

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d)
of The Securities Exchange Act of 1934

Date of report (Date of earliest event reported): **January 22, 2024**

AGRIFY CORPORATION
(Exact name of registrant as specified in its charter)

<u>Nevada</u> (State or other jurisdiction of incorporation)	<u>001-39946</u> (Commission File Number)	<u>30-0943453</u> (IRS Employer Identification No.)
<u>2468 Industrial Row Dr. Troy, MI</u> (Address of principal executive offices)		<u>48084</u> (Zip Code)

Registrant's telephone number, including area code: **(617) 896-5243**

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

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

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

<u>Title of each class</u>	<u>Trading symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.001 per share	AGFY	The Nasdaq Stock Market LLC

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

Consolidation, Amendment and Restatement of Convertible Note

As previously reported, on October 27, 2023, CP Acquisitions LLC (the “New Lender”), an entity affiliated with and controlled by Raymond Chang, the Chief Executive Officer of Agrify Corporation (the “Company”) and a member of its Board of Directors (the “Board”), and I-Tseng Jenny Chan, a member of the Board, purchased from an institutional investor (the “Prior Lender”) the Senior Secured Note issued by the Company to the Prior Lender on August 19, 2022 (the “Exchange Note”) and the Senior Secured Convertible Note issued by the Company to the Prior Lender on March 10, 2023 (the “Convertible Note”). Concurrently with that transaction, the Company issued a junior secured promissory note (the “Junior Secured Note”) to the New Lender, which was subsequently amended and restated on December 4, 2023 to have a maximum principal amount of \$4,000,000.

Also as previously disclosed, on January 8, 2024, the Company held its 2023 Annual Meeting of Stockholders (the “Annual Meeting”), at which the stockholders of the Company approved a proposal (the “Note Restatement Proposal”) for the consolidation of the Junior Secured Note and the Exchange Note into the Convertible Note and the amendment and restatement of the Convertible Note to, among other things, reduce the conversion price to \$1.46 per share, increase the beneficial ownership limitation to 49.99% with respect to each of Mr. Chang and Ms. Chan to the extent the right to receive shares is assigned by the New Lender to them or their affiliates, to increase the interest rate to 10%, and to extend the maturity date to December 31, 2025, as further described in the Company’s definitive proxy statement filed with the Securities and Exchange Commission on December 18, 2023 (the “Proxy Statement”).

On January 25, 2024, the Company and the New Lender consolidated the outstanding principal and interest due under the Junior Secured Note and the Exchange Note into the Convertible Note and amended and restated the Convertible Note consistent with the Note Restatement Proposal (the “Restated Note”), with an outstanding principal amount of approximately \$18.9 million at the time of issuance of the Restated Note. The Restated Note amended the terms of the Convertible Note by, among other things, (i) reducing the conversion price to \$1.46 per share of common stock, (ii) increasing the beneficial ownership limitation to 49.99% with respect to any individual or group, provided that the New Lender may assign its right to receive shares upon conversion to Mr. Chang and/or Ms. Chan or their affiliates, in which case the 49.99% beneficial ownership limitation will apply to each of them individually, (iii) extending the maturity date to December 31, 2025, (iv) increasing the interest rate from 9% to 10% per annum, (v) increasing the default interest from 15% to 18% per annum, and (vi) providing for the payment of interest every six months, or in lieu of cash interest payments, the Company may issue shares as payments-in-kind at a conversion price equal to the higher of (i) \$1.46 or (ii) a 20% discount to its trailing seven-day volume weighted average price as of the date of interest payment.

Immediately following the execution of the Restated Note, the New Lender immediately elected to convert approximately \$3.9 million of outstanding principal into an aggregate of 2,671,633 shares of common stock, and assigned its rights to receive such shares to entities affiliated with Mr. Chang and Ms. Chan. Following the conversion, there was \$15.0 million in principal amount outstanding under the Restated Note.

The foregoing summary of the Restated Note does not purport to be complete, and is qualified in its entirety by reference to a copy of the Restated Note that is filed as Exhibit 4.1 hereto.

Amendment and Restatement of Junior Secured Promissory Note

As previously reported, on July 12, 2023, the Company issued an unsecured promissory note with an original principal amount of \$500,000 in favor of GIC Acquisition, LLC (“GIC”), an entity that is indirectly owned and managed by Mr. Chang, and on October 27, 2023, GIC and the Company amended and restated the note to extend the maturity date to December 31, 2023 and to grant a security interest in the Company’s assets that ranks junior to the Exchange Note and the Convertible Note (the “Junior Note”). On January 25, 2024, GIC and the Company amended and restated the Junior Note to increase the principal amount thereunder to \$1.0 million and to extend the maturity date until June 30, 2024 (as amended and restated, the “Restated Junior Note”).

The foregoing summary of the Restated Junior Note does not purport to be complete, and is qualified in its entirety by reference to a copy of the Restated Junior Note that is filed as Exhibit 4.2 hereto.

Item 2.03. Creation of a Direct Financial Obligation.

The information set forth in Item 1.01 of this Current Report on Form 8-K regarding the Restated Note and the Restated Junior Note is incorporated herein by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Securities.

The information set forth in Items 1.01 and 8.01 of this Current Report on Form 8-K regarding the issuance of the Restated Note, the Restated Junior Note, the Warrant Shares (as defined in Item 8.01 below) and the shares of common stock issued upon conversion of the Restated Note is incorporated herein by reference into this Item 3.02.

The Restated Note, the Warrant Shares, the Restated Junior Note, and the shares of common stock underlying the Restated Note (collectively, the “Securities”) were, and will be, offered and sold in transactions exempt from registration under the Securities Act in reliance on Section 4(a)(2) thereof and Rule 506(b) of Regulation D thereunder. Each of the Prior Lender and the New Lender is an “accredited investor,” as defined in Regulation D, and is acquiring the Securities for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof. Accordingly, the Securities will not be registered under the Securities Act and the Securities may not be offered or sold in the United States absent registration or an exemption from registration under the Securities Act and any applicable state securities laws.

Neither this Current Report on Form 8-K nor the exhibits attached hereto is an offer to sell or the solicitation of an offer to buy shares of common stock, notes, or any other securities of the Company.

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

On January 22, 2024, the Company reconvened the Annual Meeting, as further described in Item 5.07 below, at which the Company’s stockholders approved an amendment to the Company’s Articles of Incorporation, to increase the number of authorized shares of the Company’s common stock from 10,000,000 to 35,000,000, and to correspondingly increase the total authorized shares of stock from 13,000,000 to 38,000,000 (the “Charter Amendment”). The Charter Amendment became effective upon the Company’s filing of the Charter Amendment with the Secretary of State for the State of Nevada on January 22, 2024.

The foregoing description of the Charter Amendment does not purport to be complete and is qualified in its entirety by reference to the Charter Amendment, which is filed as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated by reference herein.

Item 5.07 Submission of Matters to a Vote of Security Holders.

The Company adjourned its Annual Meeting on January 8, 2024 only with respect to the proposal to approve the Charter Amendment (“Item 3”), to approve an amendment to the Company’s Articles of Incorporation to increase the number of authorized shares of the Company’s common stock from 10,000,000 to 35,000,000, and to correspondingly increase the total authorized shares of stock from 13,000,000 to 38,000,000, as described in more detail in the Proxy Statement. Initially, at the Annual Meeting, the favorable votes for Item 3 were less than the affirmative vote of a majority of the Company’s outstanding common stock as of the record date, which is the required minimum vote to approve Item 3. Accordingly, the Annual Meeting was adjourned only with respect to the vote on Item 3, and such meeting was reconvened on January 22, 2024 (the “Reconvened Meeting”). There were 1,701,243 outstanding shares entitled to vote and there were 930,985 shares present in person or by proxy at the Reconvened Meeting, representing approximately 54.72% of the shares outstanding and entitled to vote. The voting result with respect to Item 3, as certified by the inspector of elections for the Reconvened Meeting, is presented below.

Votes For	Votes Against	Votes Abstained
878,464	49,979	2,542

Item 8.01. Other Events.*Warrant Exercise*

On January 22, 2024, pursuant to notices of exercise received by the Prior Lender, the Company issued an aggregate of 2,473,542 shares of common stock (the “Warrant Shares”) to the Prior Lender upon the cashless exercise of two warrants issued to the Prior Lender on October 27, 2023 (the “Prior Lender Warrants”). The issuance of the Warrant Shares represented the full exercise of the Abeyance Warrant as described in the Company’s Current Report on Form 8-K filed on October 30, 2023 (the “October 30 Form 8-K”) and the partial exercise of the Exchange Warrant as described in the October 30 Form 8-K, which remains exercisable for up to 659,669 shares of common stock, subject to adjustment pursuant to its terms.

