day following the end of such Exchange Blackout Period.

"**Exchange Delay Notice**" has the meaning set forth in**Section 8.6(a)(iii)**.

"**Exchange Notice**" means a written election of Exchange in the form of**Appendix D**, duly executed by the Exchanging Member.

"**Exchange Notice Date**" means, with respect to any Exchange Notice, the date such Exchange Notice is given to the Company in accordance with**Section 8.6(a)**.

"**Exchanged Units**" means, with respect to any Exchange, the Class A Common Units being exchanged pursuant to a relevant Exchange Notice, and an equal number of shares of Paired Voting Stock held by the relevant Exchanging Member.

"**Exchanging Member**" means a Member initiating an Exchange.

"**Exempt Transfer**" has the meaning set forth in**Section 8.1(a).**

"**Fully Diluted Basis**" assumes the full conversion into Units of all convertible Equity Interests, if any, that at the time of any such determination would be entitled to participate in the distributions upon consummation of the proposed Transfer, Sale of the Company, or other transaction in question.

"**Indebtedness**" means (a) all indebtedness for borrowed money, including that evidenced by notes, bonds, indentures, debentures or other instruments, (b) any amounts owed with respect to drawn letters of credit, and (c) any outstanding guarantees of obligations of the type described in clauses (a) or (b) above; *provided*, that, Indebtedness shall not include credit card charges and associated balances incurred or carried in the ordinary course of business.

"**IPO**" has the meaning set forth in the Recitals.

"**Managing Member**" means the person designated as such pursuant to **Section 5.1**, which shall be PubCo as of the effectiveness of PubCo's admission as an additional member pursuant to **Section 2.2(b)(ii)**, or any successor Managing Member admitted to the Company in accordance with the terms of this Agreement, in its capacity as the managing member of the Company.

"**Member(s)**" means the Members signing the Agreement and who are admitted as a "member" of the Company as of the Effective Date and/or such (or each such) other Person, if any, subsequently admitted as an additional or substitute "member" of the Company, from time to time, in accordance with the terms of the Agreement, *provided*, that a Person shall cease to be a "Member" at such time as such Person shall dispose of such Person's entire Membership Interest in the Company or, otherwise, upon the occurrence of any event, including a Member's dissolution, liquidation and termination, which results in a transfer or other disposition of such Person's entire Membership Interest (or other termination of such Person's status as a "member" of the Company, as specified in the Agreement or in the TBOC, as the same may be modified or superseded by the Agreement).

"**Membership Interest**" means the entire interest of a Member (or assignee of a Member's "transferable interest" not otherwise admitted as an additional or substitute "member" of the Company) in the Company as a "member" thereof (or assignee of a Member's transferrable interest in the Company), including a Member's Units, voting rights (as a "Member") and a Member's (or assignee's) interest in and to Company profits, losses and capital, including a Member's (or assignee's) right to receive both current and liquidating distributions from the Company. The Members may hold any combination of Membership Interests (including Units of more than one class).

"**Membership Percentage**" means with respect to each Member, in reference to a Membership Percentage of any class of Units, that ratio, expressed as a percentage, the numerator of which is the number of Units of such class owned by such Member, and the denominator of which is the total Units of such class then outstanding.

"**National Securities Exchange**" means a securities exchange registered with the Securities and Exchange Commission under Section 6 of the Exchange Act.

"**Paired Voting Stock**" means, with respect to Class A Common Units held by a Member other than PubCo, the shares of Class B Common Stock issued in exchange for the Class B Voting Units initially paired with such Class A Common Units, subject, as applicable, to adjustment pursuant to Section 3.2(d) and Section 3.2(e) and the

certificate of incorporation of PubCo.

"**Partnership Representative**" has the meaning set forth in Section 6223(a) of the Code and any comparable provisions of foreign, state and local income tax laws.

"**Person(s)**" means any individual(s) who is (or are) a natural person, partnership(s), limited liability company (or companies), limited liability partnership(s), limited partnership(s), corporation(s), trust(s) and any other association or legal entity.

"**Piggyback Registration**" is defined in the Registration Rights Agreement.

"**Pre-IPO Effective Time**" has the meaning set forth in the Recitals.

"**Pre-IPO Exchanges**" has the meaning set forth in the Recitals.

"**Prime Rate**" as of a particular date means the prime rate of interest as published on that date in the Wall Street Journal. If the Wall Street Journal is not published on a date for which the Prime Rate must be determined, then the Prime Rate shall be the prime rate published in the Wall Street Journal on the nearest-preceding date on which the Wall Street Journal is published.

"**PubCo**" means Direct Digital Holdings, Inc., a corporation incorporated under the laws of the State of Delaware, and its successors.

"**PubCo Offer**" has the meaning set forth in**Section 2.2(c)(ii)**.

"**Recapitalization**" has the meaning set forth in the Recitals.

"**Registration Rights Agreement**" means the Registration Rights Agreement, dated as of the date hereof, by and among PubCo, certain of the Members and the other parties thereto (together with any other parties that become a party thereto from time to time upon execution of a joinder in accordance with the terms thereof by any successor or assign to any party to such Registration Rights Agreement).

"**Registration Statement**" means any registration statement that PubCo is required to file pursuant to the Registration Rights Agreement.

"**Sale of the Company**" means either (a) the sale, transfer, conveyance or other disposition, in one transaction or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, or (b) a transaction or series of related transactions (including by way of merger, consolidation, recapitalization, reorganization or sale of securities) the result of which is that the Unitholders immediately prior to such transaction are after giving effect to such transaction no longer, in the aggregate, the "beneficial owners" (as such term is defined in Rule 13d-3 and Rule 13d-5 promulgated under the Exchange Act), directly or indirectly through one or more intermediaries, of more than eighty percent (80%) of the voting power of the outstanding voting Equity Interests of the Company, unless the foregoing change in voting power results from a capital raising transaction in which the Company issues new securities or admits new Members in exchange for new Capital Contributions to the Company.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations thereunder.Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provisions of future law.

"**Securities and Exchange Commission**" means the United States Securities and Exchange Commission, including any governmental body or agency succeeding to the functions thereof.

"**Stock Exchange Payment**" means, with respect to any Exchange, a number of shares of Class A Common Stock equal to the number of Class A Common Units subject to such Exchange.

"**Subsidiary**" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity, in any jurisdiction, of which (i) if a corporation or a limited liability company or limited partnership (with voting securities), a majority of the total voting power of Equity Interests thereof entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees (or members of any similar governing body) thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company (without voting securities), a partnership, an association or other business entity, a majority of the Equity Interests thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, a partnership, an association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any managing director, managing member or general partner (or equivalent) of such limited liability company, partnership, association or other business entity.

"**Tax Receivable Agreement**" means the Tax Receivable Agreement dated as of or about the date hereof among the Company, the Managing Member and the other parties from time to time party thereto, as amended from time to time.

"**Taxable Year**" means, with respect to the Company, the calendar year (or such other fiscal period, if any, required to be adopted as the "taxable year" of the Company for federal income tax purposes) (or portion thereof during which the Company is in existence).

"**TBOC**" means the Texas Business Organizations Code and any successor statute, as amended from time to time.

"**Third Party Purchaser**" means any Person who, immediately prior to the contemplated transaction, does not directly or indirectly own or have the right to acquire any outstanding Units.

"**Trading Day**" means a day on which Nasdaq or such other principal United States securities exchange on which the Class A Common Stock is listed, quoted or admitted to trading and is open for the transaction of business (unless such trading shall have been suspended for the entire day).

"**Transfer**" means, as a noun, any voluntary or involuntary sale, exchange pledge, assignment, hypothecation, or other disposition of any rights in tangible or intangible property, and, as a verb, means voluntarily or involuntarily (including, but not limited to, an assignment or other disposition by reason of Bankruptcy) to sell, exchange, pledge, assign, hypothecate or otherwise dispose of such property. For any Member that is a corporation, partnership, joint venture, enterprise, limited liability company, unincorporated association, trust, estate or other business or legal entity, including any state law entity disregarded as a separate entity for federal and state income tax

purposes, Transfer shall also mean any voluntary or involuntary, direct or indirect, transfer, assignment, sale, pledge hypothecation, or other disposition of more than fifty percent (50%) of the voting Equity Interests of the Member in a single transaction or a series of related transactions. The terms "**Transferee**", "**Transferor**", "**Transferred**", and other forms of the word "**Transfer**" have correlative meanings.

"**Treasury Regulations**" (or "**Regulations**") means the Treasury Regulations promulgated under the Code, as such Treasury Regulations may be amended and in effect from time to time.

"**Unit**" or "**Units**" means a Unit of a Member in the Company representing a fractional part of interests in distributions of the Company held by all Members and shall include, collectively, the Class A Common Units, the Class B Voting Units and such other units of the Company as may be authorized, designated or issued, as determined by the Managing Member from time to time after the date hereof; *provided*, that any class or group of Units issued shall have the relative rights, powers and duties set forth in this Agreement.

"**Unitholder**" shall mean, with respect to any class of Units, a Member (or other Person) owning a Unit or Units of such class.

"**USDM Investor**" means USDM Holdings, Inc., a Texas corporation.

"**USDM Redemption**" has the meaning set forth in the Recitals.

"**VWAP**" means the daily per share volume-weighted average price of the Class A Common Stock on Nasdaq or such other principal United States securities exchange on which the shares of Class A Common Stock are listed, quoted or admitted to trading, as displayed under the heading Bloomberg VWAP on the Bloomberg page designated for the Class A Common Stock (or the equivalent successor if such page is not available) in respect of the period from the open of trading on such Trading Day until the close of trading on such Trading Day (or if such volume-weighted average price is unavailable, (a) the per share volume-weighted average price of a share of Class A Common Stock on such Trading Day (determined without regard to afterhours trading or any other trading outside the regular trading session or trading hours), or (b) if such determination is not feasible, the market price per share of Class A Common Stock as determined by a nationally recognized independent investment banking firm retained in good faith for this purpose by PubCo); *provided*, *however*, that if at any time for purposes of the Class A 3-Day VWAP shares of Class A Common Stock are not then listed, quoted or traded on a principal United States securities exchange or automated or electronic quotation system, then the VWAP shall mean the per share Appraiser FMV of one (1) share of Class A Common Stock (or such other Equity Interest into which the Class A Common Stock was converted or exchanged).

APPENDIX B
SPECIAL TAX AND ACCOUNTING PROVISIONS

I. Tax and Accounting Definitions. The following terms, which are used predominantly in **Section 4** of the Agreement and this **Appendix B**, shall have the meanings set forth below:

A. "**Adjusted Capital Account**" means, with respect to any Member, such Member's Capital Account as of the end of the relevant Taxable Year, after giving effect to the following adjustments:

(1) credit to such Capital Account any amounts which such Member is obligated to restore pursuant to this Agreement or as determined pursuant to Regulations § 1.704-1(b)(2)(ii)(c), or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations §§ 1.704-2(g)(1) and 1.704-2(i)(5); and

(2) debit to such Capital Account the items described in clauses (4), (5) and (6) of Regulations § 1.704-1(b)(2)(ii)(d).

B. "**Adjusted Capital Account Deficit**" means, with respect to any Member, the deficit balance, if any, in such Member's Adjusted Capital Account. The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulations § 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

C. "**Allocation Period**" means, unless otherwise required pursuant to the Code and Treasury Regulations, (i) the Taxable Year of the Company, (ii) any portion of the Taxable Year for which the Company is required to allocate Profits, Losses and other items of Company income, gain, loss, deduction or other items pursuant to **Section 4** or this **Appendix B**, or (iii) any other period reasonably determined by the Managing Member as appropriate for a closing of the Company's books.

D. "**Book Value**" means, with respect to any Company asset, such asset's adjusted basis for federal income tax purposes, except as follows:

(1) the initial Book Value of any asset (other than money) contributed by a Member to the Company shall be the gross fair market value thereof as of the date of contribution, as set forth in this Agreement or, if not set forth in this Agreement, as reasonably determined by the Managing Member and the contributing Member as of the date of contribution;

(2) the Book Value of all Company assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Managing Member (but subject to Code § 7701(g)), as of the following times: (i) the acquisition of additional interests in the Company by any new or existing Member in exchange for more than a *de minimis* initial or additional Capital Contribution; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of cash or property as consideration for an interest in the Company; (iii) the issuance by the Company of a non-compensatory option (other than an option to acquire a *de minimis* interest in the Company); (iv) in connection with the grant of an interest in the Company (other than a *de minimis* interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a member capacity, or by a new Member acting in a partner capacity in anticipation of being a Member; or (v) the Liquidation of the Company; *provided*, that an adjustment described in clauses (i), (ii), (iii) and (iv) immediately above shall be made only if the Managing Member reasonably determines that such adjustment is necessary to reflect the relative economic interests of the Members in the Company;

(3) the Book Value of any Company asset distributed to any Member shall be adjusted immediately before its distribution to equal its gross fair market value on the date of distribution, as reasonably determined by the Managing Member;

(4) the Book Values of the Company's assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code § 734(b) or Code § 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations § 1.704-1(b)(2)(iv)(m); *provided*, *however*, that Book Values shall not be adjusted pursuant to this **Section I.D(4)** to the extent that an adjustment pursuant to **Section I.D(2)** above is otherwise made thereto in connection with or as a result of any transaction or event that would otherwise result in an adjustment pursuant to this **Section I.D(4)**; and

(5) if the Book Value of any asset subject to the allowance for depreciation or amortization has been determined or adjusted pursuant to **Section I.D(1)**, **Section I.D(2)**, or **Section I.D(4)** above, such Book Value shall thereafter be adjusted by the Depreciation taken into account, from time to time, with respect to such asset for purposes of computing Profits or Losses of the Company.

For purposes **Section I.D(2)** above, the term "**Liquidation of the Company**" means the date upon which the Company ceases to be a going concern (even though it may continue in existence for the purpose of winding up its affairs, paying its debts and distributing any remaining assets to its Members).

E. "**Capital Account**" means, with respect to any Member, the Capital Account maintained by the Company for such Member in accordance with Regulations § 1.704-1(b)(2). Except as otherwise provided in said Regulations section, each Member's Capital Account shall be maintained or adjusted in accordance with the following rules or provisions:

(1) to each such Member's Capital Account, there shall be credited the amount of cash contributed to the Company by such Member and the initial Book Value of any property, other than cash, contributed to the capital of the Company by such Member (net of any liability secured by such contributed property that the Company is considered to assume or take subject to pursuant to Code § 752), such Member's allocable share of Company Profits and any items of income or gain comprising the Profits of the Company that are allocated to such Member, and the amount of any Company liabilities assumed by such Member or that are secured by any Company property distributed to such Member;

(2) to each such Member's Capital Account, there shall be debited the amount of cash and the Book Value of any property distributed by the Company to such Member pursuant to any provision of this Agreement (net of Company liabilities secured by such distributed property that such Member is considered to assume or take subject to pursuant to Code § 752), such Member's allocable share of Company Losses and any items of expense or loss comprising the Losses of the Company that are allocated to such Member, and the amount of any liabilities of such Member (excluding liabilities taken into account in accordance with **Section I.E(1)** above) assumed by the Company or that are secured by any property contributed by such Member to the Company;

(3) to the extent that the unrealized income, gain, loss or deduction inherent in property distributed (or deemed to be distributed) in kind (whether or not distributed in liquidation) is not then reflected in the Members' Capital Accounts, the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss and deduction inherent in such property would be allocated among the Members under the Agreement if there were a fully taxable disposition of such property for all cash for its then fair market value, as determined by the Managing Member, in its reasonable discretion, as of the date of its actual (or deemed) distribution;

(4) in the event that the Book Value of Company assets are adjusted as described in **Section I.D(2)** above, the Members' Capital Accounts shall be adjusted to reflect their allocable share of the gain or loss (not then reflected in the Members' Capital Accounts) which the Company would recognize as of or immediately before such adjustment, if it sold all of its assets, as of such time, for all cash in a fully taxable transaction for an amount equal to such assets' adjusted Book Value;

(5) in the event that any Company property is subject to Code § 704(c), or in the event Company property is re-valued, at the election of the Managing Member, in accordance with Regulations § 1.704-1(b)(2)(iv)(f) and, as a result, has a Book Value different from such property's adjusted income tax basis, the Members' Capital Accounts shall be adjusted in accordance with Regulations § 1.704-1(b)(2)(iv)(g) to reflect only allocations to them of Depreciation, if any, allowable for such Company property and by the gain or loss arising from the sale or other disposition of such property, as computed for book purposes and not for income tax purposes, by reference to such property's adjusted Book Value; and

(6) If there is a transfer of a Membership Interest in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Membership Interest.