Press Release

On January 25, 2024, the Company issued a press release announcing the Restated Note, the partial conversion of the Restated Note, the approval of the Charter Amendment, and the issuance of the Warrant Shares to the Prior Lender. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
3.1	Certificate of Amendment to Articles of Incorporation of Agrify Corporation, filed January 22, 2024
4.1	Senior Secured Amended, Restated and Consolidated Convertible Note dated January 25, 2024
4.2	Second Amended and Restated Junior Secured Promissory Note dated January 25, 2024
99.1	Press Release of Agrify Corporation dated January 25, 2024
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

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

AGRIFY CORPORATION

Date: January 25, 2024

By: /s/ Raymond Nobu Chang
Raymond Nobu Chang
Chief Executive Officer

DocuSign Envelope ID: B7C8D854-F7BB-4C13-8E2B-D6588501D23F



BARBARA K. CEGAUSKE
Secretary of State
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Filed in the Office of Business Number
E0254042016-2
Filing Number
20243770744
Filed On
1/22/2024 12:06:00 PM
Number of Pages
4

Profit Corporation:
Certificate of Amendment (PURSUANT TO NRS 78.380 & 78.385/78.390)
Certificate to Accompany Restated Articles or Amended and Restated Articles (PURSUANT TO NRS 78.403)
Officer's Statement (PURSUANT TO NRS 80.030)

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

1. Entity information: Name of entity as on file with the Nevada Secretary of State: AGRIFY CORPORATION
Entity or Nevada Business Identification Number (NVID): NV20161331161
2. Restated or Amended and Restated Articles: (Select one)
3. Type of Amendment Filing Being Completed: (Select only one box)
Certificate of Amendment to Articles of Incorporation (Pursuant to NRS 78.380 - Before Issuance of Stock)
Certificate of Amendment to Articles of Incorporation (Pursuant to NRS 78.385 and 78.390 - After Issuance of Stock)
Officer's Statement (foreign qualified entities only) -

This form must be accompanied by appropriate fees.



BARBARA K. CEGAVSKE
 Secretary of State
 202 North Carson Street
 Carson City, Nevada 89701-4201
 (775) 684-5708
 Website: www.nvsos.gov

Profit Corporation:
Certificate of Amendment (PURSUANT TO NRS 78.380 & 78.385/78.390)
Certificate to Accompany Restated Articles or Amended and Restated Articles (PURSUANT TO NRS 78.403)
Officer's Statement (PURSUANT TO NRS 80.030)

4. Effective Date and Time: (Optional)

Date: Time:
 (must not be later than 90 days after the certificate is filed)

5. Information Being Changed: (Domestic corporations only)

- Changes to takes the following effect:
- The entity name has been amended.
 - The registered agent has been changed. (attach Certificate of Acceptance from new registered agent)
 - The purpose of the entity has been amended.
 - The authorized shares have been amended.
 - The directors, managers or general partners have been amended.
 - IRS tax language has been added.
 - Articles have been added.
 - Articles have been deleted.
 - Other.

The articles have been amended as follows: (provide article numbers, if available)

(attach additional page(s) if necessary)

6. Signature: (Required)

DocuSigned by: Raymond Chang (attach additional page(s) if necessary)
 X
 Signature of Officer or Authorized Signer Title

X
 Signature of Officer or Authorized Signer Title

*If any proposed amendment would alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series affected by the amendment regardless to limitations or restrictions on the voting power thereof.

Please include any required or optional information in space below:
 (attach additional page(s) if necessary)

The first sentence of ARTICLE 3 of the Articles of Incorporation of AGRIFY CORPORATION shall be amended to read as follows:

The total number of shares of stock that the Corporation shall have authority to issue is 38 million, consisting of: 35 million shares of Common Stock, par value \$0.001 per share ("Common Stock") and 3 million shares of Preferred Stock, par value \$0.001 per share ("Preferred Stock").

This form must be accompanied by appropriate fees.

**ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION OF
AGRIFY CORPORATION
(Entity ID NV20161331161)**

Pursuant to the provisions of NRS 78.380 and 78.38578.390 the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

FIRST: The name of the corporation is AGRIFY CORPORATION (the “Company”).

SECOND: The document attached hereto as Exhibit “A” sets forth the amendments to the Articles of Incorporation which were adopted by the shareholders of the corporation at the reconvened Annual Meeting of Shareholders (“**Annual Meeting**”) held online on January 22, 2024, in the manner prescribed by law.

THIRD: At the close of business on December 6, 2023, the record date for determination of stockholders entitled to vote at the Annual Meeting, there were 1,701,243 shares of the Company’s Common Stock, each being entitled to one vote, representing all of the outstanding voting securities of the Company entitled to vote at the Annual Meeting.

FOURTH: At the Annual Meeting, the holders of 930,985 shares or 54.7% percent of the Company’s Common Stock were represented in person or by proxy constituting a quorum.

FIFTH: The votes of the shareholders cast by ballot or proxy approving an Amendment to the corporation’s Articles of Incorporation to increase the number of authorized shares of Common Stock from 10,000,000 to 35,000,000, and to correspondingly increase the total authorized shares of stock from 13,000,000 to 38,000,000, were as follows:

FOR:	878,464
AGAINST:	49,979
ABSTAIN:	2,542

Dated this 22nd day of January, 2024.

AGRIFY CORPORATION

By: DocuSigned by:
Raymond Chang
2F30F1AFF9F8423... _____

Name: Raymond Chang

Title: Chief Executive Officer

EXHIBIT "A"

The first sentence of **ARTICLE 3** of the Articles of Incorporation of **AGRIFY CORPORATION** shall be amended to read as follows:

The total number of shares of stock that the Corporation shall have authority to issue is 38 million, consisting of: 35 million shares of Common Stock, par value \$0.001 per share ("Common Stock") and 3 million shares of Preferred Stock, par value \$0.001 per share ("Preferred Stock").

AGRIFY CORPORATION**Senior Secured Amended, Restated and Consolidated Convertible Note due 2025**

THE ISSUANCE AND SALE OF NEITHER THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES THAT MAY BE ISSUABLE PURSUANT TO THIS NOTE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES LAWS. UNTIL THE DATE THAT IS ONE (1) YEAR AFTER MARCH 23, 2022, THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION AND PROSPECTUS-DELIVERY REQUIREMENTS OF THE SECURITIES ACT.

AGRIFY CORPORATION

Senior Secured Amended, Restated and Consolidated Convertible Note due 2025

Certificate No. C-1

Agrify Corporation, a Nevada corporation (the “**Company**”), for value received, promises to pay to CP Acquisitions, LLC, as assignee and successor in interest to High Trail Special Situations LLC (the “**Initial Holder**”), or its registered assigns, the principal sum of Eighteen Million Nine Hundred Thousand Five Hundred Eighty-Three Dollars and Seventy-One Cents (\$18,900,583.71) (such principal sum, the “**Principal Amount**”) on December 31, 2025, and to pay any outstanding interest thereon, as provided in this Note, in each case as provided in and subject to the other provisions of this Note, including the earlier redemption, repurchase or conversion of this Note.

Additional provisions of this Note are set forth on the other side of this Note.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, Agrify Corporation has caused this instrument to be duly executed as of the date set forth below.

AGRIFY CORPORATION

Date: January 25, 2024

By: /s/ Josh Savitz

Name: Josh Savitz

Title: General Counsel

(Signature Page to Senior Secured Amended,
Restated and Consolidated Convertible Note due 2025, Certificate No. C-1)

Senior Secured Amended, Restated and Consolidated Convertible Note due 2025

This Note (this “**Note**” and, collectively with any Note issued in exchange therefor or in substitution thereof, the “**Notes**”) is issued by Agrify Corporation, a Nevada corporation (the “**Company**”), and designated as its “Senior Secured Amended, Restated and Consolidated Convertible Notes due 2025.”

This Note is given by the Company to the Holder in substitution and replacement for (i) that certain Senior Secured Convertible Note due 2025 in the original principal amount of \$10,000,000 issued by the Company on March 10, 2023, (ii) that certain Senior Secured Note due 2025 in the original principal amount of \$35,000,000 issued by the Company on August 19, 2022, as amended by Amendment No. 1 to Senior Secured Note, dated March 9, 2023, and (iii) that certain Junior Secured Promissory Note in the original principal amount of \$3,000,000 issued by the Company on October 27, 2023 (individually, each a “**Prior Note**” and collectively, the “**Prior Notes**”), to amend, restate and consolidate the terms of the Prior Notes. The Company does not intend for the substitution and replacement of this Note for the Prior Notes to constitute, nor shall such be deemed to constitute, a novation or extinguishment of any Prior Note and any obligations of any kind or nature accruing or due thereunder, and the substitution and replacement of this Note for the Prior Notes shall in no event impair, limit, reduce or otherwise discharge the liability of the Company or any obligor of the Prior Notes which liability is hereby reaffirmed by the Company and evidenced by this Note. Therefore, the Prior Notes are hereby amended, restated, consolidated and replaced in its entirety by this Note.

Section 1. DEFINITIONS.

“**Affiliate**” has the meaning set forth in Rule 144 under the Securities Act.

“**Attribution Parties**” means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issue Date, directly or indirectly managed or advised by the Holder’s investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a “group” (within the meaning of Section 13(d)(3) of the Exchange Act) together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Common Stock would or could be aggregated with the Holder’s and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act.

“**Authorized Denomination**” means, with respect to the Notes, a Principal Amount thereof equal to \$1,000 or any integral multiple of \$1,000 in excess thereof, or, if such Principal Amount then-outstanding is less than \$1,000, then such outstanding Principal Amount.

“**Bankruptcy Law**” means Title 11, United States Code, or any similar U.S. federal or state or non-U.S. law for the relief of debtors.

“**Board of Directors**” means the board of directors of the Company or a committee of such board duly authorized to act on behalf of such board.

“**Business Combination Event**” has the meaning set forth in **Section 10**.

“**Business Day**” means any day other than a Saturday, a Sunday or any day on which commercial banks in The City of New York are authorized or required by law or executive order to close or be closed; *provided, however*, for clarification, commercial banks in The City of New York shall not be deemed to be authorized or required by law or executive order to close or be closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are open for use by customers on such day.

“**Capital Lease**” means, with respect to any Person, any leasing or similar arrangement conveying the right to use any property, whether real or personal property, or a combination thereof, by that Person as lessee that, in conformity with GAAP, is required to be accounted for as a capital lease on the balance sheet of such Person.

“**Capital Lease Obligation**” means, at the time any determination is to be made, the amount of the liability in respect of a Capital Lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

“**Capital Stock**” of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case however designated, the equity of such Person, but excluding any debt securities convertible into such equity.

“**Cash**” means all cash and liquid funds.

“**Cash Equivalents**” means, as of any date of determination, any of the following: (A) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government, or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one (1) year after such date; (B) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one (1) year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from Standard & Poor’s Corporation or at least P-1 from Moody’s Investors Service; (C) commercial paper maturing no more than one (1) year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from Standard & Poor’s Corporation or at least P-1 from Moody’s Investors Service; (D) certificates of deposit or bankers’ acceptances maturing within one (1) year after such date and issued or accepted by any commercial bank organized under the laws of the United States of America or any State, or the District of Columbia that (i) is at least “adequately capitalized” (as defined in the regulations of its primary federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than \$5,000,000,000; and (E) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (A) and (B) above, (ii) has net assets of not less than \$5,000,000,000, and (iii) has the highest rating obtainable from either Standard & Poor’s Corporation or Moody’s Investors Service.

“**Close of Business**” means 5:00 p.m., New York City time.

“**Collateral**” has the meaning set forth in the Security Agreements.

“**Collateral Agent**” means CP Acquisitions, LLC in its capacity as collateral agent for the Holder and each Other Holder, together with any successor thereto in such capacity.

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

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

“**Common Stock Change Event**” has the meaning set forth in **Section 7(H)(i)(4)**.

“**Company Redemption Date**” has the meaning set forth in **Section 8(A)**.

“**Company Redemption Notice**” has the meaning set forth in **Section 8(A)**.

“**Company Redemption Price**” means a cash amount equal to one hundred and two point five percent (102.5%) of the Principal Amount then outstanding, plus accrued and unpaid interest.

“**Compliance Certification**” means each certification delivered pursuant to **Section 9(G)** or **Section 9(K)(ii)**.

“**Contingent Obligation**” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (A) any Indebtedness or other obligations of another Person, including any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (B) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (C) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term “Contingent Obligation” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

“**Conversion Amount**” has the meaning set forth in **Section 7(d)(i)**.

“**Conversion Consideration**” has the meaning set forth in **Section 7(D)(i)**.

“**Conversion Date**” means the first Business Day on which the requirements set forth in **Section 7(C)(i)** to convert this Note are satisfied.

“**Conversion Price**” means an amount equal to \$1.46 per share of Common Stock; provided, however, that if after the date of the amendment and restatement of this Note the Company effects any stock split, reverse stock split, share combination or similar transaction, the Conversion Price shall be equitably adjusted to reflect the ratio of such split or similar transaction.

“**Conversion Settlement Date**” has the meaning set forth in **Section 7(D)(iii)**.

“**Copyright License**” means any written agreement granting any right to use any Copyright or Copyright registration, now owned or hereafter acquired by the Company or in which the Company now holds or hereafter acquires any interest.

“**Copyrights**” means all copyrights, whether registered or unregistered, held pursuant to the laws of the United States, any State thereof, or of any other country.

“**Covering Price**” has the meaning set forth in **Section 7(D)(iv)(1)**.

“**Daily VWAP**” means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading “Bloomberg VWAP” on Bloomberg page “AGFY <EQUITY> VAP” (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm selected by the Company). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

“**Default**” means any event that is (or, after notice, passage of time or both, would be) an Event of Default.

“**Default Interest**” has the meaning set forth in **Section 4(B)(ii)**.

“**Disqualified Stock**” means, with respect to any Person, any Capital Stock that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

(A) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise;

(B) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock convertible or exchangeable solely at the option of the Company or a Subsidiary of the Company; provided that any such conversion or exchange will be deemed an incurrence of Indebtedness or Disqualified Stock, as applicable); or

(C) is redeemable at the option of the holder thereof, in whole or in part,

(D) in the case of each of clauses (A), (B) and (C), at any point prior to the one hundred eighty-first (181st) day after the Maturity Date.

“**Eligible Exchange**” means any of The New York Stock Exchange, The NYSE American LLC, The Nasdaq Capital Market, The Nasdaq Global Market or The Nasdaq Global Select Market (or any of their respective successors).

“**Equipment**” means all “**equipment**” as defined in the UCC with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**Equity Interests**” shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including preferred stock or membership interests (however designated, whether voting or non-voting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and including, without limitation, any “equity security” (as that term is defined under Rule 405 promulgated under the Securities Act), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

“**Equity Rights**” shall mean, with respect to any Person, any then-outstanding subscriptions, options, warrants, commitments, preemptive rights, convertible debt, or other equity-linked securities or agreements of any kind for the issuance or sale, of any additional Equity Interests of any class, or partnership or other ownership interests of any type in, such Person.

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

“**Event of Default**” has the meaning set forth in **Section 11(A)**.

“**Event of Default Acceleration Amount**” means, with respect to the delivery of a notice pursuant to **Section 11(B)(ii)** declaring this Note to be due and payable immediately on account of an Event of Default, a cash amount equal to one hundred fifteen percent (115%) of the then outstanding Principal Amount of this Note (or such lesser principal amount accelerated pursuant to such notice) plus accrued and unpaid interest on this Note.

“**Event of Default Notice**” has the meaning set forth in **Section 11(C)**.

“**Ex-Dividend Date**” means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered “regular way” for this purpose.

“**Excess Shares**” has the meaning set forth in **Section 7(I)**.

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

“**Expiration Date**” has the meaning set forth in **Section 7(F)(i)(5)**.

“**Expiration Time**” has the meaning set forth in **Section 7(F)(i)(5)**.

“**Fiscal Quarter**” means each three month period ending March 31, June 30, September 30, and December 31.

“**Fundamental Change**” means any of the following events:

(A) a “person” or “group” (within the meaning of Section 13(d)(3) of the Exchange Act), other than the Company or its Wholly Owned Subsidiaries, or the employee benefit plans of the Company or its Wholly Owned Subsidiaries, files any report with the Commission indicating that such person or group has become the direct or indirect “beneficial owner” (as defined below) of shares of the Company’s common equity representing more than fifty percent (50%) of the voting power of all of the Company’s then-outstanding common equity; or

(B) the consummation of (i) any sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person (other than solely to one or more of the Company’s Wholly Owned Subsidiaries); or (ii) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, cash or other property (other than a subdivision or combination, or solely a change in par value, of the Common Stock); *provided, however*, that any merger, consolidation, share exchange or combination of the Company pursuant to which the Persons that directly or indirectly “beneficially owned” (as defined below) all classes of the Company’s common equity immediately before such transaction directly or indirectly “beneficially own,” immediately after such transaction, more than fifty percent (50%) of all classes of common equity of the surviving, continuing or acquiring company or other transferee, as applicable, or the parent thereof, in substantially the same proportions vis-à-vis each other as immediately before such transaction will be deemed not to be a Fundamental Change pursuant to this **clause (B)**.