The foregoing provisions and the other provisions of the Agreement or this **Appendix B** relating to the maintenance of Capital Accounts are intended to comply with Regulations § 1.704-1(b) and § 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Managing Member shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company or any Members), are computed in order to comply with such Treasury Regulations, the Managing Member may make such modification, *provided*, that it is not likely to have a material effect on the amounts distributed to any Person pursuant to **Section 9** hereof upon the dissolution of the Company. The Managing Member also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(q), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulations Section 1.704-1(b).

F. "**Company Minimum Gain**" has the same meaning as the term "partnership minimum gain" under Regulations §§ 1.704-2(b)(2) and 1.704-2(d).

G. "**Depreciation**" means, for each Taxable Year, or other fiscal period of the Company, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period for federal income tax purposes, except that if the Book Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Book Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; *provided*, *however*, that if such depreciation, amortization or other cost recovery deductions with respect to any such asset for federal income tax purposes is zero for any Allocation Period, Depreciation shall be determined with reference to such asset's Book Value at the beginning of such period using any reasonable method selected by the Managing Member.

H. "**Economic Risk of Loss**" has the meaning assigned to that term in Regulations § 1.752-2(a).

I. "**Member Nonrecourse Debt**" has the same meaning as the term "partner nonrecourse debt" under Regulations § 1.704-2(b)(4).

J. "**Member Nonrecourse Debt Minimum Gain**" has the same meaning as the term "partner nonrecourse debt minimum gain" under Regulations § 1.704-2(i)(2) and shall be determined in accordance with Regulations § 1.704-2(i)(3).

K. "**Member Nonrecourse Deductions**" has the same meaning as the term "partner nonrecourse deductions" under Regulations § 1.704-2(i)(1) and shall be determined in accordance with Regulations § 1.704-2(i)(2).

L. "**Nonrecourse Debt**" or "**Nonrecourse Liability**" has the same meaning as the term "nonrecourse liability" under Regulations § 1.704-2(b)(3).

M. "**Nonrecourse Deductions**" has the meaning set forth in Regulations § 1.704-2(b)(1) and shall be determined according to the provisions of Regulations § 1.704-2(c).

N. "**Profits**" or "**Losses**" of the Company for each Allocation Period means an amount equal to the Company's taxable income or loss for each such Allocation Period, as determined for federal income tax purposes in accordance with the accounting method followed by the Company for federal income tax purposes and in accordance with Code § 703 (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code § 703(a)(1) shall be included in taxable income or loss), subject to the following modifications:

(1) any income of the Company that is exempt from federal income taxation and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss;

(2) any expenditures of the Company described in Code § 705(a)(2)(B) or treated as Code § 705(a)(2)(B) expenditures pursuant to Regulations § 1.704-1(b)(2)(iv)(i), and not otherwise taken into account, shall be subtracted from such taxable income or loss;

(3) in the event the Book Value of any Company property is adjusted pursuant to **Section I.D(2)** or **Section I.D(3),** the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Book Value of the Company property) or an item of loss (if the adjustment decreases the Book Value of the item of Company property) from the disposition of such Company property and shall be taken into account for purposes of computing Profits or Losses;

(4) gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the Company property disposed of, notwithstanding that the adjusted tax basis of such Company property differs from its Book Value;

(5) in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Allocation Period, computed in accordance with the definition of Depreciation;

(6) to the extent an adjustment to the adjusted tax basis of any item of Company property pursuant to Code § 734(b) is required, pursuant to Regulations § 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's Membership Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the item of Company property) or loss (if the adjustment decreases such basis) from the disposition of such item of Company property and shall be taken into account for purposes of computing Profits or Losses;

(7) notwithstanding any other provision of this definition or **Section 4** of the Agreement, any items that are specially allocated pursuant to **Section II** below shall not be taken into account in computing Profits or Losses; and

(8) the amounts of the items of Company income, gain, loss, or deduction available to be specially allocated pursuant to **Section II** below shall be determined by applying rules analogous to those set forth in subsections (1) through (6) above.

II. Special Allocations. Notwithstanding the provisions of **Section 4.1** of the Agreement to the contrary, the following special rules shall apply:

A. Minimum Gain Chargeback. Except as otherwise provided in Regulations § 1.704-2(f), notwithstanding any other provision of this **Appendix B**, if there is a net decrease in Company Minimum Gain during any Allocation Period, each Member shall be specially allocated items of Company income and gain for such Allocation Period (and, if necessary, subsequent Allocation Periods) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations § 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations §§ 1.704- 2(f)(6) and 1.704-2(j)(2). This subsection is intended to comply with the minimum gain chargeback requirement in Regulations § 1.704-2(f) and shall be interpreted consistently therewith.

B. Member Minimum Gain Chargeback. Except as otherwise provided in Regulations § 1.704-2(i)(4), notwithstanding any other provision of this **Appendix B**, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Allocation Period, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations § 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Allocation Period (and, if necessary, subsequent Allocation Periods) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations § 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations §§ 1.704-2(i)(4) and 1.704-2(j)(2). This subsection is intended to comply with the minimum gain chargeback requirement in Regulations § 1.704-2(i)(4) and shall be interpreted consistently therewith.

C. Qualified Income Offset. In the event that any Member who unexpectedly receives any adjustments, allocations, or distributions described in Regulation §§ 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) has an Adjusted Capital Account Deficit as of the end of any Taxable Year, computed after the application of **Section II.A** and **Section II.B** but before the application of any other provision of this **Section II**, items of Company income and gain shall be allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, *provided*, that an allocation pursuant to this subsection shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this **Appendix B** have been tentatively made as if this subsection were not applicable. This subsection is intended to be a

"qualified income offset" as defined in Regulations § 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

D. Nonrecourse Deductions. Nonrecourse Deductions for any Allocation Period (or other applicable period) shall be specially allocated pro rata among the Members in proportion to their respective Membership Percentage, except to the extent that the Code and Treasury Regulations require that such deductions be allocated in some other manner. Any Member Nonrecourse Deductions for any Allocation Period shall be specially allocated to the Member who bears the Economic Risk of Loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations § 1.704-2(i)(1). If more than one Member bears the Economic Risk of Loss with respect to Member Nonrecourse Debt, Member Nonrecourse Deductions attributable thereto shall be allocated between or among such Members in accordance with the ratios in which they share such Economic Risk of Loss.

E. Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset, pursuant to Code §§ 734(b) or Section 743(b) is required, pursuant to Regulations § 1.704-1(b)(2)(iv)(m)(2) or Regulations § 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such provisions.

F. Curative Allocations.

(1) The allocations set forth in **Sections II.A** through **II.E** of this **Appendix B** are intended to comply with certain requirements imposed by Code § 704(b) and the Regulations promulgated thereto (the "**Regulatory Allocations**"). If in any Taxable Year any Regulatory Allocations (which term shall include any other allocations required to be made under Code § 704(b) or under the Regulations promulgated thereunder) are made, then in allocating the remainder of the Company's Profits or Losses (or items thereof) thereafter pursuant to **Section 4.1** of the Agreement, whether in the same Allocation Period or in subsequent Allocation Periods, the Regulatory Allocations shall be taken into account so that, to the maximum extent possible and as quickly as possible, the net amount of allocations made to each of the Members under **Section 4.1** of the Agreement and **Sections II.A** through **II.E** of this **Appendix B** (and otherwise under Code § 704(b) and the Regulations promulgated thereunder) and this **Section II.F(1)**, shall be equal to the net amount that would have been allocated to each of the Members solely under **Section 4.1** of the Agreement had the Regulatory Allocations not been applicable. The application of this **Section II.F(1)** and the making of curative allocations pursuant hereto shall be made in any reasonable manner determined by the Managing Member, following consultation with the Company's tax advisors.

(2) For purposes of applying **Section II.F(1)** above, Regulatory Allocations which constitute allocations of Nonrecourse Deductions or Member Nonrecourse Deductions shall not be offset by subsequent curative allocations of Profits or items of income or gain comprising the Profits or Losses of the Company pursuant to **Section II.F(1)** prior to the first Taxable Year thereafter during which there is a net decrease in the Company Minimum Gain (or a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt, as the case may be), and then, shall only be offset by curative allocations pursuant to **Section II.F(1)**, if the Managing Member reasonably determines that such Regulatory Allocations are not offset (or reasonably likely to be offset) by allocations (including expected future allocations) of income or gain under **Section II.A** or **Section II.B** of this **Appendix B**.

III. Excess Nonrecourse Liabilities. For purposes of determining the Members' proportionate share of "excess nonrecourse liabilities," if any, of the Company within the meaning of Regulations § 1.752-3(a)(3) for any Allocation Period, the Members' respective interests in Company "profits" shall be in the same proportions that the Members share Profits during such Allocation Period.

IV. Tax Treatment of Fees Paid by the Company to Member/Affiliate. For income tax reporting purposes, any and all fees paid by the Company to any Member and/or any Affiliate thereof, shall be treated as expenses of the Company and, if paid to a Member, shall be treated as payments made pursuant to § 707(a) of the Code. To the extent that payments of such fees to any Member or Affiliate thereof (or any other fees or compensation paid to any Member or Affiliate thereof) ultimately are not determined to be Code § 707(a) payments, the Member receiving such fee or compensation shall be specially allocated gross income of the Company in an amount equal to the amount of such fee or compensation, and the Member's Capital Account shall be adjusted to reflect the payment of such fee or compensation, subject to the next sentence. If the Company's gross income for an Allocation Period is less than the amount of such fee or compensation paid in such year, the Member shall be specially allocated gross income of the Company in the succeeding Allocation Period(s) until the total amount so allocated equals the total amount of such fee or compensation.

V. Related Matters. Any elections or other decisions relating to such allocations shall be made by the Managing Member in any manner that reasonably reflects the purpose and intention of this Agreement.

VI. Deficit Restoration. Notwithstanding any other provision of this Agreement to the contrary, upon liquidation of a Member's Membership Interest (whether or not in connection with a liquidation of the Company), no Member shall have any liability to restore any deficit in any deemed or hypothetical Capital Account. In addition, no allocation to any Member of any Loss, whether attributable to depreciation or otherwise, shall create any asset of or obligation to the Company, even if that allocation reduces, or creates or increases a deficit in that Member's deemed or hypothetical Capital Account; it is also the intent of the Members that no Member shall be obligated to pay any such amount to or for the account of the Company or any creditor of the Company. Notwithstanding the foregoing, upon the liquidation of a Member's Membership Interest, the Company may, with the approval of the Managing Member, allocate to such Member items of income and gain with respect to the Taxable Year in which such liquidation occurs, and with respect to any prior Taxable Year to the extent permitted by law, in order to eliminate any such deficit.

APPENDIX C
FORM OF SPOUSAL CONSENT

SPOUSAL CONSENT

I, _____, spouse of _____, acknowledge that I have read the Amended and Restated Limited Liability Company Agreement, dated as of September 30 2020, by and among Direct Digital Holdings, LLC, a Texas limited liability company (the "**Company**"), and the other parties thereto, to which this Spousal Consent (this "**Consent**") is attached as Appendix C (as the same may be amended or amended and restated from time to time, the "**Agreement**"), and that I understand the contents of the Agreement. I am aware that my spouse is a party to the Agreement and the Agreement contains provisions regarding the voting and transfer of the Membership Interests (as defined in the Agreement) of the Company which my spouse may own, including any interest I might have therein.

I hereby agree that I and any interest, including any community property interest, that I may have in any Membership Interests of the Company subject to the Agreement shall be irrevocably bound by the Agreement, including any restrictions on the transfer or other disposition of any Membership Interests, valuation methods, or agreed values for the Membership Interests or voting or other obligations as set forth in the Agreement. I hereby irrevocably appoint my spouse as my attorney-in-fact with respect to the exercise of any rights and obligations under the Agreement.

I agree that, in the event of divorce or the dissolution of my marriage to my present spouse or other legal division of property, I will transfer and sell, at the fair market value, to my spouse any and all interest I have or may acquire in the Company, and I further agree that a court may award such entire interest to my spouse as part of any such legal division of property. The foregoing agreement is not intended as a waiver of any community property or other ownership interest I may have in the Membership Interests of the Company, but only as an agreement to accept other property or assets of substantially equivalent value as part of any property settlement agreement or other legal division of property upon divorce or the dissolution of my marriage.

I agree not to bequeath my interest, if any, in the Membership Interests of the Company, by will, trust, or any other testamentary disposition to any person other than my current spouse. Further, the residuary clause in my will shall not include my interest, if any, in the Membership Interests of the Company.

I agree not to pledge or encumber any interest I may have in the Membership Interests of the Company.

This Consent shall be binding on my executors, administrators, heirs, and assigns. I agree to execute and deliver such documents as may be necessary to carry out the intent of the Agreement and this Consent.

I am aware that the legal, financial, and related matters contained in the Agreement are complex and that I am free to seek independent professional guidance or counsel with respect to this Consent. I have either sought such guidance or counsel or determined after reviewing the Agreement carefully that I will waive such right. I am under no disability or impairment that affects my decision to sign this Consent and I knowingly and voluntarily intend to be legally bound by this Consent. I am satisfied with the terms of this Consent and I understand and have received full disclosure of all the rights that I am agreeing to waive.

I hereby agree that my spouse may join in any future amendment, waiver, consent, or modification of the Agreement without any further signature, acknowledgment, agreement, or consent on my part or notice to me.

The undersigned has executed and delivered this spousal consent as of the date set forth below.

Dated to be effective on _____, 202_

_____

Name:

APPENDIX D
FORM OF ELECTION OF EXCHANGE

ELECTION OF EXCHANGE

Direct Digital Holdings, Inc.
1233 West Loop South, Suite 1170
Houston, TX 77027
Email Address: sechard@directdigitalholdings.com
Attention: Susan Echard

Direct Digital Holdings, LLC
c/o Direct Digital Holdings, Inc., its manager
1233 West Loop South, Suite 1170
Houston, TX 77027
Email Address: sechard@directdigitalholdins.com
Attention: Susan Echard

Reference is hereby made to the Second Amended and Restated Limited Liability Company Agreement of Direct Digital Holdings, LLC, a Texas limited liability company (the "**Company**"), dated as of January [_], 2022 (as amended from time to time, the "**LLC Agreement**"), among Direct Digital Holdings, Inc., a Delaware corporation ("**PubCo**"), the Company, and the Members from time to time party thereto (each, a "**Holder**"). Capitalized terms used but not defined herein shall have the meanings given to them in the LLC Agreement.

Effective as of the Exchange Date as determined in accordance with the LLC Agreement, the undersigned Member hereby transfers and surrenders to the Company the number of Class A Common Units set forth below and an equal number of shares of Paired Voting Stock held by such Member in exchange for the issuance to the undersigned Member of that number of shares of Class A Common Stock equal to the number of Class A Common Units so exchanged (to be issued in its name as set forth below), in accordance with the LLC Agreement. The undersigned hereby acknowledges that the Exchange of Class A Common Units shall include the cancellation of an equal number of outstanding shares of Paired Voting Stock held by the undersigned that have been surrendered in such Exchange.

Legal Name of Undersigned Member:_____
Address:_____

Number of Class A Common Units to be Exchanged:_____

If the undersigned Member desires the shares of Class A Common Stock be settled through the facilities of The Depositary Trust Company ("**DTC**"), please indicate the account of the DTC participant below.

In the event PubCo elects to certificate the shares of Class A Common Stock issued to the Member, please indicate the following:

Legal Name for Certificate Delivery:_____
Address for Certificate Delivery:_____

The undersigned hereby represents and warrants that (i) the undersigned has full legal capacity to execute and deliver this Election of Exchange and to perform the undersigned's obligations hereunder; (ii) this Election of Exchange has been duly executed and delivered by the undersigned and is the legal, valid and binding obligation of the undersigned enforceable against it in accordance with the terms thereof or hereof, as the case may be, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and the availability of equitable remedies; (iii) no consent, approval, authorization, order, registration or qualification of any third party or with any court or governmental agency or body having jurisdiction over the undersigned, the Class A Common Units, the Paired Voting Stock or shares of Class A Common Stock subject to this Election of Exchange is required to be obtained by the undersigned for the transfer of such Class A Common Units, Paired Voting Stock or shares of Class A Common Stock to the Company (or PubCo, as applicable); (iv) the undersigned has complied with any qualifications or filings required under applicable securities laws; (v) the undersigned is the owner of the number of Class A Common Units and Paired Voting Stock the undersigned is electing to Exchange pursuant to this Exchange Notice, and that such Class A Common Units and Paired Voting Stock are not subject to any liens or restrictions on transfer (other than restrictions imposed by the Agreement, the charter and governing documents of PubCo and applicable Law); (vi) the undersigned is an accredited investor as such term is defined in Rule 501 of Regulation D under the Securities Act of 1933, as amended; (vii) the undersigned is either not currently in possession of material non-public information concerning PubCo or its securities or will not be in possession of such material non-public information at the time the shares of Class A common stock are sold in any public sale and (viii) the undersigned has consulted with the undersigned's personal tax advisor regarding the tax consequences to the undersigned of this Election of Exchange and acknowledges that neither PubCo nor the Company is making any representations or warranties regarding the tax treatment of this Election of Exchange.