For the purposes of this definition, (x) any transaction or event described in both **clause (A)** and in **clause (B)(i) or (ii)** above (without regard to the proviso in **clause (B)**) will be deemed to occur solely pursuant to **clause (B)** above (subject to such proviso); and (y) whether a Person is a “beneficial owner” and whether shares are “beneficially owned” will be determined in accordance with Rule 13d-3 under the Exchange Act.

“**Fundamental Change Base Repurchase Price**” means, with respect to this Note (or any portion of this Note to be repurchased) upon a Repurchase Upon Fundamental Change, a cash amount equal to one hundred two point five percent (102.5%) of the then-outstanding Principal Amount of this Note (or portion thereof) to be so repurchased.

“**Fundamental Change Notice**” has the meaning set forth in **Section 6(C)**.

“**Fundamental Change Repurchase Date**” means the date as of which this Note must be repurchased for cash in connection with a Fundamental Change, as provided in **Section 6(B)**.

“**Fundamental Change Repurchase Price**” means the cash price payable by the Company to repurchase this Note (or any portion of this Note) upon its Repurchase Upon Fundamental Change, calculated pursuant to **Section 6(D)**.

“**GAAP**” means generally accepted accounting principles in the United States of America, as in effect from time to time; provided the definitions set forth in this Note and any financial calculations required by thereby shall be computed to exclude any change to lease accounting rules from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance as in effect on the date hereof.

“**Holder**” means the person in whose name this Note is registered on the books of the Company, which initially is the Initial Holder.

“**Holder Conversion Notice**” has the meaning set forth in **Section 7(C)(i)**.

The term “**including**” means “including without limitation,” unless the context provides otherwise.

“**Indebtedness**” means, indebtedness of any kind, including, without duplication (A) all indebtedness for borrowed money or the deferred purchase price of property or services, including reimbursement and other obligations with respect to surety bonds and letters of credit, (B) all obligations evidenced by notes, bonds, debentures or similar instruments, (C) all Capital Lease Obligations, (D) all Contingent Obligations, and (E) Disqualified Stock.

“**Independent Investigator**” has the meaning set forth in **Section 9(S)**.

“**Initial Exchange Note**” has the meaning set forth in the Securities Exchange Agreement.

“**Initial Holder**” has the meaning set forth in the cover page of this Note.

“**Intellectual Property**” means all of the Company’s Copyrights; Trademarks; Patents; Licenses; trade secrets and inventions; mask works; the Company’s applications therefor and reissues, extensions, or renewals thereof; and the Company’s goodwill associated with any of the foregoing, together with the Company’s rights to sue for past, present and future infringement of Intellectual Property and the goodwill associated therewith.

“**Interest Payment Date**” means (A) the first calendar day of each September and March during the term of this Note, beginning on September 1, 2024; and (B) if not otherwise included in clause (A), the Maturity Date.

“**Interest Shares**” has the meaning set forth in **Section 5(A)**.

“**Investment**” means any beneficial ownership (including stock, partnership or limited liability company interests) of or in any Person, or any loan, advance or capital contribution to any Person or the acquisition of all, or substantially all, of the assets of another Person or the purchase of any assets of another Person for greater than the fair market value of such assets to solely the extent of the amount in excess of the fair market value.

“**Issue Date**” means March 10, 2023.

“**Last Reported Sale Price**” of the shares of Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the shares of Common Stock are then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from a nationally recognized independent investment banking firm selected by the Company.

“**License**” means any Copyright License, Patent License, Trademark License or other license of rights or interests.

“**Lien**” means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, levy, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, against any property, any conditional sale or other title retention agreement, and any lease in the nature of a security interest; provided, that for the avoidance of doubt, licenses, strain escrows and similar provisions in collaboration agreements, research and development agreements that do not create or purport to create a security interest, encumbrance, levy, lien or charge of any kind shall not be deemed to be Liens for purposes of this Note.

“**Market Disruption Event**” means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

“**Maturity Date**” means December 31, 2025.

“**Maximum Percentage**” has the meaning set forth in **Section 7(I)**.

The term “**or**” is not exclusive, unless the context expressly provides otherwise.

“**Open of Business**” means 9:00 a.m., New York City time.

“**Other Holder**” means any person in whose name any Other Note is registered on the books of the Company.

“**Other Notes**” means any Notes that are of the same class of this Note and that are represented by one or more certificates other than the certificate representing this Note.

“**Patent License**” means any written agreement granting any right with respect to any invention covered by a Patent that is in existence or a Patent application that is pending, in which agreement the Company now holds or hereafter acquires any interest.

“**Patents**” means all letters patent of, or rights corresponding thereto, in the United States or in any other country, all registrations and recordings thereof, and all applications for letters patent of, or rights corresponding thereto, in the United States or any other country.

“**Permitted Acquisition**” means any transaction or series of related transactions consummated by the Company or one of its Subsidiaries for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the capital stock or equity interests of any Person or otherwise causing any Person to become a Subsidiary of the Company, or (c) a merger or consolidation or any other combination with another Person, in each case for which (i) the Holder provided prior written consent for such transaction or series of related transactions, provided that the purchase price or consideration in respect of such transaction or series of related transactions at any time shall not exceed an amount equal to the aggregate purchase price of the Purchased Securities (as defined in the Securities Purchase Agreement) outstanding at such time; or (ii) the consideration remitted by the Company or its applicable Subsidiary in connection with such transaction or series of related transactions is solely in the form of Equity Interests of the Company, provided that, in each case, no Default or Event of Default shall then exist or would exist after giving effect to any of the foregoing.

“**Permitted Indebtedness**” means (A) Indebtedness evidenced by the Initial Exchange Notes and Indebtedness evidenced by the Notes (as defined in the Securities Purchase Agreement); (B) Indebtedness actually disclosed pursuant to the Securities Exchange Agreement as of the date of the Securities Exchange Agreement; (C) nonrecourse Indebtedness outstanding at any time secured by a Lien described in clause (G) of the defined term “Permitted Liens,” provided such Indebtedness does not exceed the cost of the Equipment or real property interests and related expenses financed with such Indebtedness or in the form of purchase money Indebtedness (whether in the form of a loan or a lease) used solely to acquire Equipment or real property interests used in the ordinary course of business and secured only by such Equipment and real property interests and sale and insurance proceeds in respect thereof, and provided further that the total amount of Permitted Indebtedness permitted pursuant to this clause (C) may not exceed five million dollars (\$5,000,000) in the aggregate; (D) nonrecourse Indebtedness outstanding at any time secured by a Lien described in clause (H) of the defined term “Permitted Liens,” provided such Indebtedness does not exceed the cost of the software or other intellectual property and related expenses financed with such Indebtedness or in the form of purchase money Indebtedness (whether in the form of a loan or a lease) used solely to acquire software or other intellectual property used in the ordinary course of business and secured only by such software or other intellectual property and sale and insurance proceeds in respect thereof, provided further that the total amount of Permitted Indebtedness permitted pursuant to this clause (D) may not exceed five hundred thousand dollars (\$500,000) in the aggregate; (E) Indebtedness to trade creditors incurred in the ordinary course of business; (F) Subordinated Indebtedness of the Company that has received the prior written approval of the Holder; (G) reimbursement obligations in connection with letters of credit or similar instruments that are secured by Cash or Cash Equivalents and issued on behalf of the Company or a Subsidiary thereof in an aggregate amount not to exceed five hundred thousand dollars (\$500,000) at any time outstanding; (H) unsecured Indebtedness of the Company that has received the prior written approval of the Holder, (I) Contingent Obligations that are guarantees of Indebtedness described in clauses (A) through (H) and (J); and (J) earn-outs incurred in connection with any Permitted Acquisition that are subordinated in full to the Notes to the satisfaction of the Holder and do not exceed (a) ten million dollars (\$10,000,000) in the aggregate due in any twelve-month period and (b) twenty million dollars (\$20,000,000); provided that in no event shall Permitted Indebtedness under (x) clauses (B)-(J) of this definition exceed in the aggregate an amount equal to ten million dollars (\$10,000,000) or (y) clauses (F) or (H) (1) have a final maturity date, amortization payment, sinking fund, put right, mandatory redemption or other repurchase obligation at the option of the lender or holder of such indebtedness, or be prepayable at the option of the Company, in any case earlier than one hundred eighty-one (181) days following the Maturity Date or (2) have any covenants that are more restrictive on the Company in any material respect than the covenants set forth in this Note.