The undersigned hereby irrevocably constitutes and appoints any officer of PubCo, as applicable, as the attorney of the undersigned, with full power of substitution and resubstitution in the premises, solely to do any and all things and to take any and all actions necessary to effect the Exchange elected hereby.

IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Election of Exchange to be executed and delivered by the undersigned or by its duly authorized attorney.

Name: _____

Dated: _____

Exhibit 10.3

DIRECT DIGITAL HOLDINGS, INC.

2022 OMNIBUS INCENTIVE PLAN

1. Purpose

The purpose of the Plan is to provide a means through which the Company and its Affiliates may attract able persons to enter and remain in the employ of the Company and its Affiliates and to provide a means whereby employees, directors and consultants of the Company and its Affiliates can acquire and maintain Common Stock ownership, or be paid incentive compensation measured by reference to the value of Common Stock, thereby strengthening their commitment to the welfare of the Company and its Affiliates and promoting an identity of interest between stockholders and these persons.

This Plan document is an omnibus document which may include, in addition to the Plan, separate sub-plans ("Sub Plans") that permit offerings of grants to employees of certain Designated Foreign Subsidiaries. Offerings under the Sub Plans may be made in particular locations outside the United States of America and shall comply with local laws applicable to offerings in such foreign jurisdictions. The Plan shall be a separate and independent plan from the Sub Plans, but the total number of shares of Stock authorized to be issued under the Plan applies in the aggregate to both the Plan and the Sub Plans.

So that the appropriate incentive can be provided, the Plan provides for granting Incentive Stock Options, Nonqualified Stock Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Phantom Stock Awards, Stock Bonuses and Cash Bonus Awards, or any combination or variation of the foregoing.

The Plan is effective upon (a) the approval by the Company's stockholders of this Plan and (b) the date of consummation of the Company's initial public offering.

2. Definitions

The following definitions shall be applicable throughout the Plan.

(a) "Affiliate" means (i) any entity that directly or indirectly is controlled by, controls or is under common control with the Company and (ii) to the extent provided by the Committee, any entity in which the Company has a significant equity interest.

(b) "Award" means, individually or collectively, any Incentive Stock Option, Nonqualified Stock Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Unit, Phantom Stock Award, Stock Bonus or Cash Bonus Award granted under the Plan.

(c) "Award Agreement" means an agreement, contract or other instrument, document or other type or form of writing pursuant to which an Award is granted, whether in writing or through an electronic medium.

(d) "Board" means the Board of Directors of the Company.

(e) "Cash Bonus Award" means an Award of a cash bonus pursuant to Section 11 of the Plan.

(f) "Cause" shall mean, unless in the case of a particular Award the applicable Award Agreement states otherwise, the Company or an Affiliate having "cause" to terminate a Participant's employment or service, as defined in any existing employment, consulting or any other agreement between the Participant and the Company or an Affiliate in effect at the time of such termination or, in the absence of such an employment, consulting or other agreement, upon (i) the good faith determination by the Committee that the Participant has ceased to perform his duties to the Company or an Affiliate (other than as a result of his incapacity due to physical or mental illness or injury), which failure amounts to an intentional and extended neglect of his duties to such party, provided that no such failure shall constitute Cause unless the Participant has been given notice of such failure (if cure is reasonably possible) and has not cured such act or omission within 15 days following receipt of such notice, (ii) the Committee's good faith determination that the Participant has engaged or is about to engage in conduct materially injurious (financially, reputationally, or otherwise) to the Company or an Affiliate, (iii) the Participant having been convicted of, or plead guilty or no contest to, a felony or any crime involving as a material element fraud or dishonesty, (iv) the consistent failure of the Participant to follow the lawful instructions of the Board or his direct superiors, which failure amounts to an intentional and extended neglect of his duties to such party, or (v) in the case of a Participant who is a non-employee director, the Participant ceasing to be a member of the Board in connection with the Participant engaging in any of the activities described in clauses (i) through (iv) above.

(g) "Change in Control" shall, unless in the case of a particular Award the applicable Award Agreement states otherwise or contains a different definition of "Change in Control," be deemed to occur upon:

(i) the acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act (an "Entity")) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than 50% (on a fully diluted basis) of either (A) the then outstanding shares of Common Stock of the Company, taking into account as outstanding for this purpose such Common Stock issuable upon the exercise of options or warrants, the conversion of convertible stock or debt, and the exercise of any similar right to acquire such Common Stock or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that for purposes of this Plan, the following acquisitions shall not constitute a Change in Control: (I) any acquisition by the Company or any Affiliate, (II) any acquisition by any employee benefit plan sponsored or maintained by the Company or any Affiliate, (III) any acquisition which complies with clauses (A), (B) and (C) of subsection (v) of this Section 2(g), or (IV) in respect of an Award held by a particular Participant, any acquisition by the Participant or any group of persons including the Participant (or any entity controlled by the Participant or any group of persons including the Participant);

(ii) individuals who, on the date hereof, constitute the Board (the "Incumbent Directors") cease for any reason to constitute at least a majority of the Board, provided that any person becoming a director subsequent to the date hereof, whose election or nomination for election was approved by a vote of at least two-thirds of the Incumbent Directors then on the Board (either by a specific vote or by approval of a registration statement of the Company describing such person's inclusion on the Board, or a proxy statement of the Company in which such person is named as a nominee for director, without written objection to such nomination) shall be an Incumbent Director; provided, however, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to directors or as a result of any other actual or threatened solicitation of proxies or consents by or on behalf of any person other than the Board shall be deemed to be an Incumbent Director;

(iii) the dissolution or liquidation of the Company;

(iv) the sale, transfer or other disposition of all or substantially all of the business or assets of the Company; or

(v) the consummation of a reorganization, recapitalization, merger, consolidation, statutory share exchange or similar form of corporate transaction

involving the Company that requires the approval of the Company's stockholders, whether for such transaction or the issuance of securities in the transaction (a "Business Combination"), unless immediately following such Business Combination: (A) more than 50% of the total voting power of (x) the entity resulting from such Business Combination (the "Surviving Company"), or (y) if applicable, the ultimate parent entity that directly or indirectly has beneficial ownership of sufficient voting securities eligible to elect a majority of the members of the Board of Directors (or the analogous governing body) of the Surviving Company (the "Parent Company"), is represented by the Outstanding Company Voting Securities that were outstanding immediately prior to such Business Combination (or, if applicable, is represented by shares into which the Outstanding Company Voting Securities were converted pursuant to such Business Combination), and such voting power among the holders thereof is in substantially the same proportion as the voting power of the Outstanding Company Voting Securities among the holders thereof immediately prior to the Business Combination, (B) no Entity (other than any employee benefit plan sponsored or maintained by the Surviving Company or the Parent Company), is or becomes the beneficial owner, directly or indirectly, of more than 50% of the total voting power of the outstanding voting securities eligible to elect members of the Board of Directors of the Parent Company (or the analogous governing body) (or, if there is no Parent Company, the Surviving Company) and (C) at least a majority of the members of the Board of Directors (or the analogous governing body) of the Parent Company (or, if there is no Parent Company, the Surviving Company) following the consummation of the Business Combination were Board members at the time of the Board's approval of the execution of the initial agreement providing for such Business Combination.

(h) "Code" means the Internal Revenue Code of 1986, as amended. Reference in the Plan to any section of the Code shall be deemed to include any amendments or successor provisions to such section and any regulations under such section.

(i) "Committee" means the Compensation Committee of the Board, or if the Board is acting as the Committee, the individuals constituting Eligible Directors of the Board. Notwithstanding the foregoing, "Committee" means the Board for purposes of granting Awards to members of the Board who are not employees, and administering the Plan with respect to those Awards, unless the Board determines otherwise.

(j) "Common Stock" means the common stock, par value $0.001 per share, of the Company and any stock into which such common stock may be converted or into which it may be exchanged.

(k) "Company" means Direct Digital Holdings, Inc., and any successor thereto.

(l) "Date of Grant" means the date on which the granting of an Award is authorized, or such other date as may be specified in such authorization or, if there is no such date, the date indicated on the applicable Award Agreement.

(m) "Designated Foreign Subsidiaries" means all Affiliates organized under the laws of any jurisdiction or country other than the United States of America that may be designated by the Board or the Committee from time to time.

(n) "Disability" means, unless in the case of a particular Award the applicable Award Agreement states otherwise, the Company or an Affiliate having cause to terminate a Participant's employment or service on account of "disability," as defined in any existing employment, consulting or other similar agreement between the Participant and the Company or an Affiliate or, in the absence of such an employment, consulting or other agreement, a condition entitling the Participant to receive benefits under a long-term disability plan of the Company or an Affiliate, or, in the absence of such a plan, the complete and permanent inability by reason of illness or accident to perform the duties of the occupation at which a Participant was employed or served when such disability commenced, as determined by the Committee based upon medical evidence acceptable to it.

(o) "Effective Date" means the earlier of (i) the date on which this Plan is approved by the Company's stockholders, or (ii) the date on which this Plan is adopted by the Company's Board.

(p) "Eligible Director" means a person who is (i) a "non-employee director" within the meaning of Rule 16b-3 under the Exchange Act, or a person meeting any similar requirement under any successor rule or regulation, and (ii) an "independent director" under the rules of the stock exchange on which the Stock is listed or the National Association of Securities Dealers Automated Quotation System (the "Nasdaq"), as applicable.

(q) "Eligible Person" means any (i) individual regularly employed by the Company or Affiliate who satisfies all of the requirements of Section 6;provided, however, that no such employee covered by a collective bargaining agreement shall be an Eligible Person unless and to the extent that such eligibility is set forth in such collective bargaining agreement or in an agreement or instrument relating thereto; (ii) director of the Company or an Affiliate or (iii) consultant or advisor to the Company or an Affiliate who may be offered securities pursuant to Form S-8.

(r) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(s) "Fair Market Value" on a given date, means (i) if the Stock is listed on a national securities exchange, the closing price reported as having occurred on the primary exchange with which the Stock is listed and traded on the date prior to such date, or, if there is no such sale on that date, then on the last preceding date on which such a sale was reported; (ii) if the Stock is not listed on any national securities exchange but is quoted in the Nasdaq National Market on a last sale basis, the last sale price on such date, or, if there is no such sale on that date, then on the last preceding date on which a sale was reported; or (iii) if the Stock is not listed on a national securities exchange nor quoted in the Nasdaq on a last sale basis, the amount determined by the Committee to be the fair market value based upon a good faith attempt to value the Stock accurately and computed in accordance with applicable regulations of the Internal Revenue Service.

(t) "Good Reason" shall mean, unless in the case of a particular Award the applicable Award Agreement states otherwise, the Participant having "good reason" to terminate the Participant's employment or service, as defined in any existing employment, consulting or any other agreement between the Participant and the Company or an Affiliate in effect at the time of such termination or, in the absence of such an employment, consulting or other agreement, upon (i) a material diminution in the Participant's base compensation or target bonus below the amount as of the date of the award, totaling more than 20% in the aggregate; (ii) a material diminution in the Participant's authority, duties or responsibilities; (iii) a material change in the geographic location at which the Participant must perform services; or (iv) any action or inaction that constitutes a material breach by the Company of the Plan or an Award Agreement entered into with the Participant; provided, however, that for the Participant to be able to terminate his or her employment with the Company on account of "Good Reason" the Participant must provide notice of the occurrence of the event constituting Good Reason and his or her desire to terminate his or her employment with the Company on account of such Good Reason, and the Company must have a period of thirty (30) days following receipt of such notice to cure the condition. If the Company does not cure the event constituting Good Reason within such thirty (30) day period, the Participant's employment will terminate the day immediately following the end of such thirty (30) day period, unless the Company provides for an earlier employment termination date.

(u) "Incentive Stock Option" means an Option granted by the Committee to a Participant under the Plan which is designated by the Committee as an incentive stock option as described in Section 422 of the Code and otherwise meets the requirements set forth herein.

(v) "Nonqualified Stock Option" means an Option granted by the Committee to a Participant under the Plan which is not designated by the Committee as an Incentive Stock Option.

(w) "Option" means an Award granted under Section 7 of the Plan.

(x) "Option Price" means the exercise price for an Option as described in Section 7(a) of the Plan.

(y) "Parent" means any parent of the Company, as defined in Section 424(e) of the Code.

(z) "Participant" means an Eligible Person who has been selected by the Committee to participate in the Plan and to receive an Award pursuant to Section 6 of the Plan.

(aa) "Performance Criteria" shall mean the criterion or criteria that the Committee shall select for purposes of establishing the Performance Goal(s) for a Performance Period with respect to any Award under the Plan. The Performance Criteria that may be used to establish the Performance Goal(s) may be based on the achievement of specific levels of performance of the Company (or Affiliate, division or operational unit of the Company). Performance Criteria, may include, without limitation, any of the following: (i) net earnings or net income (before or after taxes); (ii) basic or diluted earnings per share (before or after taxes); (iii) net revenue or net revenue growth; (iv) gross revenue; (v) new client revenue; (vi) gross profit or gross profit growth; (vii) net operating profit (before or after taxes); (viii) return measures (including, but not limited to, return on assets, capital, invested capital, equity or sales); (ix) cash flow (including, but not limited to, operating cash flow, free cash flow, and cash flow return on capital); (x) earnings before or after taxes, interest, depreciation and/or amortization; (xi) share price (included, but not limited to, growth measures and total stockholder return); and (xii) any other objective or subjective criterion or criteria that the Committee may select from time to time.

Without limiting the Committee's authority to select any Performance Criteria as it determines appropriate, any Performance Criteria may be used on an absolute or relative basis to measure the performance of the Company and/or an Affiliate as a whole or any business unit of the Company and/or an Affiliate or any combination thereof, as the Committee may deem appropriate, or any Performance Criteria as compared to the performance of a group of comparable companies, or published or special index that the Committee, in its sole discretion, deems appropriate, or the Company may select Performance Criterion as compared to a selected peer group or published index. Performance Goals may also be based on individual performance goals. The Committee also has the authority to provide for accelerated vesting of any Award based on the achievement of Performance Goals pursuant to the Performance Criteria.

(bb) "Performance Goals" shall mean, for a Performance Period, the one or more goals established by the Committee for the Performance Period based upon the Performance Criteria. The Committee is authorized at any time during a Performance Period, or during the performance review period following the Performance Period, in its sole and absolute discretion, to adjust or modify the calculation of a Performance Goal for such Performance Period based on the occurrence of any of following events: (i) asset write downs; (ii) litigation or claim judgments or settlements; (iii) the effect of changes in tax laws, accounting principles, or other laws or regulatory rules affecting reported result; (iv) any reorganization or restructuring programs; (v) extraordinary nonrecurring items as described in Accounting Principles Board Opinion No. 30 (or any successor pronouncement thereto) or unusual or infrequently occurring items pursuant to Accounting Standards Update 2015-01 (or any successor pronouncement thereto) and/or in management's discussion and analysis of financial conditions and results of operations appearing in the Company's annual report to stockholders for the applicable year; (vi) acquisitions or divestitures; (vii) any other specific unusual or nonrecurring events, or objectively determinable category thereof; (viii) foreign exchange gains or losses; (ix) a change in the Company's fiscal year; or (x) any other event or circumstance the Committee deems appropriate.

(cc) "Performance Period" shall mean the one or more periods of time, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to and the payment of an Award.

(dd) "Phantom Stock Award" shall mean a cash award whose value is determined based on the change in the value of the Company Common Stock from the Effective Date.

(ee) "Plan" means this Direct Digital Holdings, Inc., 2021 Omnibus Incentive Plan, as may be amended from time to time.

(ff) "Restricted Period" means, with respect to any Award of Restricted Stock or any Restricted Stock Unit, the period of time determined by the Committee during which such Award is subject to the restrictions set forth in Section 9 or, as applicable, the period of time within which performance is measured for purposes of determining whether an Award has been earned.