“Permitted Intellectual Property Licenses” means Intellectual Property (A) licenses in existence at March 23, 2022, including those listed on the Schedules to the Security Agreements, and (B) non-perpetual licenses granted in the ordinary course of business on arm’s length terms consisting of the licensing of technology, the development of technology or the providing of technical support which may include licenses with unlimited renewal options solely to the extent such options require mutual consent for renewal or are subject to financial or other conditions as to the ability of licensee to perform under the license; provided such license was not entered into during an Event of Default or continuance of a Default.

“Permitted Investment” means: (A) Investments actually disclosed pursuant to the Securities Exchange Agreement, as in effect as of the Issue Date; (B) (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one year from the date of acquisition thereof, (ii) commercial paper maturing no more than one year from the date of creation thereof and currently having a rating of at least A-2 or P-2 from either Standard & Poor’s Corporation or Moody’s Investors Service, (iii) certificates of deposit issued by any bank headquartered in the United States with assets of at least \$5,000,000,000 maturing no more than one year from the date of investment therein, and (iv) money market accounts; (C) Investments accepted in connection with Permitted Transfers; (D) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of the Company’s business; (E) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers in the ordinary course of business and consistent with past practice, provided that this clause (E) shall not apply to Investments of the Company in any Subsidiary thereof; (F) Investments consisting of (i) loans not involving the net transfer on a substantially contemporaneous basis of cash proceeds to employees, officers or directors relating to the purchase of capital stock of the Company pursuant to employee stock purchase plans or other similar agreements approved by the Company’s Board of Directors and (ii) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, provided that the aggregate of all such loans outstanding may not exceed one hundred thousand (\$100,000) at any time; (G) Investments in Wholly Owned Subsidiaries; (H) Permitted Intellectual Property Licenses; (I) Permitted Acquisitions; (J) loans, advances or other capital contributions to Company customers pursuant to a TTK Contract with such customer; (K) Investments in a TTK SPV; and (L) Investments in real property; provided that, for any Investment set forth in clause (G), (J) and (K) other than a Permitted Turnkey Investment, such Investment shall not qualify as a Permitted Investment unless the Company receives the prior written consent to such Investment from the Holder.

“Permitted Liens” means any and all of the following: (A) Liens in favor of Holder or the Collateral Agent; (B) Liens deemed to be disclosed pursuant to the Securities Exchange Agreement, as in effect as of the Issue Date; (C) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings; provided, that the Company maintains adequate reserves therefor in accordance with GAAP; (D) Liens securing claims or demands of materialmen, artisans, mechanics, carriers, warehousemen, landlords and other like Persons arising in the ordinary course of business; provided, that the payment thereof is not yet required; (E) Liens arising from judgments, decrees or attachments in circumstances which do not constitute a Default or an Event of Default hereunder; (F) the following deposits, to the extent made in the ordinary course of business: deposits under workers’ compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations (other than Liens arising under ERISA or environmental Liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds; (G) Liens on Equipment (but, for the avoidance of doubt, not software or other intellectual property) or real property interests constituting purchase money Liens or Liens securing construction financing for real property interests and Liens in connection with Capital Leases securing Indebtedness permitted in clause (C) of “Permitted Indebtedness”; (H) Liens on software or other intellectual property (but, for the avoidance of doubt, not Equipment or real property interests related thereto) constituting purchase money Liens and Liens in connection with Capital Leases securing Indebtedness permitted in clause (D) of “Permitted Indebtedness”; (I) leasehold interests in leases or subleases and licenses granted in the ordinary course of the Company’s business and not interfering in any material respect with the business of the licensor; (J) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due; (K) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets); (L) statutory and common law rights of set-off and other similar rights as to deposits of cash and securities in favor of banks, other depository institutions and brokerage firms; (M) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property; (N) Liens on Cash or Cash Equivalents securing obligations permitted under clause (E) and (G) of the definition of Permitted Indebtedness; (O) Liens securing Subordinated Indebtedness, and (P) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clauses (C) through (O) above (other than any Indebtedness repaid with the proceeds of this Note); provided, that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced (as may have been reduced by any payment thereon) does not increase.

“**Permitted Transfers**” means (A) dispositions of inventory sold, and Permitted Intellectual Property Licenses entered into, in each case, in the ordinary course of business, (B) dispositions of worn-out, obsolete or surplus property at fair market value in the ordinary course of business; (C) dispositions of accounts or payment intangibles (each as defined in the UCC) resulting from the compromise or settlement thereof in the ordinary course of business for less than the full amount thereof; (D) transfers consisting of Permitted Investments in Wholly Owned Subsidiaries under clause (G) of Permitted Investments; (E) transfers between Grantors (as defined in the Security Agreement); and (F) other transfers of assets to any Person other than to a joint venture and which have a fair market value of not more than fifty thousand dollars (\$50,000) in the aggregate in any twelve (12) month period.

“**Permitted Turnkey Investment**” shall mean any Investments in any customers using the Company’s Total Turnkey Solution not to exceed in the aggregate twelve million dollars (\$12,000,000).

“**Person**” or “**person**” means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

“**Principal Amount**” has the meaning set forth in the cover page of this Note; *provided, however*, that the Principal Amount of this Note will be subject to reduction pursuant to **Section 6, Section 7 and Section 8**.

“**Prior Securities Exchange Agreement**” means that certain Securities Exchange Agreement, dated as of August 18, 2022, by and between the Company and each of the investors listed on the Schedule of Holders attached thereto.

“**Reference Property**” has the meaning set forth in **Section 7(H)(i)(4)**.

“**Reference Property Unit**” has the meaning set forth in **Section 7(H)(i)(4)**.

“**Reported Outstanding Share Number**” has the meaning set forth in **Section 7(I)**.

“**Repurchase Upon Fundamental Change**” means the repurchase of any Note by the Company pursuant to **Section 6**.

“**Required Holders**” has the meaning set forth in the Securities Purchase Agreement.

“**Required Reserve Amount**” has the meaning in **Section 9(W)**.

“**Rule 144**” means Rule 144 promulgated under the Securities Act.

“**Scheduled Trading Day**” means any day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal, in terms of volume, Eligible Exchange on which the Common Stock is listed for trading. If the Common Stock is not so listed or traded, then “Scheduled Trading day” means a Business Day.

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

“**Securities Exchange Agreement**” means that certain Securities Exchange Agreement, dated as of March 8, 2023, by and among the Company and each of the investors listed on the Schedule of Holders attached thereto.

“**Securities Purchase Agreement**” means that certain Securities Purchase Agreement, dated as of March 14, 2022, by and among the Company and each of the investors listed on the Schedule of Buyers attached thereto.

“**Security Agreements**” means those certain Security Agreements, dated March 23, 2022, between the Company and the Collateral Agent, as amended, supplemented or otherwise modified from time to time.

“**Security Document**” has the meaning set forth in the Security Agreements.

“**Significant Subsidiary**” means, with respect to any Person, any Subsidiary of such Person that constitutes a “significant subsidiary” (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of such Person.

“**Spin-Off**” has the meaning set forth in **Section 7(F)(i)(3)(b)**.

“**Spin-Off Valuation Period**” has the meaning set forth in **Section 7(F)(i)(3)(b)**.

“**Stated Interest**” has the meaning set forth in **Section 4(B)(i)**.

“**Stated Interest Rate**” means, as of any date, a rate per annum equal to ten percent (10.0%).

“**Subordinated Indebtedness**” means Indebtedness subordinated to the Notes that is (a) in amounts and on terms and conditions satisfactory to the Holder in its sole discretion or (b) nonrecourse Indebtedness incurred in connection with the consummation of a TTK Contract that is secured only by assets of the respective TTK SPV, provided that, for the avoidance of doubt, no Indebtedness permitted under this clause (b) shall be guaranteed by the Company or qualify as a liability of the Company.

“**Subsidiary**” means, with respect to any Person, (A) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than fifty percent (50%) of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person; and (B) any partnership or limited liability company where (i) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; and (ii) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company.

“**Successor Corporation**” has the meaning set forth in **Section 10(A)**.

“**Successor Person**” has the meaning set forth in **Section 7(H)(i)**.

“**Tender/Exchange Offer Valuation Period**” has the meaning set forth in **Section 7(F)(i)(5)**.

“**Trademark License**” means any written agreement granting any right to use any Trademark or Trademark registration, now owned or hereafter acquired by the Company or in which the Company now holds or hereafter acquires any interest.

“**Trademarks**” means all trademarks (registered, common law or otherwise) and any applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof.

“**Trading Day**” means any day on which (A) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded; and (B) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then “Trading Day” means a Business Day.

“**Transaction Documents**” shall mean the documents included in the definitions of “Transaction Documents” under the Securities Exchange Agreement and the Prior Securities Exchange Agreement.

“**TTK Contracts**” means Total Turn-Key Solution contracts entered into between the Company and customers thereof to implement a TTK Transaction, which include, without limitation, financing, construction, vertical farming unit leasing, extraction or processing equipment leasing, software, brand and/or marketing consulting and production-based fee contracts.

“**TTK SPV**” means a special purpose vehicle established to implement a TTK Transaction with a customer of the Company.

“**TTK Transaction**” means a long-term partnership between the Company and a customer of the Company designed to provide such customer with access to vertical farming units, extraction or processing equipment, construction and/or equipment funding, facility design and construction services, cultivation equipment and software, standard operating procedures, training, data and insights, and ongoing maintenance, support, and equipment upgrades.

“**UCC**” means the Uniform Commercial Code as the same is, from time to time, in effect in the State of New York.

“**Undelivered Shares**” has the meaning set forth in **Section 7(D)(iv)**.

“**VWAP Market Disruption Event**” means, with respect to any date, (A) the failure by the principal U.S. national or regional securities exchange on which the Common Stock is then listed, or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, the principal other market on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (B) the occurrence or existence, for more than one half hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

“**VWAP Trading Day**” means a day on which (A) there is no VWAP Market Disruption Event; provided that the Holder, by written notice to the Company, may waive any such VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then “VWAP Trading Day” means a Business Day.

“**Wholly Owned Subsidiary**” of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

Section 2. PERSONS DEEMED OWNERS.

The Holder of this Note will be treated as the owner of this Note for all purposes.

Section 3. REGISTERED FORM.

This Note, and any Note issued in exchange therefor or in substitution thereof, will be in registered form, without coupons.

Section 4. INTEREST; MATURITY DATE PAYMENT; PREPAYMENT.

(A) *[Reserved]*.

(B) *Interest.*

(i) This Note will accrue interest (the “**Stated Interest**”) at a rate per annum equal to the Stated Interest Rate. Stated Interest on this Note will (i) accrue on the Principal Amount of this Note; (ii) accrue from, and including, the most recent date to which Stated Interest has been paid or duly provided for (or, if no Stated Interest has theretofore been paid or duly provided for, the Issue Date) to, but excluding, the date of payment of such Stated Interest; (iii) be paid to Holder on each Interest Payment Date in accordance with **Section 5(A)**; and (iv) be computed on the basis of a 360-day year comprised of twelve 30-day months.

(ii) If a Default or an Event of Default occurs, then in each case, to the extent lawful, interest (“**Default Interest**”) will accrue (rather than at the Stated Interest Rate, if applicable) on the Principal Amount outstanding as of the date of such Default or Event of Default at a rate per annum equal to eighteen percent (18.0%), from, and including, the date of such Default or Event of Default, as applicable, to, but excluding, the date such Default is cured and all outstanding Default Interest under this Note has been paid. Default Interest hereunder will be payable in arrears on the earlier of (i) the first day of each calendar month and (ii) the date such Default is cured, and will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(C) *Maturity Date Payment.* On the Maturity Date, the Company will pay the Holder an amount in cash equal to the then-outstanding Principal Amount of this Note plus any accrued and unpaid interest on this Note.

(D) *Prepayment.* The Company may not prepay the Note without the written consent of the Holder other than pursuant to **Section 8(A)**.

(E) *[Reserved]*.

Section 5. METHOD OF PAYMENT; WHEN PAYMENT DATE IS NOT A BUSINESS DAY.

(A) *Method of Payment.* The Company will pay all cash amounts due under this Note by wire transfer of immediately available funds to an account of the Holder that is provided to the Company on the date hereof, which account may be changed for any cash amount due under this Note by written notice provided by the Holder to the Company at least three (3) Business Days before the date such amount is due. Notwithstanding anything to the contrary herein, any payments of Stated Interest required hereunder may be paid, at the option of the Company, in cash, in shares of Common Stock (“**Interest Shares**”) or a combination of cash and Interest Shares. Interest to be paid hereunder in Interest Shares shall be paid in a number of shares (rounded to the nearest closest whole number in accordance with **Section 7(D)**) of Common Stock equal to the greater of (A) the quotient obtained by dividing (i) the amount of Stated Interest payable on such date less any Stated Interest paid in cash on such date by (ii) the Conversion Price, and (B) the quotient obtained by dividing (i) the amount of Stated Interest payable on such date less any Stated Interest paid in cash on such date by (ii) the average trailing seven (7) day Daily VWAP less twenty percent (20%) of such average price.

(B) *Delay of Payment when Payment Date is Not a Business Day.* If the due date for a payment on this Note as provided in this Note is not a Business Day, then, notwithstanding anything to the contrary in this Note, such payment may be made on the immediately following Business Day and no interest will accrue on such payment as a result of the related delay.

Section 6. REQUIRED REPURCHASE OF NOTE UPON A FUNDAMENTAL CHANGE.

(A) *Repurchase Upon Fundamental Change.* Subject to the other terms of this **Section 6**, if a Fundamental Change occurs, then the Holder will have the right to require the Company to repurchase this Note (or any portion of this Note in an Authorized Denomination) on the Fundamental Change Repurchase Date for such Fundamental Change for a cash purchase price equal to the Fundamental Change Repurchase Price.

(B) *Fundamental Change Repurchase Date.* The Fundamental Change Repurchase Date for any Fundamental Change will be a Business Day of the Holder's choosing that is no more than twenty (20) Business Days after the later of (x) the date the Company delivers to the Holder the related Fundamental Change Notice pursuant to **Section 6(C)**; and (y) the effective date of such Fundamental Change.

(C) *Fundamental Change Notice.* No later than the eighth (8th) Business Day before the occurrence of any Fundamental Change, the Company will send to the Holder a written notice (the "**Fundamental Change Notice**") thereof (provided, however, in no event shall such notice be required prior to the actual public notice of such Fundamental Change), stating the expected date such Fundamental Change will occur. No later than the fifth (5th) Business Day after the date of delivery of the Fundamental Change Notice, the Holder shall notify the Company in writing whether it will require the Company to repurchase this Note and specify the Fundamental Change Repurchase Date.

(D) *Fundamental Change Repurchase Price.* The Fundamental Change Repurchase Price for this Note (or any portion of this Note to be repurchased) upon a Repurchase Upon Fundamental Change following a Fundamental Change is an amount in cash equal to the Fundamental Change Base Repurchase Price for such Fundamental Change plus any accrued and unpaid interest on this Note (or such portion of this Note) to, but excluding, the Fundamental Change Repurchase Date for such Fundamental Change. For the avoidance of doubt, no other prepayment premium, fee or penalty (including the prepayment fee set forth in the definition of "**Company Redemption Price**") shall be due or payable in connection with a Repurchase Upon Fundamental Change.

(E) *Effect of Repurchase.* If this Note (or any portion of this Note) is to be repurchased upon a Repurchase Upon Fundamental Change, then, from and after the date the related Fundamental Change Repurchase Price is paid in full, this Note (or such portion) will cease to be outstanding.

Section 7. CONVERSION.

(A) Right to Convert.

(i) *[Reserved]*.

(ii) *Conversions in Part.* Subject to the terms of this **Section 7**, this Note may be converted in part, but only in an Authorized Denomination. Provisions of this **Section 7** applying to the conversion of this Note in whole will equally apply to conversions of any permitted portion of this Note.

(B) When this Note May Be Converted.

(i) *Generally.* The Holder may convert this Note at any time until the Close of Business on the second (2nd) Scheduled Trading Day immediately before the Maturity Date.

(ii) *Limitations and Closed Periods.* Notwithstanding anything to the contrary in this **Section 7**, if this Note (or any portion of this Note) is to be repurchased upon a Repurchase Upon Fundamental Change, then in no event may this Note (or such portion) be converted after the Close of Business on the Scheduled Trading Day immediately before the related Fundamental Change Repurchase Date; provided, that the limitations contained in this **Section 7(B)(ii)** shall no longer apply to this Note (or such applicable portion) if the applicable Fundamental Change Repurchase Price is not delivered on the Fundamental Change Repurchase Date in accordance with **Section 6**.

(C) Conversion Procedures.

(i) *Generally.* To convert this Note, the Holder must complete, sign and deliver to the Company the conversion notice attached to this Note on **Exhibit A** or portable document format (.pdf) version of such conversion notice (at which time such conversion will become irrevocable) (a "**Holder Conversion Notice**"). For the avoidance of doubt, the Holder Conversion Notice may be delivered by e-mail in accordance with **Section 14**. If the Company fails to deliver, by the related Conversion Settlement Date, any shares of Common Stock forming part of the Conversion Consideration of the conversion of this Note, the Holder, by notice to the Company, may rescind all or any portion of the corresponding Holder Conversion Notice at any time until such Undelivered Shares are delivered.