(gg) "Restricted Stock" means shares of Stock issued or transferred to a Participant subject to a substantial risk of forfeiture, as defined in Section 83 of the Code, and the other restrictions set forth in Section 9 of the Plan.

(hh) "Restricted Stock Unit" means a hypothetical investment equivalent to one share of Stock granted in connection with an Award made under Section 9.

(ii) "Securities Act" means the Securities Act of 1933, as amended.

(jj) "Stock" means the Common Stock or such other authorized shares of stock of the Company as the Committee may from time to time authorize for use under the Plan.

(kk) "Stock Appreciation Right" or "SAR" means an Award granted under Section 8 of the Plan.

(ll) "Stock Bonus" means an Award granted under Section 10 of the Plan.

(mm) "Stock Option Agreement" means any agreement between the Company and a Participant who has been granted an Option pursuant to Section 7 which defines the rights and obligations of the parties thereto.

(nn) "Strike Price" means (i) in the case of a SAR granted in tandem with an Option, the Option Price of the related Option, or (ii) except with respect to a SAR that is a Substitute Award, in the case of a SAR granted independent of an Option, the Fair Market Value on the Date of Grant.

(oo) "Subsidiary" means any subsidiary of the Company.

(pp) "Substitute Award" means an Award granted or issued to a Participant in assumption or substitution of outstanding awards by an entity acquired by the

Company or any Affiliate or Subsidiary or with which the Company, an Affiliate or a Subsidiary combines.

(qq) "Vested Unit" shall have the meaning ascribed thereto in Section 9(d).

3. Effective Date, Duration and Stockholder Approval

The Plan is effective as of the Effective Date. No Option shall be treated as an Incentive Stock Option unless the Plan has been approved by the stockholders of the Company in a manner intended to comply with the stockholder approval requirements of Section 422(b)(i) of the Code; provided, that any Option intended to be an Incentive Stock Option shall not fail to be effective solely on account of a failure to obtain such approval, but rather such Option shall be treated as a Nonqualified Stock Option unless and until such approval is obtained.

The expiration date of the Plan, on and after which no Awards may be granted hereunder, shall be the tenth anniversary of the Effective Date; provided, however, that the administration of the Plan shall continue in effect until all matters relating to Awards previously granted have been settled.

4. Administration

(a) The Committee shall administer the Plan. The majority of the members of the Committee shall constitute a quorum. The acts of a majority of the members present at any meeting at which a quorum is present or acts approved in writing by a majority of the Committee shall be deemed the acts of the Committee.

(b) Subject to the provisions of the Plan and applicable law, the Committee shall have the power, and in addition to other express powers and authorizations conferred on the Committee by the Plan, to: (i) designate Participants; (ii) determine the type or types of Awards to be granted to a Participant; (iii) determine the number of shares of Stock to be covered by, or with respect to which payments, rights, or other matters are to be calculated in connection with, Awards; (iv) determine the terms and conditions of any Award; (v) determine whether, to what extent, and under what circumstances Awards may be settled or exercised in cash, shares of Stock, other securities, other Awards or other property, or canceled, forfeited, or suspended and the method or methods by which Awards may be settled, exercised, canceled, forfeited, or suspended; (vi) determine whether, to what extent, and under what circumstances the delivery of cash, Stock, other securities, other Options, other property and other amounts payable with respect to an Award shall be deferred either automatically or at the election of the holder thereof or of the Committee; (vii) accelerate the exercisability of any option or SAR and to remove any restriction on any Award; (viii) interpret, administer, reconcile any inconsistency, correct any defect and/or supply any omission in the Plan and any instrument or agreement relating to, or Award granted under, the Plan; (ix) establish, amend, suspend, or waive such rules and regulations; (x) appoint such agents as it shall deem appropriate for the proper administration of the Plan; and (xi) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan.

(c) Notwithstanding the foregoing, the Committee may delegate to any officer or officers of the Company or any Affiliate the authority to act on behalf of the Committee with respect to any matter, right, obligation, or election which is the responsibility of or which is allocated to the Committee herein, and which may be so delegated as a matter of law, except for grants of Awards to persons subject to Section 16 of the 1934 Act.

(d) Unless otherwise expressly provided in the Plan, all designations, determinations, interpretations, and other decisions under or with respect to the Plan or any Award or any documents evidencing Awards granted pursuant to the Plan shall be within the sole discretion of the Committee, may be made at any time and shall be final, conclusive and binding upon all parties, including, without limitation, the Company, any Affiliate, any Participant, any holder or beneficiary of any Award, and any stockholder.

(e) No member of the Board, Committee or any officer or employee to whom authority has been delegated administrative authority shall be liable for any action or determination made in good faith with respect to the Plan or any Award hereunder.

5. Grant of Awards; Shares Subject to the Plan

The Committee may, from time to time, grant Awards of Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Phantom Stock Awards, Stock Bonuses and/or Cash Bonus Awards to one or more Eligible Persons; provided, however, that:

(a) Subject to Section 15, the aggregate number of shares of Stock in respect of which Awards may be granted under the Plan as of the Effective Date is 1,500,000 shares of Stock, all of which may be granted pursuant to Incentive Stock Options.

(b) Shares of Stock shall not be deemed to have been used in settlement of Awards in the event the Award is settled in cash. Shares of Stock delivered (either directly or by means of attestation) in full or partial satisfaction of applicable tax withholding obligations or withheld by the Company in full or partial satisfaction of applicable tax withholding obligations for any Award, or that are withheld or delivered in satisfaction of any Option Price with respect to any Option, do not result in an issuance of shares under the Plan and accordingly do not reduce the number of shares of Stock in respect of which Awards may be granted under the Plan. If and to the extent an Award under the Plan expires, terminates or is canceled for any reason whatsoever without the Participant having received any benefit therefrom, the shares covered by such Award shall again become available for future Awards under the Plan. For purposes of the foregoing sentence, a Participant shall not be deemed to have received any "benefit" (i) in the case of forfeited Restricted Stock Awards by reason of having enjoyed voting rights and dividend rights prior to the date of forfeiture or (ii) in the case of an Award canceled pursuant to Section 5(d) by reason of a new Award being granted in substitution therefor.

(c) Stock delivered by the Company in settlement of Awards may be authorized and unissued Stock, Stock held in the treasury of the Company, Stock purchased on the open market or by private purchase, or a combination of the foregoing.

(d) Without limiting the generality of the preceding provisions of this Section 5 and subject to Section 17(b), the Committee may, but solely with the Participant's consent, agree to cancel any Award under the Plan and issue a new Award in substitution therefor upon such terms as the Committee may in its sole discretion determine, provided that the substituted Award satisfies all applicable Plan requirements as of the date such new Award is granted.

(e) Substitute Awards shall not be counted against the shares of Stock available for granting Awards under the Plan.

(f) In the event the Company or any Subsidiary or Affiliate acquires or combines with a company that has shares available under a pre-existing plan, such shares shall be available for grant of Awards under this Plan, subject to applicable listing exchange requirements and shall not be counted against the shares of Stock available for granting Awards under the Plan.

(g) Notwithstanding any other provision in the Plan to the contrary, the maximum number of shares of Stock subject to Awards granted during a single calendar year to any Eligible Director, taken together with any cash fees paid during the calendar year to the Eligible Director in respect of the Eligible Director's service as a member of the Board during such year (including service as a member or chair of any committees of the Board), shall not have an aggregate Fair Market Value on the Date of Grant (computed as of the Date of Grant in accordance with applicable financial accounting rules) in excess of an amount to be set by the independent members of the Board. The independent members of the Board may make exceptions to this limit for a non-executive chair of the Board, provided that the Eligible Director receiving such additional compensation may not participate in the decision to award such compensation.

6. Eligibility

Participation shall be limited to Eligible Persons who have entered into an Award Agreement or who have received written notification (which may be electronic) from the Committee, or from a person designated by the Committee, that they have been selected to participate in the Plan.

7. Options

The Committee is authorized to grant one or more Incentive Stock Options or Nonqualified Stock Options to any Eligible Person;provided, however, that no Incentive Stock Option shall be granted to any Eligible Person who is not an employee of the Company or a Parent or Subsidiary. Each Option so granted shall be subject to the conditions set forth in this Section 7, or to such other conditions as may be reflected in the applicable Stock Option Agreement.

(a) **Option Price**. Except with respect to an Option that is a Substitute Award, the Option Price per share of Stock for each Option shall be set by the Committee at the time of grant but shall not be less than the Fair Market Value of a share of Stock on the Date of Grant.

(b) **Manner of Exercise and Form of Payment**. No shares of Stock shall be delivered pursuant to any exercise of an Option until payment in full of the Option Price therefor is received by the Company. Options which have become exercisable may be exercised by delivery of written notice of exercise to the Committee accompanied by payment of the Option Price. The Option Price shall be payable (i) in cash, check, cash equivalent and/or shares of Stock valued at the Fair Market Value at the time the Option is exercised (including by means of attestation of ownership of a sufficient number of shares of Stock in lieu of actual delivery of such shares to the Company), (ii) in the discretion of the Committee, either (A) in other property having a fair market value on the date of exercise equal to the Option Price or (B) by delivering to the Committee a copy of irrevocable instructions to a stockbroker to deliver promptly to the Company an amount of loan proceeds, or proceeds from the sale of the Stock subject to the Option, sufficient to pay the Option Price or (iii) by such other method as the Committee may allow. Notwithstanding the foregoing, in no event shall a Participant be permitted to exercise an Option in the manner described in clause (ii) or (iii) of the preceding sentence if the Committee determines that exercising an Option in such manner would violate the Sarbanes-Oxley Act of 2002, any other applicable law or the applicable rules and regulations of the Securities and Exchange Commission or the applicable rules and regulations of any securities exchange or inter dealer quotation system on which the securities of the Company or any Affiliates are listed or traded. Options may be exercised only with respect to whole shares of Stock or their equivalents.

(c) **Vesting, Option Period and Expiration**. Options shall vest and become exercisable in such manner and on such date or dates determined by the Committee and shall expire after such period, not to exceed ten years, as may be determined by the Committee (the "Option Period"); provided, however, that notwithstanding any vesting dates set by the Committee, the Committee may, in its sole discretion, accelerate the exercisability of any Option, which acceleration shall not affect the terms and conditions of such Option other than with respect to exercisability. If an Option is exercisable in installments, such installments or portions thereof which become exercisable shall remain exercisable until the Option expires.

(d) **Stock Option Agreement - Other Terms and Conditions**. Each Option granted under the Plan shall be evidenced by a Stock Option Agreement. Except as specifically provided otherwise in such Stock Option Agreement, each Option granted under the Plan shall be subject to the following terms and conditions:

(i) Each Option or portion thereof that is exercisable shall be exercisable for the full amount or for any part thereof.

(ii) Each share of Stock purchased through the exercise of an Option shall be paid for in full at the time of the exercise. Each Option shall cease to be exercisable, as to any share of Stock, when the Participant purchases the share or exercises a related SAR or when the Option expires.

(iii) Subject to Section 13(l), Options shall not be transferable by the Participant except by will or the laws of descent and distribution and shall be exercisable during the Participant's lifetime only by him.

(iv) Each Option shall vest and become exercisable by the Participant in accordance with the vesting schedule established by the Committee and set forth in the Stock Option Agreement.

(v) At the time of any exercise of an Option, the Committee may, in its sole discretion, require a Participant to deliver to the Committee a written representation that the shares of Stock to be acquired upon such exercise are to be acquired for investment and not for resale or with a view to the distribution thereof and any other representation deemed necessary by the Committee to ensure compliance with all applicable federal and state securities laws. Upon such a request by the Committee, delivery of such representation prior to the delivery of any shares issued upon exercise of an Option shall be a condition precedent to the right of the Participant or such other person to purchase any shares. In the event certificates for Stock are delivered under the Plan with respect to which such investment representation has been obtained, the Committee may cause a legend or legends to be placed on such certificates to make appropriate reference to such representation and to restrict transfer in the absence of compliance with applicable federal or state securities laws.

(vi) Each Participant awarded an Incentive Stock Option under the Plan shall notify the Company in writing immediately after the date he or she makes a disqualifying disposition of any Stock acquired pursuant to the exercise of such Incentive Stock Option. A disqualifying disposition is any disposition (including any sale) of such Stock before the later of (A) two years after the Date of Grant of the Incentive Stock Option or (B) one year after the date the Participant acquired the Stock by exercising the Incentive Stock Option. The Company may, if determined by the Committee and in accordance with procedures established by it, retain possession of any Stock acquired pursuant to the exercise of an Incentive Stock Option as agent for the applicable Participant until the end of the period described in the preceding sentence, subject to complying with any instructions from such Participant as to the sale of such Stock.

(vii) An Option Agreement may, but need not, include a provision whereby a Participant may elect, at any time before the termination of the Participant's employment with the Company, to exercise the Option as to any part or all of the shares of Stock subject to the Option prior to the full vesting of the Option. Any unvested shares of Stock so purchased may be subject to a share repurchase option in favor of the Company or to any other restriction the Committee determines to be appropriate. The Company shall not exercise its repurchase option until at least six (6) months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes) have elapsed following the exercise of the Option unless the Committee otherwise specifically provides in an Stock Option Agreement.

(e) **Incentive Stock Option Grants to 10% Stockholders**. Notwithstanding anything to the contrary in this Section 7, if an Incentive Stock Option is granted to a Participant who owns stock representing more than ten percent of the voting power of all classes of stock of the Company or of a Subsidiary or Parent, the Option Period shall not exceed five years from the Date of Grant of such Option and the Option Price shall be at least 110 percent of the Fair Market Value (on the Date of Grant) of the Stock subject to the Option.

(f) **$100,000 Per Year Limitation for Incentive Stock Options**. To the extent the aggregate Fair Market Value (determined as of the Date of Grant) of Stock for which Incentive Stock Options are exercisable for the first time by any Participant during any calendar year (under all plans of the Company) exceeds $100,000, such excess Incentive Stock Options shall be treated as Nonqualified Stock Options.

8. Stock Appreciation Rights

Any Option granted under the Plan may include SARs, either at the Date of Grant or, except in the case of an Incentive Stock Option, by subsequent amendment. The Committee also may award SARs to Eligible Persons independent of any Option. A SAR shall be subject to such terms and conditions not inconsistent with the Plan as the Committee shall impose, including, but not limited to, the following:

(a) **Vesting, Transferability and Expiration**. A SAR granted in connection with an Option shall become exercisable, be transferable and shall expire according to the same vesting schedule, transferability rules and expiration provisions as the corresponding Option. A SAR granted independent of an Option shall become exercisable, be transferable and shall expire in accordance with a vesting schedule, transferability rules and expiration provisions as established by the Committee and reflected in an Award Agreement.

(b) **Payment**. Upon the exercise of a SAR, the Company shall pay to the Participant an amount equal to the number of shares subject to the SAR multiplied by the excess, if any, of the Fair Market Value of one share of Stock on the exercise date over the Strike Price. The Company shall pay such excess in cash in shares of Stock valued at Fair Market Value, or any combination thereof, as determined by the Committee. Fractional shares shall be settled in cash.

(c) **Method of Exercise**. A Participant may exercise a SAR at such time or times as may be determined by the Committee at the time of grant by filing an irrevocable written notice with the Committee or its designee, specifying the number of SARs to be exercised, and the date on which such SARs were awarded.

(d) **Expiration**. Except as otherwise provided in the case of SARs granted in connection with Options, a SAR shall expire on a date designated by the Committee which is not later than ten years after the Date of Grant of the SAR.

(e) **Tax Considerations**. The Committee shall take into account Section 409A of the Code and applicable regulatory guidance thereunder before granting a SAR.

9. Restricted Stock and Restricted Stock Units

(a) **Award of Restricted Stock and Restricted Stock Units**.

(i) The Committee shall have the authority (A) to grant Restricted Stock and Restricted Stock Units to Eligible Persons, (B) to issue or transfer Restricted Stock to Participants, and (C) to establish terms, conditions and restrictions applicable to such Restricted Stock and Restricted Stock Units, including the Restricted Period and any applicable Performance Goals, as applicable, which may differ with respect to each grantee, the time or times at which Restricted Stock or Restricted Stock Units shall be granted or become vested and the number of shares or units to be covered by each grant.