(ii) *Holder of Record of Conversion Shares.* The person in whose name any shares of Common Stock is issuable upon conversion of this Note will be deemed to become the holder of record of such shares as of the Close of Business on the Conversion Date for such conversion, conferring, as of such time, upon such person, without limitation, all voting and other rights appurtenant to such shares.

(iii) *Taxes and Duties.* If the Holder converts a Note, the Company will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue of any shares of Common Stock upon such conversion.

(D) *Settlement upon Conversion.*

(i) *Generally.* Subject to **Section 7(D)(ii)**, the consideration (the “**Conversion Consideration**”) due in respect of any portion of the outstanding Principal Amount of this Note, to be converted (the “**Conversion Amount**”) will consist of the following:

(1) subject to **Section 7(D)(ii)**, a number of shares of Common Stock determined by dividing the Conversion Amount by the Conversion Price; and

(2) cash in an amount equal to the aggregate accrued and unpaid interest on this Note to, but excluding, the Conversion Settlement Date for such conversion or, at the election of the Company, a number of validly issued, fully paid and Common Stock (the “**Conversion Consideration Interest Shares**”) equal to the quotient (rounded up to the closest whole number) obtained by dividing the aggregate accrued and unpaid interest on this Note to, but excluding, the Conversion Settlement Date by the Conversion Price.

(ii) *Fractional Shares.* The total number of shares of Common Stock due in respect of any conversion of this Note pursuant to this **Section 7**, will be determined on the basis of the total Principal Amount of this Note to be converted with the same Conversion Date; *provided, however*, that if such number of shares of Common Stock is not a whole number, then such number will be rounded up to the nearest whole number.

(iii) *Delivery of the Conversion Consideration.* The Company will pay or deliver, as applicable, the Conversion Consideration due upon the conversion of this Note, to the Holder on or before the second (2nd) Business Day (or, if earlier, the standard settlement period for the primary Eligible Exchange (measured in terms of trading volume for its Common Stock) on which the Common Stock are traded) immediately after the Conversion Date for such conversion (the “**Conversion Settlement Date**”).

(iv) *Company Failure to Timely Deliver Stock Payments.* If (x) the Company shall fail for any reason or for no reason on or prior to the applicable Conversion Settlement Date to deliver shares of Common Stock in accordance with **Section 7(C)** (such shares to which Holder is entitled referred to as the “**Undelivered Shares**”); and (y) the Holder (whether directly or indirectly, including by any broker acting on the Holder’s behalf or acting with respect to such Undelivered Shares) purchases any shares of Common Stock (whether in the open market or otherwise) to cover any such Undelivered Shares (whether to satisfy any settlement obligations with respect thereto of the Holder or otherwise), then, without limiting the Holder’s right to pursue any other remedy available to it (whether hereunder, under applicable law or otherwise), the Holder will have the right, exercisable by notice to the Company, to cause the Company to either:

(1) pay, on or before the second (2nd) Business Day after the date such notice is delivered, cash to the Holder in an amount equal to the aggregate purchase price (including any brokerage commissions and other out-of-pocket costs) incurred to purchase such shares (such aggregate purchase price, the “**Covering Price**”); or

(2) promptly deliver, to the Holder, such Undelivered Shares in accordance with this Note, together with cash in an amount equal to the excess, if any, of the Covering Price over the product of (x) the number of such Undelivered Shares; and (y) the Daily VWAP per share of Common Stock on the applicable Conversion Date.

To exercise such right, the Holder must deliver notice of such exercise to the Company, specifying whether the Holder has elected clause (1) or (2) above to apply. If the Holder has elected clause (1) to apply, then the Company's obligation to deliver the Undelivered Shares in accordance with this Note will be deemed to have been satisfied and discharged to the extent the Company has paid the Covering Price in accordance with clause (1). Nothing herein shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock as required pursuant to the terms hereof. In addition to the foregoing, if the Company fails for any reason to deliver Common Stock to the Holder by the applicable Conversion Settlement Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Undelivered Shares (based on the Daily VWAP on the applicable Conversion Settlement Date), \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after the Conversion Settlement Date until the cash amount set forth in **Section 7(D)(iv)(1)** is paid to the Holder or the shares of Common Stock are delivered to the Holder pursuant to **Section 7(D)(iv)(2)**.

(v) *Effect of Conversion.* If this Note is converted in full, then, from and after the date the Conversion Consideration therefor is issued or delivered in settlement of such conversion, this Note will cease to be outstanding and all interest will cease to accrue on this Note.

(E) *Common Stock Issued upon Conversion.*

(i) *Status of Conversion Shares; Listing.* Each share of Common Stock delivered pursuant to this Note will be a newly issued or treasury share and will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any Lien or adverse claim (except to the extent of any Lien or adverse claim created by the action or inaction of the Holder or the Person to whom such share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will cause each share of Common Stock issued pursuant to this Note, when delivered, to be admitted for listing on such exchange or quotation on such system.

(ii) *[Reserved.]*

(F) *[Reserved.]*

(G) *[Reserved.]*

(H) *Effect of Certain Recapitalizations, Reclassifications, Consolidations, Mergers and Sales.*

(i) *Generally.* If there occurs:

(1) recapitalization, reclassification or change of the Common Stock (other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value and (z) stock splits and stock combinations that do not involve the issuance of any other series or class of securities);

(2) consolidation, merger, combination or binding or statutory share exchange involving the Company;

(3) sale, lease or other transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or

(4) other similar event,

and, in each case, as a result of such occurrence, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities or other property (including cash or any combination of the foregoing) (such an event, a “**Common Stock Change Event**,” and such other securities or other property, the “**Reference Property**,” and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue fractional shares of securities or other property), a “**Reference Property Unit**”), then, notwithstanding anything to the contrary in this Note, at the effective time of such Common Stock Change Event, (x) the Conversion Consideration due upon conversion of any Note will be determined in the same manner as if each reference to any number of shares of Common Stock in this **Section 7** (or in any related definitions) were instead a reference to the same number of Reference Property Units; (y) for purposes of **Section 7(A)**, each reference to any number of shares of Common Stock in such Section (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units; and (z) for purposes of the definition of “Fundamental Change,” the term “Common Stock” and “common equity” will be deemed to mean the common equity, if any, forming part of such Reference Property. For these purposes, (I) the Daily VWAP of any Reference Property Unit or portion thereof that consists of a class of common equity securities will be determined by reference to the definition of “Daily VWAP,” substituting, if applicable, the reported Bloomberg page data for such class of securities in such definition; and (II) the Daily VWAP of any Reference Property Unit or portion thereof that does not consist of a class of common equity securities, and the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities, will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Company will notify the Holder of such weighted average as soon as practicable after such determination is made.

At or before the effective date of such Common Stock Change Event, the Company and the resulting, surviving or transferee Person (if not the Company) of such Common Stock Change Event (the “**Successor Person**”) will execute and deliver such instruments or agreements that (x) provides for subsequent conversions of this Note in the manner set forth in this **Section 7(H)**; and (y) contains such other provisions as the Company reasonably determines are appropriate to preserve the economic interests of the Holder and to give effect to the provisions of this **Section 7(H)**. If the Reference Property includes shares of stock or other securities or assets of a Person other than the Successor Person, then such other Person will also execute such instruments or agreements and such instruments or agreements will contain such additional provisions the Company reasonably determines are appropriate to preserve the economic interests of the Holder.

(ii) *Notice of Common Stock Change Events.* As soon as practicable after learning the anticipated or actual effective date of any Common Stock Change Event, the Company will provide written notice to the Holder of such Common Stock Change Event, including a brief description of such Common Stock Change Event, its anticipated effective date and a brief description of the anticipated change in the conversion right of this Note.

(iii) *Compliance Covenant.* The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this **Section 7(H)**.

(I) *Limitations on Conversions.* Notwithstanding anything to the contrary contained herein, the Company shall not effect the conversion of any portion of this Note, or otherwise issue shares pursuant to this Note, and the Holder shall not have the right to convert any portion of this Note, pursuant to the terms and conditions of this Note and any such conversion or issuance shall be null and void and treated as if never made, to the extent that after giving effect to such conversion or issuance, the Holder together with the other Attribution Parties collectively would beneficially own in the aggregate in excess of 49.99% (the “**Maximum Percentage**”) of the number of shares of Common Stock outstanding immediately after giving effect to such conversion or issuance. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of, or otherwise pursuant to, this Note with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining, unconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this **Section 7(I)**. For purposes of this **Section 7(I)**, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of this Note, in determining the number of outstanding shares of Common Stock the Holder may acquire in connection with this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Commission, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent (as defined in the Securities Purchase Agreement) setting forth the number of shares of Common Stock outstanding (the “**Reported Outstanding Share Number**”). If the Company receives a notice from the Holder related to the conversion of this Note or any issuance of shares of Common Stock in connection with this Note at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall promptly notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such conversion or issuance of shares of Common Stock would otherwise cause the Holder's beneficial ownership, as determined pursuant to this **Section 7(I)**, to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of shares of Common Stock to be issued pursuant to such notice. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Trading Day confirm in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of, or otherwise pursuant to, this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the “**Excess Shares**”) shall be deemed null and void and shall be cancelled *ab initio*, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 49.99% as specified in such notice; *provided that* (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any Other Holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to convert this Note or receive shares pursuant to this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. Notwithstanding the foregoing, the Holder may assign its right to receive shares of Common Stock upon issuance of this Note to any of its members, in which case the Maximum Percentage shall be calculated with respect to each individual member and its respective Attribution Parties in accordance with this **Section 7(I)**, provided that one member of the Holder shall not, solely as a result of its status as a member of the Holder, be deemed to be an Attribution Party of any other member of the Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this **Section 7(I)** to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this **Section 7(I)** or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note.