(ii) Each Participant granted Restricted Stock shall execute and deliver to the Company an Award Agreement with respect to the Restricted Stock setting forth the restrictions and other terms and conditions applicable to such Restricted Stock. If the Committee determines that the Restricted Stock shall be held by the Company or in escrow rather than delivered to the Participant pending the release of the applicable restrictions, the Committee may require the Participant to additionally execute and deliver to the Company (A) an escrow agreement satisfactory to the Committee, if applicable, and (B) the appropriate blank stock power with respect to the Restricted Stock covered by such agreement. If a Participant shall fail to execute an agreement evidencing an Award of Restricted Stock and, if applicable, an escrow agreement and stock power, the Award shall be null and void. Subject to the restrictions set forth in Section 9(b) and subject to Section 13(b), the Participant generally shall have the rights and privileges of a stockholder as to such Restricted Stock, including the right to vote such Restricted Stock.

(iii) Upon the grant of Restricted Stock, the Committee shall either (i) cause a stock certificate registered in the name of the Participant to be issued and, if it so determines, deposited together with the stock powers with an escrow agent designated by the Committee, or (ii) issue the Restricted Stock on a noncertificated basis, to the extent not prohibited by applicable law or the rules of any stock exchange or automated dealer quotation system on which the Shares are traded. If an escrow arrangement is used, the Committee may cause the escrow agent to issue to the Participant a receipt evidencing any stock certificate held by it, registered in the name of the Participant.

(iv) The terms and conditions of a grant of Restricted Stock Units shall be reflected in a written Award Agreement. No shares of Stock shall be issued at the time a Restricted Stock Unit is granted, and the Company will not be required to set aside a fund for the payment of any such Award. At the discretion of the Committee and subject to Section 14(b), each Restricted Stock Unit (representing one share of Stock) may be credited with cash and stock dividends paid by the Company in respect of one share of Stock ("Dividend Equivalents").

(b) **Restrictions**.

(i) Restricted Stock awarded to a Participant shall be subject to the following restrictions until the expiration of the Restricted Period, and to such other terms and conditions, including and without limitation, the satisfaction of any applicable Performance Goals during such period, as may be set forth in the applicable Award Agreement: (A) if an escrow arrangement is used, the Participant shall not be entitled to delivery of the stock certificate; (B) the shares shall be subject to the restrictions on transferability set forth in the Award Agreement; (C)the shares shall be subject to forfeiture to the extent provided in Section 9(c) and the applicable Award Agreement; and (D) to the extent such shares are forfeited, the stock certificates shall be returned to the Company, and all rights of the Participant to such shares and as a stockholder with respect to such shares shall terminate without further obligation on the part of the Company.

(ii) Restricted Stock Units awarded to any Participant shall be subject to (A) forfeiture until the expiration of the Restricted Period, and satisfaction of any applicable Performance Goals during such period, to the extent provided in the applicable Award Agreement, and to the extent such Restricted Stock Units are forfeited, all rights of the Participant to such Restricted Stock Units shall terminate without further obligation on the part of the Company and (B) such other terms and conditions as may be set forth in the applicable Award Agreement.

(c) **Restricted Period**. With respect to Restricted Stock and Restricted Stock Units, the Restricted Period shall commence on the Date of Grant and end at the time or times set forth on a schedule established by the Committee in the applicable Award Agreement.

(d) **Delivery of Restricted Stock and Settlement of Restricted Stock Units**. Upon the expiration of the Restricted Period with respect to any shares of

Restricted Stock, the restrictions set forth in Section 9(b) and the applicable Award Agreement shall be of no further force or effect with respect to such shares, except as set forth in the applicable Award Agreement. If an escrow arrangement is used, upon such expiration, the Company shall deliver to the Participant, or his beneficiary, without charge, the stock certificate evidencing the shares of Restricted Stock which have not then been forfeited and with respect to which the Restricted Period has expired (to the nearest full share) and any cash dividends or stock dividends credited to the Participant's account with respect to such Restricted Stock and the interest thereon, if any.

Subject to the applicable Award Agreement, upon the expiration of the Restricted Period with respect to any outstanding Restricted Stock Units, the Company shall deliver to the Participant, or his beneficiary, without charge, one share of Stock for each such outstanding Restricted Stock Unit ("Vested Unit") and cash equal to any Dividend Equivalents credited with respect to each such Vested Unit in accordance with Section 9(a)(iv) hereof and the interest thereon or, at the discretion of the Committee, in shares of Stock having a Fair Market Value equal to such Dividend Equivalents and interest thereon, if any; provided, however, that, the Committee may, in its sole discretion, elect to (i)pay cash or part cash and part Stock in lieu of delivering only shares of Stock for Vested Units or (ii) delay the delivery of Stock (or cash or part Stock and part cash, as the case may be) beyond the expiration of the Restricted Period. If a cash payment is made in lieu of delivering shares of Stock, the amount of such payment shall be equal to the Fair Market Value of the Stock as of the date on which the Restricted Period lapsed with respect to such Vested Unit.

(e) **Stock Restrictions**. Each certificate representing Restricted Stock awarded under the Plan shall bear a legend substantially in the form of the following until the lapse of all restrictions with respect to such Stock as well as any other information the Company deems appropriate:

> Transfer of this certificate and the shares represented hereby is restricted pursuant to the terms of the Direct Digital Holdings, Inc., 2021 Omnibus Incentive Plan and a Restricted Stock Award Agreement, dated as of _____, between Direct Digital Holdings, Inc., and _____. A copy of such Plan and Agreement is on file at the offices of Direct Digital Holdings, Inc..

Stop transfer orders shall be entered with the Company's transfer agent and registrar against the transfer of legend securities.

10. Stock Bonus Awards

The Committee may issue unrestricted Stock, or other Awards denominated in Stock, including and without limitation, fully-vested deferred stock units, under the Plan to Eligible Persons, alone or in tandem with other Awards, in such amounts and subject to such terms and conditions as the Committee shall from time to time in its sole discretion determine. A Stock Bonus Award under the Plan shall be granted as, or in payment of, a bonus, or to provide incentives or recognize special achievements or contributions.

11. Cash Bonus Awards

The Committee shall have the authority to make an Award of a cash bonus to any Participant. Any such Award may be subject to a Performance Period, Performance Goals or such other terms and conditions as the Committee may designate in the applicable Award Agreement.

12. Forfeiture of Awards

(a) **Forfeiture Events**. Unless the Committee shall have determined otherwise in an Award Agreement, the recipient of any Award pursuant to the Plan shall forfeit the Award, to the extent not then payable or exercisable, upon the occurrence of any of the following events, subject to compliance with any applicable local laws:

(i) The recipient is terminated for Cause.

(ii) The recipient engages in competition with the Company or any Affiliate.

(iii) The recipient engages in any activity or conduct contrary to the best interests of the Company or any Affiliate, including, but not limited to, conduct that breaches the recipient's duty of loyalty to the Company or an Affiliate or that is materially injurious to the Company or an Affiliate, monetarily or otherwise. Such activity or conduct may include, without limitation: (i) disclosing or misusing any confidential information pertaining to the Company or an Affiliate, (ii) any attempt, directly or indirectly, to induce any employee of the Company or any Affiliate to be employed or perform services elsewhere, or (iii) any direct or indirect attempt to solicit, or assist another employer in soliciting, the trade of any customer or supplier or prospective customer of the Company or any Affiliate. Notwithstanding the foregoing, nothing herein prohibits a recipient from (A) reporting possible violations of federal law or regulations, including any possible securities laws violations, to any governmental agency or entity, (B) making any other disclosures that are protected under the whistleblower provisions of federal law or regulations, or (C) otherwise fully participating in any federal whistleblower programs, including but not limited to any such programs managed by the U.S. Securities and Exchange.

(b) **Additional/Waiver of Conditions**. The Committee or the Board, as the case may be, may include in any Award Agreement any additional or different conditions of forfeiture it may deem appropriate, and may waive any condition of forfeiture stated above or in the Award Agreement.

(c) **Effect of Forfeiture**. In the event of forfeiture, the recipient shall lose all rights in and to portions of any Award then outstanding. Except in the case of an Award of Restricted Stock as to which restrictions have not lapsed and subject to the clawback provisions in Section 19, this provision, however, shall not be invoked to require any recipient to transfer to the Company any Common Stock or cash already received under an Award.

(d) **Committee/Board Discretion**. Such determinations as may be necessary for application of this Section, including any grant of authority to others to make determinations under this Section, shall be at the sole discretion of the Committee, or in the case of Awards granted to directors, of the Board, and such determinations shall be conclusive and binding.

13. General

(a) **Additional Provisions of an Award**. Awards to a Participant under the Plan also may be subject to such other provisions (whether or not applicable to Awards granted to any other Participant) as the Committee determines appropriate, including, without limitation, provisions to assist the Participant in financing the purchase of Stock upon the exercise of Options (provided, that the Committee determines that providing such financing does not violate the Sarbanes-Oxley Act of 2002), adding Dividend Equivalent rights or other protections to Participants in respect of dividends paid on Stock underlying any Award (in addition to and subject to those provisions of Section 9 and Section 13(b), including the prohibition on currently paying dividends or Dividend Equivalents prior to the release of restrictions or settlement of the corresponding Restricted Stock or Restricted Stock Units), provisions for the forfeiture of or restrictions on resale or other disposition of shares of Stock acquired under any Award, provisions giving the Company the right to repurchase shares of Stock acquired under any Award in the event the Participant elects to dispose of such shares, provisions allowing the Participant to elect to defer the receipt of payment in respect of Awards for a specified period or until a specified event, and provisions to comply with Federal and state securities laws and

Federal and state tax withholding requirements; provided, however, that any such deferral does not result in acceleration of taxability of an Award prior to receipt, or tax penalties, under Section 409A of the Code. Any such provisions shall be reflected in the applicable Award Agreement.

(b) **Treatment of Dividends and Dividend Equivalents on Unvested Awards**. In no event shall dividends or Dividend Equivalents (whether paid in cash or shares of Stock) be paid with respect to Options or Stock Appreciation Rights. Notwithstanding any other provision of the Plan to the contrary, with respect to any Award that provides for or includes a right to dividends or Dividend Equivalents, if dividends are declared during the period that an Award is outstanding, such dividends (or Dividend Equivalents) shall either (i) not be paid or credited with respect to such Award or (ii) be accumulated but remain subject to vesting requirement(s) to the same extent as the applicable Award and shall only be paid at the time or times such vesting requirement(s) are satisfied and the Award is settled (as applicable).

(c) **Privileges of Stock Ownership**. Except as otherwise specifically provided in the Plan, no person shall be entitled to the privileges of ownership in respect of shares of Stock which are subject to Awards hereunder until such shares have been issued to that person.

(d) **Government and Other Regulations**. The obligation of the Company to settle Awards in Stock shall be subject to all applicable laws, rules, and regulations, and to such approvals by governmental agencies as may be required. Notwithstanding any terms or conditions of any Award to the contrary, the Company shall be under no obligation to offer to sell or to sell, and shall be prohibited from offering to sell or selling, any shares of Stock pursuant to an Award unless such shares have been properly registered for sale pursuant to the Securities Act with the Securities and Exchange Commission or unless the Company has received an opinion of counsel, satisfactory to the Company, that such shares may be offered or sold without such registration pursuant to an available exemption therefrom and the terms and conditions of such exemption have been fully complied with. The Company shall be under no obligation to register for sale under the Securities Act any of the shares of Stock to be offered or sold under the Plan. If the shares of Stock offered for sale or sold under the Plan are offered or sold pursuant to an exemption from registration under the Securities Act, the Company may restrict the transfer of such shares and may legend the Stock certificates representing such shares in such manner as it deems advisable to ensure the availability of any such exemption.

(e) **Tax Withholding**.

(i) A Participant may be required to pay to the Company or any Affiliate, and the Company or any Affiliate shall have the right and is hereby authorized to withhold from any shares of Stock or other property deliverable under any Award or from any compensation or other amounts owing to a Participant, the amount (in cash, Stock or other property) of any required income tax withholding and payroll taxes in respect of an Award, its exercise, or any payment or transfer under an Award or under the Plan and to take such other action as may be necessary in the opinion of the Company to satisfy all obligations for the payment of such withholding and taxes.

(ii) Without limiting the generality of clause (i) above, the Committee may, in its sole discretion, permit a Participant to satisfy, in whole or in part, the foregoing withholding (at a tax withholding rate that will not result in adverse accounting implications for the Company) by (A) the delivery of shares of Stock owned by the Participant having a Fair Market Value equal to such withholding liability, (B) having the Company withhold from the number of shares of Stock otherwise issuable pursuant to the exercise or settlement of the Award a number of shares with a Fair Market Value equal to such withholding liability, (C) by delivering to the Committee a copy of irrevocable instructions to a stockbroker to deliver promptly to the Company an amount of loan proceeds, or proceeds from the sale of the Stock subject to the Option, sufficient to pay the withholding liability or (D) by such other method as the Committee may allow.

(f) **Claim to Awards and Employment Rights**. No employee of the Company or an Affiliate, or other person, shall have any claim or right to be granted an Award under the Plan or, having been selected for the grant of an Award, to be selected for a grant of any other Award. Neither the Plan nor any action taken hereunder shall be construed as giving any Participant any right to be retained in the employ or service of the Company or an Affiliate.

(g) **Designation and Change of Beneficiary**. If permitted by the Committee in its sole discretion, each Participant may file with the Committee a written designation of one or more persons as the beneficiary who shall be entitled to receive the amounts payable with respect to an Award, if any, due under the Plan upon his death. A Participant may, from time to time, revoke or change his beneficiary designation without the consent of any prior beneficiary by filing a new designation with the Committee. The last such designation received by the Committee shall be controlling; provided, however, that no designation, or change or revocation thereof, shall be effective unless received by the Committee prior to the Participant's death, and in no event shall it be effective as of a date prior to such receipt. If no beneficiary designation is filed by a Participant, the beneficiary shall be deemed to be his or her spouse or, if the Participant is unmarried at the time of death, his or her estate.

(h) **Payments to Persons Other Than Participants**. If the Committee shall find that any person to whom any amount is payable under the Plan is unable to care for his affairs because of illness or accident, or is a minor, or has died, then any payment due to such person or his estate (unless a prior claim therefor has been made by a duly appointed legal representative) may, if the Committee so directs the Company, be paid to his spouse, child, relative, an institution maintaining or having custody of such person, or any other person deemed by the Committee to be a proper recipient on behalf of such person otherwise entitled to payment. Any such payment shall be a complete discharge of the liability of the Committee and the Company therefor.

(i) **No Liability of Committee Members**. No member of the Committee shall be personally liable by reason of any contract or other instrument executed by such member or on his behalf in his capacity as a member of the Committee nor for any mistake of judgment made in good faith, and the Company shall indemnify and hold harmless each member of the Committee and each other employee, officer or director of the Company to whom any duty or power relating to the administration or interpretation of the Plan may be allocated or delegated, against any cost or expense (including counsel fees) or liability (including any sum paid in settlement of a claim) arising out of any act or omission to act in connection with the Plan unless arising out of such person's own fraud or willful bad faith; provided, however, that approval of the Board shall be required for the payment of any amount in settlement of a claim against any such person. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Articles of Incorporation or By-Laws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

(j) **Governing Law**. The Plan shall be governed by and construed in accordance with the internal laws of the State of Delaware applicable to contracts made and performed wholly within the State of Delaware.

(k) **Funding**. No provision of the Plan shall require the Company, for the purpose of satisfying any obligations under the Plan, to purchase assets or place any assets in a trust or other entity to which contributions are made or otherwise to segregate any assets, nor shall the Company maintain separate bank accounts, books, records or other evidence of the existence of a segregated or separately maintained or administered fund for such purposes. Participants shall have no rights under the Plan other than as unsecured general creditors of the Company, except that insofar as they may have become entitled to payment of additional compensation by performance of services, they shall have the same rights as other employees under general law.

(l) **Nontransferability**.

(i) Each Award shall be exercisable only by a Participant during the Participant's lifetime, or, if permissible under applicable law, by the Participant's legal guardian or representative. No Award may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Participant other than by will or by the laws of descent and distribution and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or an Affiliate; provided that the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance. Notwithstanding the foregoing, subject to the execution of transfer documentation in a format acceptable to the Company and subject to the approval of the Committee or a duly authorized officer of the Company, an Option may be transferred pursuant to a domestic relations order.

(ii) Notwithstanding the foregoing, the Committee may, in its sole discretion, permit Awards other than Incentive Stock Options to be transferred by a Participant, without consideration, subject to such rules as the Committee may adopt consistent with any applicable Award Agreement to preserve the purposes of the Plan, to:

A. any person who is a "family member" of the Participant, as such term is used in the instructions to Form S-8 (collectively, the "Immediate Family Members");

B. a trust solely for the benefit of the Participant and his or her Immediate Family Members;

C. a partnership or limited liability company whose only partners or stockholders are the Participant and his or her Immediate Family Members; or

D. other transferee as may be approved either (a) by the Board or the Committee in its sole discretion, or (b) as provided in the applicable Award Agreement;

(each transferee described in clauses (A), (B), (C) and (D) above is hereinafter referred to as a "Permitted Transferee"); provided that the Participant gives the Committee advance written notice describing the terms and conditions of the proposed transfer and the Committee notifies the Participant in writing that such a transfer would comply with the requirements of the Plan.

(iii) The terms of any Award transferred in accordance with the immediately preceding sentence shall apply to the Permitted Transferee and any reference in the Plan, or in any applicable Award Agreement, to a Participant shall be deemed to refer to the Permitted Transferee, except that (A) Permitted Transferees shall not be entitled to transfer any Award, other than by will or the laws of descent and distribution; (B) Permitted Transferees shall not be entitled to exercise any transferred Option unless there shall be in effect a registration statement on an appropriate form covering the shares of Stock to be acquired pursuant to the exercise of such Option if the Committee determines, consistent with any applicable Award Agreement, that such a registration statement is necessary or appropriate, (C) the Committee or the Company shall not be required to provide any notice to a Permitted Transferee, whether or not such notice is or would otherwise have been required to be given to the Participant under the Plan or otherwise, and (D) the consequences of the termination of the Participant's employment by, or services to, the Company or an Affiliate under the terms of the Plan and the applicable Award Agreement shall continue to be applied with respect to the Participant, including, without limitation, that an Option shall be exercisable by the Permitted Transferee only to the extent, and for the periods, specified in the Plan and the applicable Award Agreement.

(m) **Reliance on Reports**. Each member of the Committee and each member of the Board shall be fully justified in acting or failing to act, as the case may be, and shall not be liable for having so acted or failed to act in good faith, in reliance upon any report made by the independent public accountant of the Company and its Affiliates and/or any other information furnished in connection with the Plan by any person or persons other than himself.

(n) **Relationship to Other Benefits**. No payment under the Plan shall be taken into account in determining any benefits under any pension, retirement, profit sharing, group insurance or other benefit plan of the Company except as otherwise specifically provided in such other plan.

(o) **Expenses**. The expenses of administering the Plan shall be borne by the Company and Affiliates.

(p) **Pronouns**. Masculine pronouns and other words of masculine gender shall refer to both men and women.

(q) **Titles and Headings**. The titles and headings of the sections in the Plan are for convenience of reference only, and in the event of any conflict, the text of the Plan, rather than such titles or headings shall control.

(r) **Termination of Employment**. Unless an applicable Award Agreement provides otherwise, for purposes of the Plan, a person who transfers from employment or service with the Company to employment or service with an Affiliate or vice versa shall not be deemed to have terminated employment or service with the Company or an Affiliate. Unless required by Code Section 409A, a transfer from employment to service, or vice versa, within or between the Company or an Affiliate, shall not be deemed a termination of employment or services with the Company or an Affiliate.

(s) **Severability**. If any provision of the Plan or any Award Agreement is or becomes or is deemed to be invalid, illegal, or unenforceable in any jurisdiction or as to any person or Award, or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to the applicable laws, or if it cannot be construed or deemed amended without, in the determination of the Committee, materially altering the intent of the Plan or the Award, such provision shall be stricken as to such jurisdiction, person or Award and the remainder of the Plan and any such Award shall remain in full force and effect.

(t) **Compliance with Applicable Law**. Notwithstanding any provision in the Plan to the contrary, the Committee reserves the right to add any additional terms or provisions to any Award granted under the Plan that it in its sole discretion deems necessary or advisable in order that such Award complies with the legal requirements of any governmental entity to whose jurisdiction the Award is subject.

14. Changes in Capital Structure

Awards granted under the Plan and any agreements evidencing such Awards, the maximum number of shares of Stock subject to all Awards stated in Section 5(a) shall be subject to adjustment or substitution, as determined by the Committee in its sole discretion, as to the number, price or kind of a share of Stock or other consideration subject to such Awards or as otherwise determined by the Committee to be equitable (i) in the event of changes in the outstanding Stock or in the capital structure of the Company by reason of stock or extraordinary cash dividends, stock splits, reverse stock splits, recapitalization, reorganizations, mergers, consolidations, combinations, exchanges, or other relevant changes in capitalization occurring after the Date of Grant of any such Award or (ii) in the event of any change in applicable laws or any change in circumstances which results in or would result in any substantial dilution or enlargement of the rights granted to, or available for, Participants, or which otherwise warrants equitable adjustment because it interferes with the intended operation of the Plan. Any adjustment in Incentive Stock Options under this Section 15 shall be made only to the extent not constituting a "modification" within the meaning of Section 424(h)(3) of the Code, and any adjustments under this Section 15 shall be made in a manner which does not adversely affect the exemption provided pursuant to Rule 16b-3 under the Exchange Act.

Notwithstanding the above, if the Company is merged or consolidated with another corporation or entity and, in connection therewith, consideration is received by stockholders of the Company in a form other than stock or other equity interests of the surviving entity then the Committee may, in its discretion, cancel any outstanding Awards and cause the holders thereof to be paid, in cash or stock, or any combination thereof, the value of such Awards based upon the price per share of Stock received or to

be received by other stockholders of the Company in the event.

The terms of this Section 15 may be varied by the Committee in any particular Award Agreement.

15. Effect of Change in Control

(a) If (i) within 12 months following a Change in Control or (ii) in contemplation of a Change in Control at the acquiror's request or suggestion, a Participant's employment or service with the Company or any Affiliate is terminated by the Company or an Affiliate without Cause or by the Participant for Good Reason, all Awards held by such Participant, irrespective of the vesting schedule, shall become fully vested and immediately exercisable and, if applicable, the restricted period shall end at the time of such termination.

(b) In the event of a Change in Control, all incomplete Performance Periods in respect of such Award in effect on the date the Change in Control occurs shall end on the date of such change, and the Committee shall (A) determine the extent to which performance goals with respect to each such Award have been met based upon such audited or unaudited financial information then available as it deems relevant, (B) cause to be paid to the applicable Participant partial or full Awards with respect to Performance Goals for each such Award based upon the Committee's determination of the degree of attainment of performance goals, and (C) cause the Award, if previously deferred, to be settled in full as soon as possible.

(c) In the event of a Change in Control, the Committee may in its discretion cancel any outstanding vested Awards and pay to the holders thereof, in cash or stock, or any combination thereof, the value of such vested Awards based upon the price per share of Common Stock received or to be received by other stockholders of the Company in the event.

(d) In the event of a Change in Control, the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be (the "Acquiror"), may, without the consent of any Participant, assume or continue the Company's rights and obligations under each or any Award or portion thereof outstanding immediately prior to the Change in Control or substitute for each or any such outstanding Award or portion thereof a substantially equivalent award with respect to the Acquiror's stock, as applicable. For purposes of this Section, if so determined by the Committee in its discretion, an Award denominated in shares of Common Stock shall be deemed assumed if, following the Change in Control, the Award confers the right to receive, subject to the terms and conditions of the Plan and the applicable Award Agreement, for each share of Common Stock subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, other securities or property or a combination thereof) to which a holder of a share of Common Stock on the effective date of the Change in Control was entitled (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares of Common Stock); provided, however, that if such consideration is not solely common stock of the Acquiror, the Committee may, with the consent of the Acquiror, provide for the consideration to be received upon the exercise or settlement of the Award, for each share of Common Stock subject to the Award, to consist solely of common stock of the Acquiror equal in Fair Market Value to the per share consideration received by holders of Common Stock pursuant to the Change in Control. Any Award or portion thereof which is not assumed, continued or substituted as provided herein by the Acquiror in connection with the Change in Control, irrespective of the vesting schedule, shall become fully vested and immediately exercisable and, if applicable, the Restricted Period shall end as of the time of consummation of the Change in Control.

(e) In the event any payment(s) or the value of any benefit(s) received or to be received by a Participant in connection with or contingent upon a Change in Control (whether received or to be received pursuant to the terms of the Plan or any Award Agreement or of any other plan, arrangement or agreement of the Company, its successors, any person whose actions result in a Change in Control, or any person affiliated with any of them (or which, as a result of the completion of the transaction(s) causing a Change in Control, will become affiliated with any of them) (collectively, the "Payments")), are determined, under the provisions of this subsection to be subject to an excise tax imposed by Code Section 4999 (any such excise tax, together with any interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), as determined in this subsection, then the Company shall reduce the aggregate amount of the Payments payable to the Participant such that no Excise Tax shall be payable by the Participant and the Payments shall not cease to be deductible by the Company by reason of Code Section 280G (or any successor provision thereto). Notwithstanding the foregoing, the Company shall not reduce the aggregate amount of the Payments payable to the Participant pursuant to the foregoing sentence if the After-Tax Amount (as defined below) of the unreduced Payments is greater than the After-Tax Amount that would have been paid had the Payments been reduced pursuant to the foregoing sentence. For purposes of this Agreement, "After-Tax Amount" means the portion of a specified amount that would remain after payment of all Excise Taxes (if any), income taxes, payroll and withholding taxes, and other applicable taxes paid or payable by Participant in respect of such specified amount.

If there is a determination that the Payments payable to Participant must be reduced pursuant to the immediately preceding paragraph, the Company shall promptly give Participant notice to that effect and a copy of the detailed calculation thereof and of the amount to be reduced. The Participant may then elect which and how much the Payments shall be eliminated or reduced as long as (i) the first such Payments to be reduced are not considered "deferred compensation" within the meaning of Code Section 409A (if any), (ii) if Payments described in clause (i) are exhausted and additional reductions are necessary, any cash Payments are reduced next, and (iii) after such election the aggregate present value of the Payments equals the largest amount that would both (A) not cause any Excise Tax to be payable by the Participant, and (B) not cause any Payments to become nondeductible by the Company by reason of Code Section 280G (or any successor provision thereto). The Participant shall advice the Company in writing of the Participant's election within ten (10) days of the Participant's receipt of such notice from the Company. Notwithstanding the foregoing, if no election is made by the Participant within the ten-day period, the Company may elect which and how much of the Payments shall be eliminated or reduced as long (1) the first such payments to be reduced are not considered "deferred compensation" within the meaning of Code Section 409A (if any), (2) if Payments described in clause (1) are exhausted and additional reductions are necessary, any cash Payments are reduced next, and (3) after such election the aggregate present value of the Payments equals the largest amount that would both (A) not cause any Excise Tax to be payable by the Participant, and (B) not cause any Payments to become nondeductible by the Company by reason of Code Section 280G (or any successor provision thereto). For purposes of this paragraph, present value shall be determined in accordance with Code Section 280G(d)(4).

All determinations required to be made under this subsection, including whether the aggregate amount of Payments shall be reduced, and the assumptions to be utilized in arriving at such determinations, shall be made by the certified public accountants regularly employed by the Company immediately prior to the Change in Control transaction ("Accounting Firm"). Any determination by the Accounting Firm shall be binding upon the Company and Participant and shall be made within sixty (60) days immediately following the event constituting the Change in Control transaction. As promptly as practicable following such determination, the Company shall pay to or distribute for the benefit of the Participant such Payments as are then due to the Participant under this Plan and applicable Award Agreement.

At the time of the initial determination by the Accounting Firm, it is possible that amounts will have been paid or distributed by the Company to or for the benefit of the Participant pursuant to this Plan which should not have been so paid or distributed ("Overpayment") or that additional amounts which will have not been paid or distributed by the Company to or for the benefit of the Participant pursuant to this Plan could have been so paid or distributed ("Underpayment"), in each case, consistent with the calculation hereunder. In the event that the Accounting Firm, based either upon the assertion of a deficiency by the Internal Revenue Service against the Company or the Participant which the Accounting Firm believes has a high probability of success or controlling precedent or other substantial authority, determines that an Overpayment has been made, any such Overpayment paid or distributed by the Company to or for the benefit of the Participant shall be treated for all purposes as a loan ab initio to the Participant which the Participant shall repay to the Company together with interest at the applicable Federal rate provided for in Code Section 7872(f)(2); provided, however,

that no such loan shall be deemed to have been made and no amount shall be payable by the Participant to the Company if and to the extent (i) such deemed loan and payment would not either reduce the amount on which the Participant is subject to tax under Code Section 1 and Code Section 4999 or generate a refund of such taxes or (ii) the Participant is subject to the prohibition on personal loans under Section 402 of the Sarbanes-Oxley Act of 2002. In the event that the Accounting Firm, based upon controlling precedent or other substantial authority, determines that an Underpayment has occurred, any such Underpayment shall be promptly paid by the Company to or for the benefit of the Participant together with interest at the applicable Federal rate provided for in Code Section 7872(f)(2).

(f) The obligations of the Company under the Plan shall be binding upon any successor corporation or organization resulting from the merger, consolidation or other reorganization of the Company, or upon any successor corporation or organization succeeding to substantially all of the assets and business of the Company. The Company agrees that it will make appropriate provisions for the preservation of Participants' rights under the Plan in any agreement or plan which it may enter into or adopt to effect any such merger, consolidation, reorganization or transfer of assets.

16. Nonexclusivity of the Plan

Neither the adoption of this Plan by the Board nor the submission of this Plan to the stockholders of the Company for approval shall be construed as creating any limitations on the power of the Board to adopt such other incentive arrangements as it may deem desirable, including, without limitation, the granting of stock options otherwise than under this Plan, and such arrangements may be either applicable generally or only in specific cases.

17. Amendments and Termination

(a) **Amendment and Termination of the Plan**. The Board may amend, alter, suspend, discontinue, or terminate the Plan or any portion thereof at any time; provided, that no such amendment, alteration, suspension, discontinuation or termination shall be made without stockholder approval if such approval is necessary to comply with any tax or regulatory requirement applicable to the Plan (including as necessary to comply with any applicable stock exchange listing requirement); and provided, further that any such amendment, alteration, suspension, discontinuance or termination that would impair the rights of any Participant or any holder or beneficiary of any Award theretofore granted shall not to that extent be effective without the consent of the affected Participant, holder or beneficiary. The termination date of the Plan, following which no Awards may be granted hereunder, shall be the tenth anniversary of the Effective Date; provided, that such termination shall not affect Awards then outstanding, and the terms and conditions of the Plan shall continue to apply to such Awards.

(b) **Amendment of Award Agreements**. The Committee may, to the extent consistent with the terms of any applicable Award Agreement, waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate, any Award theretofore granted or the associated Award Agreement, prospectively or retroactively; provided that any such waiver, amendment, alteration, suspension, discontinuance, cancellation or termination that would impair the rights of any Participant or any holder or beneficiary of any Award theretofore granted shall not to that extent be effective without the consent of the affected Participant, holder or beneficiary; and provided further that, other than in connection with an equitable adjustment under Section 15 or a Change in Control, without stockholder approval, (i) no amendment or modification may reduce the Option Price of any Option or the Strike Price of any SAR, (ii) the Committee may not cancel any outstanding Option or SAR and replace it with a new Option or SAR (with a lower Option Price or Strike Price, as the case may be) in a manner which would either (A) (if the Company is subject to the reporting requirement of the Exchange Act) be reportable on the Company's proxy statement as Options which have been "repriced" (as such term is used in Item 402 of Regulation S-K promulgated under the Exchange Act), or (B) result in any Option being accounted for under the "variable" method for financial statement reporting purposes and (iii) the Committee may not take any other action which is considered a "repricing" for purposes of the stockholder approval rules of the applicable stock exchange on which the Stock is listed, if any. In no event may the Company buyout for cash any Option or SAR whose Option Price or Strike Price (as applicable) on the date of purchase exceeds the Fair Market Value of the Company's Stock.

18. Compliance with Section 409A.

(a) It is intended that any amounts payable under this Plan shall either be exempt from or comply with Section 409A of the Code (including the Treasury regulations and other published guidance relating thereto) so as not to subject a Participant to payment of any interest or additional tax imposed under Section 409A of the Code. To the extent that any amount payable under this Agreement would trigger the additional tax, penalty or interest imposed by Section 409A of the Code, this Plan shall be modified to avoid such additional tax, penalty or interest yet preserve (to the nearest extent reasonably possible) the intended benefit payable to the Participant. In no event shall the Company, any member of the Board of Directors, or any employee, agent or other service provider have any liability to any Participant for any tax, fine or penalty associated with any failure to comply with the requirements of Section 409A of the Code.

(b) To the extent a payment or benefit is nonqualified deferred compensation subject to Section 409A of the Code, a termination of employment shall not be deemed to have occurred for purposes of any provision of this Plan or any Award Agreement providing for the payment of any amounts upon or following a termination of employment unless such termination is also a "separation from service" within the meaning of Section 409A of the Code and, for purposes of any such provision of this Plan and any Award Agreement, references to a "termination," "termination of employment" or like terms shall mean "separation from service." If a Participant is deemed on the date of a separation from service (within the meaning of Section 409A of the Code) to be a "specified employee" (within the meaning of that term under Section 409A(a)(2)(B) of the Code and determined using any identification methodology and procedure selected by the Company from time to time, or, if none, the default methodology and procedure specified under Section 409A of the Code), then with regard to any payment or the provision of any benefit that is "nonqualified deferred compensation" within the meaning of Code Section 409A and which is paid as a result of the Participant's "separation from service," to the extent necessary to avoid the imposition of taxes under Section 409A of the Code, such payment or benefit shall not be made or provided prior to the date which is the earlier of (A) the expiration of the six-month period measured from the date of such "separation from service" of the Participant, and (B) the date of the Participant's death (the "Delay Period"). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this clause (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to the Participant 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.

(c) For purposes of Section 409A of the Code, the Participant's right to receive any installment payments pursuant to this Plan or any Award Agreement shall be treated as a right to receive a series of separate and distinct payments. Whenever a payment under the Plan or any Award Agreement specifies a payment period with reference to a number of days (e.g., "payment shall be made within thirty days following the date of termination"), the actual date of payment within the specified period shall be within the sole discretion of the Company.

(d) With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A of the Code, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit; (ii) the amount of expenses eligible for reimbursement, or in-kind benefits, provided during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year, provided, that the foregoing clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Section 105(b) of the Code solely because such expenses are subject to a limit related to the period the arrangement is in effect; and (iii) such payments shall be made on or before the last day of the

Participant's taxable year following the taxable year in which the expense was incurred.

19. Forfeiture and Recoupment.

Without limiting in any way the generality of the Committee's power to specify any terms and conditions of an Award consistent with law, and for greater clarity, the Committee may specify in an Award Agreement that the Participant's rights, payments and benefits with respect to an Award, including any payment of Common Stock received upon exercise or in satisfaction of an Award under the Plan shall be subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions, without limit as to time. Such events shall include, but not be limited to, failure to accept the terms of the Award Agreement, termination of service under certain or all circumstances, violation of material Company policies, misstatement of financial or other material information about the Company, fraud, misconduct, breach of noncompetition, confidentiality, nonsolicitation, noninterference, corporate property protection, or other agreements that may apply to the Participant, or other conduct by the Participant that the Committee determines is detrimental to the business or reputation of the Company and its Affiliates, including facts and circumstances discovered after termination of service. Awards granted under the Plan shall be subject to any clawback, compensation recovery policy or minimum stock holding period requirement as may be adopted or amended by the Company from time to time.

21. Hedging and Pledging.

Notwithstanding any other provisions of this Plan, an Award will be subject to any Company policy that the Company may adopt and/or amend from time to time regarding the hedging or pledging (or any similar transaction) of Company securities.

22. Whistleblower Provisions.

Nothing contained herein prohibits the Participant from: (1) reporting possible violations of federal law or regulations, including any possible securities laws violations, to any governmental agency or entity; (2) making any other disclosures that are protected under the whistleblower provisions of federal law or regulations; or (3) otherwise fully participating in any federal whistleblower programs, including but not limited to any such programs managed by the U.S. Securities and Exchange.

23. Broker-Assisted Sales.

In the event of a broker-assisted sale of Stock in connection with the payment of amounts owed by a Participant under or with respect to the Plan or Awards: (a) any Stock to be sold through the broker-assisted sale will be sold on the day the payment first becomes due, or as soon thereafter as practicable; (b) such Stock may be sold as part of a block trade with other Participants in the Plan in which all Participants receive an average price; (c) the applicable Participant will be responsible for all broker's fees and other costs of sale, and by accepting an Award, each Participant agrees to indemnify and hold the Company harmless from any losses, costs, damages, or expenses relating to any such sale; (d) to the extent the Company or its designee receives proceeds of such sale that exceed the amount owed, the Company will pay such excess in cash to the applicable Participant as soon as reasonably practicable; (e) the Company and its designees are under no obligation to arrange for such sale at any particular price; and (f) in the event the proceeds of such sale are insufficient to satisfy the Participant's applicable obligation, the Participant may be required to pay immediately upon demand to the Company or its designee an amount in cash sufficient to satisfy any remaining portion of the Participant's obligation.

24. Data Privacy

As a condition for receiving any Award, each Participant explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of personal data as described in this Section by and among the Company and its Subsidiaries and Affiliates exclusively for implementing, administering and managing the Participant's participation in the Plan. The Company and its Subsidiaries and Affiliates may hold certain personal information about a Participant, including the Participant's name, address and telephone number; birthdate; social security, insurance number or other identification number; salary; nationality; job title(s); any Stock held in the Company or its Subsidiaries and Affiliates; and Award details, to implement, manage and administer the Plan and Awards (the " Data"). The Company and its Subsidiaries and Affiliates may transfer the Data amongst themselves as necessary to implement, administer and manage a Participant's participation in the Plan, and the Company and its Subsidiaries and Affiliates may transfer the Data to third parties assisting the Company with Plan implementation, administration and management. These recipients may be located in the Participant's country, or elsewhere, and the Participant's country may have different data privacy laws and protections than the recipients' country. By accepting an Award, each Participant authorizes such recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, to implement, administer and manage the Participant's participation in the Plan, including any required Data transfer to a broker or other third party with whom the Company or the Participant may elect to deposit any Stock. The Data related to a Participant will be held only as long as necessary to implement, administer, and manage the Participant's participation in the Plan. A Participant may, at any time, view the Data that the Company holds regarding such Participant, request additional information about the storage and processing of the Data regarding such Participant, recommend any necessary corrections to the Data regarding the Participant or refuse or withdraw the consents in this Section 24 in writing, without cost, by contacting the local human resources representative. The Company may cancel Participant's ability to participate in the Plan and, in the Committee's discretion, the Participant may forfeit any outstanding Awards if the Participant refuses or withdraws the consents in this Section 24. For more information on the consequences of refusing or withdrawing consent, Participants may contact their local human resources representative.

* * *

As adopted by the Board of Directors of
Direct Digital Holdings, Inc., as of January 17, 2022.

Exhibit 10.15

EXECUTIVE EMPLOYMENT AGREEMENT

This **EXECUTIVE EMPLOYMENT AGREEMENT** ("**Agreement**") is made as of January [●], 2022 by and between Direct Digital Holdings, Inc., a Delaware corporation (together with its successors and assigns, the "**Company**"), and [●] ("**Executive**"). This Agreement shall be effective upon the consummation of the Company's initial public offering (the "**Effective Date**").

RECITALS

WHEREAS, the Company desires to employ Executive pursuant to the terms in this Agreement, and Executive desires to be employed by the Company pursuant to the terms in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and conditions herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Term. The Company hereby agrees to employ Executive, and Executive hereby accepts employment by the Company, on the terms and conditions hereinafter set forth. Executive's term of employment by the Company under this Agreement (the "**Term**") shall commence on the Effective Date and end on the date on which the term of employment is terminated in accordance with **Section 5**. Executive's employment with the Company shall be on an employment "at-will" basis.

2. Position.

(a) **Duties.** During the Term, the Company shall employ Executive as its [●]. Executive shall report directly to **[**the Company's Chief Executive Officer, subject to the specific direction of**]** the Company's Board of Directors (the "**Board**"). Executive shall have such duties, powers, and authority as are commensurate with Executive's position and such other duties and responsibilities that are commensurate with Executive's position as specifically delegated to Executive from time to time by the **[**Company's Chief Executive Officer or the**]** Board. Executive shall have a primary office location as designated by the Company or the Board from time to time and agrees to travel as is reasonably necessary for business. To the extent requested by the Board, Executive shall serve during the Term as an officer and/or director for the Company or any of its affiliates without further compensation.

(b) **Efforts.** Executive agrees to devote Executive's reasonable best efforts, energies, and skill to the discharge of the duties and responsibilities attributable to Executive's position and, except as set forth herein, agrees to devote all of Executive's professional time and attention to the business and affairs of the Company and its affiliates. Executive shall be entitled to engage in service on the board of directors of one (1) not-for-profit organization to the extent such service does not interfere with the performance of Executive's duties and responsibilities to the Company, as determined by the Company in its sole reasonable discretion. Executive shall be subject to the Bylaws, policies, practices, procedures and rules of the Company, including those policies and procedures set forth in the Company's Code of Conduct and Ethics. Executive's violation of the terms of such documents shall be considered a breach of the terms of this Agreement.

3. Compensation.

(a) **Base Salary.** During the Term, the Company shall pay to Executive an annual salary of $[●]("**Base Salary**"). The Compensation Committee of the Board (the "**Committee**") may increase or decrease the Base Salary, in its sole discretion, taking into account Company and individual performance objectives.

(b) **Annual Cash Bonus.** During the Term, Executive shall be eligible to receive an annual cash bonus, on terms and conditions as determined by the Committee in its sole discretion taking into account Company and individual performance objectives.

(c) **Long-Term Incentive Award.** During the Term, Executive shall be eligible to participate in the Company's long-term incentive plan, the Direct Digital Holdings, LLC 2022 Omnibus Incentive Plan adopted by the Board as of January 17, 2022 (the "**Omnibus Incentive Plan**"), subject to the terms and conditions set forth in the plan document as amended from time to time and the corresponding award agreements, as determined by the Committee in its sole discretion taking into account Company and individual performance objectives.

4. Employee Benefits.

(a) **Benefits.** Executive shall be entitled to participate in such health, group insurance, welfare, pension, and other employee benefit plans, programs, and arrangements as are made generally available from time to time to other employees of the Company, subject to Executive's satisfaction of all applicable eligibility conditions of such plans, programs, and arrangements. Nothing herein shall be construed to limit the Company's ability to amend or terminate any employee benefit plan or program in its sole discretion.

(b) **Perquisites.** During the Term, Executive shall be entitled to participate in all fringe benefits and perquisites made available to other employees of the Company, subject to Executive's satisfaction of all applicable eligibility conditions to receive such fringe benefits and perquisites. In addition, Executive shall be eligible for paid time off ("**PTO**") in accordance with the Company's vacation and PTO policy, inclusive of vacation days and sick days and excluding standard paid Company holidays, in the same manner as PTO days for employees of the Company generally accrue.

(c) **Expenses.** The Company shall reimburse Executive for all reasonable business and travel expenses incurred in the performance of Executive's job duties, promptly upon presentation of appropriate supporting documentation and otherwise in accordance with and subject to the expense reimbursement policy of the Company.

5. Termination.

(a) **General.** The Company may terminate Executive's employment for any reason or no reason, and Executive may terminate Executive's employment for any reason or no reason, in either case subject only to the terms of this Agreement; provided, however, that Executive is required to provide to the Company at least sixty days' written notice of intent to terminate employment for any reason unless the Company specifies an earlier date of termination. For purposes of this Agreement, the following terms have the following meanings:

(i) "**Accrued Benefits**" shall mean: (i) accrued but unpaid Base Salary through the Termination Date, payable within thirty days following the Termination Date; (ii) reimbursement for any unreimbursed and reasonable business expenses incurred through the Termination Date consistent with the expense reimbursement policy of the Company, payable within thirty days following the Termination Date; (iii) accrued but unused PTO days but only if payment for accrued but unused PTO days is required by applicable law; and (iv) all other payments, benefits, or fringe benefits to which Executive shall be entitled as of the Termination Date under the terms of any applicable compensation arrangement or benefit, equity, or fringe benefit plan or program or grant.

(ii) "**Cause**" shall mean the Board's or the Company's good-faith determination that: (i) Executive has ceased to perform Executives duties for the Company, which failure amounts to an intentional and extended neglect of Executive's duties, provided that no such failure shall constitute Cause unless the Executive has been given notice of such failure (if cure is reasonably possible) and has not cured such act or omission within 15 days following receipt of such notice, (ii) Executive has engaged or is about to engage in conduct materially injurious (financially, reputationally, or otherwise) to the Company or any affiliate, (iii) Executive has been indicted, convicted of, or plead guilty or no contest to, a felony or any crime involving as a material element fraud or dishonesty, (iv) Executive has failed to follow the lawful instructions of the Board or Executive's direct superiors, which failure amounts to an intentional and extended neglect of Executive's duties; or (v) Executive has materially breached a provision in this Agreement.

(iii) "**Good Reason**" shall mean a material breach by the Company of its obligations under this Agreement, upon which Executive notifies the Board in writing of such material breach within thirty days of such occurrence and such material breach shall have not been cured within thirty days after the Board's receipt of written notice thereof from Executive.

(iv) "**Termination Date**" shall mean the date on which Executive's employment hereunder terminates in accordance with this Agreement.

(b) **Severance Pay Prior to a Change in Control.** In the event that Executive's employment hereunder is terminated by the Company without Cause or by Executive for Good Reason, in either case prior to a Change in Control (as defined in the Omnibus Incentive Plan), Executive shall be entitled to receive the Accrued Benefits. In addition, commencing on the first payroll date following the date that is sixty days following the Termination Date, the Company shall continue to pay Executive Executive's Base Salary, in accordance with customary payroll practices and subject to applicable withholding and payroll taxes (the "**Severance Payments**"), for a period of twelve months; provided, however, that the Severance Payments shall be conditioned upon the execution, non-revocation, and delivery of a general release of claims by Executive, in a form reasonably satisfactory to the Company, within sixty days following the Termination Date. In the event that Executive fails to timely execute and deliver such a release, the Company shall have no obligation to pay Severance Payments under this Agreement.

(c) **Severance Pay Following a Change in Control.** In the event that Executive's employment hereunder is terminated by the Company without Cause or by Executive for Good Reason, in either case upon or following a Change in Control (as defined in the Omnibus Incentive Plan), Executive shall be entitled to receive the Accrued Benefits. In addition, (i) commencing on the first payroll date following the date that is sixty days following the Termination Date, the Company shall continue to pay Executive Executive's Base Salary, in accordance with customary payroll practices and subject to applicable withholding and payroll taxes, for a period of twenty-four months, and (ii) on the first payroll date following the date that is sixty days following the Termination Date, the Company shall pay Executive an annual bonus for the year in which such separation occurs equal to Executive's target bonus opportunity for such year, subject to applicable withholding and payroll taxes (collectively, the "**Severance Payments**"); provided, however, that the Severance Payments shall be conditioned upon the execution, non-revocation, and delivery of a general release of claims by Executive, in a form reasonably satisfactory to the Company, within sixty days following the Termination Date. In the event that Executive fails to timely execute and deliver such a release, the Company shall have no obligation to pay Severance Payments under this Agreement.

(d) **All Other Terminations.** In the event that Executive's employment hereunder is terminated by the Company for Cause, by Executive without Good Reason, or due to Executive's death or disability, Executive shall be entitled to receive the Accrued Benefits.

(e) **Return of Company Property.** Upon termination of Executive's employment for any reason or under any circumstances, Executive shall promptly return any and all of the property of the Company and any affiliates (including, without limitation, all computers, keys, credit cards, identification tags, documents, data, confidential information, work product, and other proprietary materials), and other materials.

(f) **Post-Termination Cooperation.** Executive agrees and covenants that, following the Term, Executive shall, to the extent requested by the Company, cooperate in good faith with the Company to assist the Company in the pursuit or defense of (except if Executive is adverse with respect to) any claim, administrative charge, or cause of action by or against the Company as to which Executive, by virtue of Executive's employment with the Company or any other position that Executive holds that is affiliated with or was held at the request of the Company, has relevant knowledge or information, including by acting as the Company's representative in any such proceeding and, without the necessity of a subpoena, providing truthful testimony in any jurisdiction or forum. The Company shall reimburse Executive for Executive's reasonable out-of-pocket expenses incurred in compliance with this Section.

6. Tax Matters.

(a) The Company shall withhold all applicable federal, state, and local taxes, social security and workers' compensation contributions and other amounts as may be required by law with respect to compensation payable to Executive pursuant to this Agreement.

(b) Notwithstanding anything herein to the contrary, this Agreement is intended to be interpreted and applied so that the payment of the benefits set forth herein shall either be exempt from, or in the alternative, comply with, the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the "**Code**"), and the published guidance thereunder ("**Section 409A**"). A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment that are considered "nonqualified deferred compensation" under Section 409A unless such termination is also a "separation from service" within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a "termination," "Termination Date," or like terms shall mean "separation from service." Notwithstanding any provision of this Agreement to the contrary, if Executive is a "specified employee" within the meaning of Section 409A, any payments or arrangements due upon a termination of Executive's employment under any arrangement that constitutes a "nonqualified deferral of compensation" within the meaning of Section 409A and which do not otherwise qualify under the exemptions under Treas. Regs. Section 1.409A-1 (including without limitation, the short-term deferral exemption or the permitted payments under Treas. Regs. Section 1.409A-1(b)(9)(iii)(A)), shall be delayed and paid or provided on the earlier of (a) the date which is six months after Executive's "separation from service" for any reason other than death, or (b) the date of Executive's death. This Agreement may be amended without requiring Executive's consent to the extent necessary (including retroactively) by the Company in order to preserve compliance with Section 409A. The preceding shall not be construed as a guarantee of any particular tax effect for Executive's compensation and benefits and the Company does not guarantee that any compensation or benefits provided under this Agreement will satisfy the provisions of Section 409A.

(c) After any Termination Date, Executive shall have no duties or responsibilities that are inconsistent with having a "separation from service" within the meaning of Section 409A as of the Termination Date and, notwithstanding anything in the Agreement to the contrary, distributions upon termination of employment of nonqualified deferred compensation may only be made upon a "separation from service" as determined under Section 409A and such date shall be the Termination Date for purposes of this Agreement. Each payment under this Agreement or otherwise shall be treated as a separate payment for purposes of Section 409A. In no event may Executive, directly or indirectly, designate the calendar year of any payment to be made under this Agreement which constitutes a "nonqualified deferral of compensation" within the meaning of Section 409A and to the extent an amount is payable within a time period, the time during which such amount is paid shall be in the discretion of the Company.

(d) All reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A. To the extent that any reimbursements are taxable to Executive, such reimbursements shall be paid to Executive on or before the last day of Executive's taxable year following the taxable year in which the related expense was incurred. Reimbursements shall not be subject to liquidation or exchange for another benefit and the amount of such reimbursements that Executive receives in one taxable year shall not affect the amount of such reimbursements that Executive receives in any other taxable year.

(e) If any payment, benefit, or distribution of any type to or for the benefit of Executive, whether paid or payable, provided or to be provided, or distributed or distributable pursuant to the terms of this Agreement or otherwise (collectively, the "**Parachute Payments**") would (as determined by the Company) subject Executive to the excise tax imposed under Section 4999 of the Code (the "**Excise Tax**"), the Parachute Payments shall be reduced so that the maximum amount of the Parachute Payments (after reduction) shall be one dollar less than the amount which would cause the Parachute Payments to be subject to the Excise Tax; provided that the Parachute Payments shall only be reduced to the extent the after-tax value of amounts received by Executive after application of the above reduction would exceed the after-tax value of the amounts received without application of such reduction. For this purpose, the after-tax value of an amount shall be determined taking into account all federal, state, and local income, employment and excise taxes applicable to such amount. The Company shall reduce or eliminate the Parachute Payments by first reducing or eliminating any cash Parachute Payments that do not constitute deferred compensation within the meaning of Section 409A, then by reducing or eliminating any other Parachute Payments that do not constitute deferred compensation within the meaning of Section 409A, then by reducing or eliminating all other Parachute Payments that do constitute deferred compensation within the meaning of Section 409A, beginning with those payments last to be paid, subject to and in accordance with all applicable requirements of Section 409A

7. Clawback. The compensation awarded to the Executive under this Agreement shall be subject, including on a retroactive basis, to clawback, forfeiture or similar requirements (and such requirements shall be deemed incorporated by reference into this Agreement) to the extent required or permitted by applicable law (including, without limitation, Section 304 of the Sarbanes-Oxley Act and Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act); provided that such requirement is in effect at the relevant time, and/or the rules and regulations of any applicable securities exchange or inter-dealer quotation system on which the shares of Company stock may be listed or quoted or if so required pursuant to a written policy adopted by the Company.

8. Non-Compete, Non-Solicitation.

(a) **Non-Competition.** Beginning on the date hereof and through the date that is 12 months following the Termination Date (the "**Restricted Period**"), Executive shall not, and shall cause Executive's affiliates not to, directly or indirectly, through or in association with any third party, in any territory which the Company or any of its subsidiaries operates as of the Termination Date: (i) market, sell, or provide any products or services which are the same as or substantially similar to or otherwise competitive with the products and services sold or provided by the Company or any of its subsidiaries as of the Termination Date; or (ii) own, acquire, or control any interest, financial or otherwise, in a third party or business or manage, participate in, consult with, render services for or otherwise assist, any business, that in any case is engaged in selling or providing any products or services which are the same as or substantially similar to or otherwise competitive with the products and services sold or provided by the Company or any of its subsidiaries as of the Termination Date. However, it shall not be a breach of this section to own one percent or less of the equity of a publicly traded company.

(b) **Non-Solicitation.** During the Restricted Period, Executive shall not, and shall cause Executive's affiliates not to, directly or indirectly, through or in association with any third party: (i) call on, solicit, or service, engage or contract with, or take any action which may interfere with, impair, subvert, disrupt, or negatively alter the relationship, contractual or otherwise, between the Company or any of its subsidiaries and any customer, supplier, distributor, developer, service provider, licensor, or licensee or other material business relation of the Company or any of its subsidiaries as of the Termination Date; (ii) divert or take away the business or patronage (with respect to products or services of the kind or type developed, produced, marketed, furnished, or sold by the Company or any of its subsidiaries as of the Termination Date) of any of the clients, customers, or accounts of the Company or any of its subsidiaries as of the Termination Date; or (iii) attempt to do any of the foregoing, either for Executive's own purposes or for any other third party.

(c) **Non-Raiding.** During the Restricted Period, Executive shall not, and shall cause Executive's affiliates not to, directly or indirectly, through or in association with any third party: (i) solicit, induce, recruit, or encourage any employees or independent contractors of or consultants to the Company or any of its subsidiaries to terminate their relationship with the Company or any of its subsidiaries or take away or hire such employees, independent contractors, or consultants; or (ii) attempt to do any of the foregoing, either for Executive's own purposes or for any other third party.

9. Confidential Information.

(a) Executive acknowledges that: (i) the Confidential Information (as hereinafter defined) is a valuable, special, and unique asset of the Company, the unauthorized disclosure or use of which could cause substantial injury and loss of profits and goodwill to the Company; (ii) Executive is in a position of trust and subject to a duty of loyalty to the Company, and (iii) by reason of Executive's employment and service to the Company, Executive will have access to the Confidential Information. Executive, therefore, acknowledges that it is in the Company's legitimate business interest to restrict Executive's disclosure or use of Confidential Information for any purpose other than in connection with Executive's performance of Executive's duties for the Company, and to limit any potential misappropriation of such Confidential Information by Executive.

(b) Executive will not disclose or use at any time, either during the Term or thereafter, any Confidential Information of which Executive is or becomes aware, whether or not such information is developed by Executive, except to the extent that such disclosure or use is directly related to and required by Executive's performance in good faith of duties assigned to Executive by the Company or has been expressly authorized by the Board; provided, however, that this sentence shall not be deemed to prohibit Executive from complying with any subpoena, order, judgment, or decree of a court or governmental or regulatory agency of competent jurisdiction (an "**Order**"); provided, further, however, that (i) Executive agrees to provide the Company with prompt written notice of any such Order and to assist the Company, at the Company's expense, in asserting any legal challenges to or appeals of such Order that the Company in its sole discretion pursues, and (ii) in complying with any such Order, Executive shall limit Executive's disclosure only to the Confidential Information that is expressly required to be disclosed by such Order. Executive will take all appropriate steps to safeguard Confidential Information and to protect it against disclosure, misuse, espionage, loss, and theft. Executive shall deliver to the Company at the Termination Date, or at any time the Company may request, all memoranda, notes, plans, records, reports, electronic information, files and software, and other documents and data (and copies thereof) relating to the Confidential Information of the business of the Company which Executive may then possess or have under Executive's control.

(c) As used in this Agreement, the term "**Confidential Information**" means information that is not generally known to the public and that is used, developed, or obtained by the Company or any of its subsidiaries in connection with their business, including, but not limited to, information, observations, and data obtained by Executive while employed by the Company or any predecessors thereof (including those obtained prior to the date of this Agreement) concerning (i) the business or affairs of the Company or any of its subsidiaries (or such predecessors), (ii) products or services, (iii) fees, costs and pricing structures, (iv) designs, (v) analyses, (vi) drawings, photographs and reports, (vii) computer software and hardware, including operating systems, applications and program listings, (viii) flow charts, manuals and documentation, (ix) databases and data, (x) accounting and business methods, (xi) inventions, devices, new developments, methods, and processes, whether patentable or unpatentable and whether or not reduced to practice, (xii) customers and clients (and all information with respect to such persons) and customer or client lists, (xiii) suppliers (and all information with respect to such persons) or supplier lists, (xiv) other copyrightable works, (xv) all production methods, processes, technology, and trade secrets, and (xvi) all similar and related information in whatever form. Confidential Information will not include any information that has been published in a form generally available to the public prior to the date Executive proposes to disclose or use such information. Confidential Information will not be deemed to have been published merely because individual portions of the information have been separately published, but only if all material features comprising such information have been published in combination.

(d) For the avoidance of doubt, this provision in no way limits Executive's obligations or the Company's rights under state or federal trade secrets statutes. Executive is advised and understands that the federal Defend Trade Secrets Act of 2016 provides that an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (i) is made (A) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney; and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

10. Intellectual Property.

(a) Executive hereby assigns and agrees in the future to assign to the Company Executive's full right, title and interest in all Developments (as defined below), including all Intellectual Property Rights (as defined below) associated therewith or embodied thereby. In addition, all copyrightable works that Executive has created or creates in the course of or related to Executive's employment with the Company shall be considered "work made for hire" and shall be owned exclusively by the Company.

(b) "**Developments**" means any invention, formula, process, development, design, work of authorship, discovery, computer program, innovation or improvement made, conceived or first reduced to practice by Executive, solely or jointly with others, during Executive's employment with the Company and that was developed using the equipment, supplies, facilities or trade secret information of the Company or any of its subsidiaries or that relates at the time of conception or reduction to practice to: (a) the business of the Company or any of its subsidiaries, or (b) any work performed by Executive for the Company or any of its subsidiaries. The term "**Intellectual Property Rights**" means all patent rights, trademarks, copyrights, trade secret rights, and any other intellectual property or industrial rights in all countries and territories worldwide. Executive acknowledges and agrees that any copyrightable works included in the Developments shall be considered "works made for hire" under the Copyright Act (17 U.S.C. §§ 101 et seq.) and that Company will be considered the author and owner of such copyrightable works.

(c) To the extent that any copyrightable Development is not recognized as a "work made for hire" as a matter of law, Executive hereby assigns to Company any and all copyrights in and to such Development. To the extent any of the right, title and interest in and to any Development cannot be assigned by Executive to Company, Executive hereby grants to Company an exclusive, royalty-free, fully paid-up, transferable, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to practice such non-assignable rights, title and interest. Executive agrees to perform, during and after the Term, all acts deemed necessary or desirable by Company to permit and assist Company, at Company's expense, in obtaining and enforcing the full benefits, enjoyment, rights and title throughout the world in the Developments assigned or licensed to Company under this Agreement.

11. Non-Disparagement. Executive agrees that, during the Term and at any time thereafter, Executive will not make, or cause to be made, any statement, observation, or opinion, or communicate any information (whether oral or written), to any person other than a member of the Board, that disparages the Company or is likely in any way to harm the business or the reputation of the Company, or any of its former, present, or future managers, directors, officers, members, stockholders, or employees.

12. Enforcement. Because Executive's services are special, unique, and extraordinary and because Executive has access to Confidential Information and Developments, the parties hereto agree that money damages would be an inadequate remedy for any breach of this Agreement. Therefore, in the event of a breach or threatened breach of this Agreement, the Company, or any of its successors or assigns may, in addition to other rights and remedies existing in their favor at law or in equity, apply to any court of competent jurisdiction for specific performance and/or injunctive or other relief in order to enforce, or prevent any violations of, the provisions hereof (without posting a bond or other security).

13. Breach. In addition to the foregoing, and not in any way in limitation thereof, or in limitation of any right or remedy otherwise available to the Company, if Executive violates any provision of this Agreement, any obligation of the Company to pay Severance Payments shall be terminated and of no further force or effect, and Executive shall promptly repay to the Company any Severance Payments previously made to Executive, in each case, without limiting or affecting Executive's obligations under this Agreement the Company's other rights and remedies available at law or equity.

14. Government Agencies. Notwithstanding any provision in this Agreement to the contrary, nothing in this Agreement limits your right to file a charge with, to participate in a proceeding by, to give testimony to, or to communicate with a court, legislative body, administrative agency, government agency or government official. In addition, nothing in this Agreement limits your right to make truthful statements or disclosures about alleged unlawful discrimination, harassment or retaliation.

15. **Assurances by Executive.** Executive represents and warrants to the Company that Executive may enter into and fully perform all of Executive's obligations under this Agreement and as an employee of the Company without breaching, violating, or conflicting with (a) any judgment, order, writ, decree, or injunction of any court, arbitrator, government agency, or other tribunal that applies to Executive or (b) any agreement, contract, obligation, or understanding to which Executive is a party or may be bound.

16. **Notices.** Except as otherwise specifically provided herein, any notice, consent, demand, or other communication to be given under or in connection with this Agreement shall be in writing and shall be deemed duly given when delivered personally, when transmitted by facsimile transmission, one day after being deposited with Federal Express or other nationally recognized overnight delivery service, or three days after being mailed by first class mail, charges or postage prepaid, properly addressed, if to the Company, at its principal office, and, if to Executive, at Executive's home or office address. Either party may change such address from time to time by notice to the other.

17. **Governing Law; Venue.** This Agreement shall be governed by and construed and interpreted in accordance with the laws of Delaware, without giving effect to any choice of law rules or other conflicting provision or rule that would cause the laws of any jurisdiction to be applied. Any litigation under this Agreement shall be brought by either of the parties exclusively in the state or federal courts located in Delaware. As such, the parties irrevocably consent to the jurisdiction of and venue with the courts in Delaware for all disputes related to this Agreement and irrevocably consent to service via nationally recognized overnight carrier, without limiting other service methods allowed by applicable law. Each of the parties irrevocably waives any right to a trial by jury in any action related to this Agreement. The parties acknowledge and agree that the Company is a Delaware entity and that the terms in this Section are material to this Agreement.

18. **Amendments; Waivers.** This Agreement may not be modified or amended or terminated except by an instrument in writing, signed by Executive and a duly authorized representative of the Company (other than Executive). By an instrument in writing similarly executed (and not by any other means), either party may waive compliance by the other party with any provision of this Agreement that such other party was or is obligated to comply with or perform; provided, however, that such waiver shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure. No failure to exercise and no delay in exercising any right, remedy, or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or power provided herein or by law or in equity. To be effective, any written waiver must specifically refer to the condition(s) or provision(s) of this Agreement being waived.

19. **Assignment.** This Agreement is personal to Executive and without the prior written consent of the Company shall not be assignable by Executive. The obligations of Executive hereunder shall be binding upon Executive's heirs, administrators, executors, assigns, and other legal representatives. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the Company's successors and assigns.

20. **Voluntary Execution.** Executive acknowledges that (a) Executive has consulted with or has had the opportunity to consult with independent counsel of Executive's own choosing concerning this Agreement and has been advised to do so by the Company, and (b) Executive has read and understands this Agreement, is competent and of sound mind to execute this Agreement, is fully aware of the legal effect of this Agreement, and has entered into it freely based on Executive's own judgment and without duress.

21. **Construction.** The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.

22. **Survivorship.** Except as otherwise set forth in this Agreement, the respective rights and obligations of the parties shall survive any termination of Executive's employment.

23. **Severability.** It is the desire and intent of the parties hereto that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction or arbitrator to be invalid, prohibited, or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited, or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

24. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument. Signatures delivered by facsimile or PDF shall be effective for all purposes.

25. **Entire Agreement; Prior Agreements.** This Agreement contains the entire agreement of the parties and supersedes all prior or contemporaneous negotiations, correspondence, understandings and agreements between the parties, regarding the subject matter of this Agreement. Executive agrees that this agreement terminates any prior employment, consulting, board services, or similar agreement with the Company, Direct Digital Holdings, LLC, or any of their predecessors or affiliates.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date:

Executive:

_____

[●]

The Company:

Direct Digital Holdings, Inc.

By: _____
Name: _____
Title: _____