Section 8. REDEMPTION OF THIS NOTE.

(A) *Company Redemption Election.* The Company may redeem all (or a portion thereof not less than five million dollars (\$5,000,000)) of the then outstanding Principal Amount on any date by paying on the Company Redemption Date (as defined below) a cash redemption price equal to the Company Redemption Price; provided, that (i) the Company shall have not received a Holder Conversion Notice from the Holder prior to the Company Redemption Date (as defined below) with respect to the applicable Principal Amount to be redeemed pursuant to this **Section 8(A)** and (ii) the Company must provide irrevocable written notice thereof (a “**Company Redemption Notice**”) certifying that no Default has occurred or is continuing as of the date of such notice and that no Event of Default has occurred as of the date of such notice that has not been waived and setting forth the date upon which such redemption shall occur (the “**Company Redemption Date**”) at least twenty (20) Trading Days prior to the Company Redemption Date and the Company must have, on or prior to 9:00 am, New York City time, on such notice delivery date, publicly disclosed any material, non-public information regarding the Company (including the fact that the Company is redeeming the Note) on a Form 8-K or otherwise; provided, however, that this **Section 8(A)** will cease to have any force and effect if a Default has occurred and is continuing or an Event of Default has occurred and has not been waived by the Required Holders. If this Note is to be redeemed in full pursuant to this **Section 8(A)**, then, from and after the date the related Company Redemption Price is paid in full, this Note will cease to be outstanding. Notwithstanding the foregoing (and for the avoidance of doubt), the Holder may elect to convert any Principal Amount to be redeemed pursuant to this **Section 8(A)** into shares of Common Stock in accordance with **Section 7** by delivering a Holder Conversion Notice to the Company prior to the Company Redemption Date.

Section 9. AFFIRMATIVE AND NEGATIVE COVENANTS.

(A) *Stay, Extension and Usury Laws.* To the extent that it may lawfully do so, the Company (A) agrees that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Note; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Holder by this Note, but will suffer and permit the execution of every such power as though no such law has been enacted.

(B) *Corporate Existence.* Subject to **Section 10**, the Company will cause to preserve and keep in full force and effect:

(i) its corporate existence and the corporate existence of its Subsidiaries in accordance with the organizational documents of the Company or its Subsidiaries, as applicable; and

(ii) the material rights (charter and statutory), licenses and franchises of the Company and its Subsidiaries;

provided, however, that the Company need not preserve or keep in full force and effect any such rights (charter and statutory), license or franchise or existence of any of its Subsidiaries if the Board of Directors determines in good faith that (x) the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole; and (y) the loss thereof is not, individually or in the aggregate, materially adverse to the Holder.

(C) *Ranking.* All payments due under this Note (i) shall rank pari passu with all Other Notes and (ii) shall rank senior to all other indebtedness of the Company (other than the indebtedness described in clauses (i)) and any Subordinated Indebtedness.

(D) *Indebtedness; Amendments to Indebtedness.* The Company shall not and shall not permit any Subsidiary to: (a) create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness, other than Permitted Indebtedness; (b) prepay any Indebtedness except for (i) by the conversion of Indebtedness into equity securities (other than Disqualified Stock) and the payment of cash in lieu of fractional shares in connection with such conversion, and (ii) a refinancing of the entire amount of such Indebtedness which does not impose materially more burdensome terms upon the Company or its Subsidiaries than exist in such Indebtedness prior to such refinancing, but with a maturity date which is later than one hundred eighty-one (181) days following the Maturity Date; or (c) amend or modify any documents or notes evidencing any Indebtedness in any manner which shortens the maturity date or any amortization, redemption or interest payment date thereof or otherwise imposes materially more burdensome terms upon the Company or its Subsidiaries than exist in such Indebtedness prior to such amendment or modification without the prior written consent of Holder. The Company shall not and shall not permit any Subsidiary to incur any Indebtedness that would cause a breach or Default under the Notes or prohibit or restrict the performance of any of the Company's or its Subsidiaries' obligations under the Notes, including without limitation, the payment of interest and principal thereon.

(E) *Liens.* The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien of any kind on any asset now owned or hereafter acquired, except Permitted Liens.

(F) *Investments.* The Company shall not directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries so to do, other than Permitted Investments; *provided* that the Company may not make any Investment (including a Permitted Investment) or permit any of its Subsidiaries to make any Investment (including a Permitted Investment) if (i) any Event of Default has occurred hereunder or (ii) any event or circumstance has occurred and is continuing which, with the giving of notice or passage of time or both, could constitute an Event of Default with respect to **Section 11(A)(ii)**, **Section 11(A)(iii)**, **Section 11(A)(x)**, **Section 11(A)(xii)**, **Section 11(A)(xv)** or **Section 11(A)(xvi)**.

(G) *Distributions.* The Company shall not, and shall not allow any Subsidiary to, (a) repurchase or redeem any class of stock or other Equity Interest other than pursuant to employee, director or consultant repurchase plans or other similar agreements provided under plans approved by the Board of Directors; *provided*, however, in each case the repurchase or redemption price does not exceed the original consideration paid for such stock or Equity Interest, or (b) declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest, except that a Subsidiary of the Company may pay dividends or make distributions to the Company or a parent company that is a direct or indirect Wholly Owned Subsidiary of the Company, or (c) lend money to any employees, officers or directors (except as permitted under clause (F) of the definition of Permitted Investment), or guarantee the payment of any such loans granted by a third party in excess of fifty thousand dollars (\$50,000) in the aggregate or (d) waive, release or forgive any Indebtedness owed by any employees, officers or directors in excess of fifty thousand dollars (\$50,000) in the aggregate. Within one (1) Business Day following the date on which the Company files an Annual Report on Form 10-K or Quarterly Report on Form 10-Q with the Commission, the Company will provide the Holder with a written notice setting forth the aggregate amount of dividends or distributions made by the Company or any Subsidiary pursuant to this **Section 9(G)** for the period covered by such Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as applicable. Notwithstanding anything herein to the contrary, the Company shall not, and shall not allow any Subsidiary to, declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest if (A) any Event of Default has occurred hereunder and has not been waived by the Required Holders or (B) any event or circumstance has occurred and is continuing which, with the giving of notice or passage of time or both, could constitute an Event of Default with respect to **Section 11(A)(ii)**, **Section 11(A)(iii)**, **Section 11(A)(x)**, **Section 11(A)(xii)**, **Section 11(A)(xv)** or **Section 11(A)(xvi)**. On or prior to the first (1st) Business Day of each calendar month, the Company shall provide to the Holder a certification, executed on behalf of the Company by the Chief Financial Officer of the Company, certifying whether or not the Company has satisfied the requirements of this **Section 9(G)** during the immediately preceding calendar month." If the Company determines in its sole discretion that any such information constitutes material non-public information, then the Company will so indicate in the certification provided pursuant to this **Section 9(G)** and the Company will concurrently disclose such material non-public information on a Current Report on Form 8-K or otherwise.

(H) *Transfers*. The Company shall not, and shall not allow any Subsidiary to, voluntarily or involuntarily transfer, sell, lease, license, lend or in any other manner convey any equitable, beneficial or legal interest in any material portion of the assets of the Company and its Subsidiaries (taken as a whole), except for Permitted Transfers and Permitted Investments.

(I) *Taxes*. The Company and its Subsidiaries shall pay when due all material taxes, fees or other similar governmental charges (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom. The Company and its Subsidiaries shall file on or before the due date therefor all material personal property tax returns. Notwithstanding the foregoing, the Company and its Subsidiaries may contest, in good faith and by appropriate proceedings, taxes for which they maintain adequate reserves therefor in accordance with GAAP.

(J) *[Reserved]*.

(K) *[Reserved]*.

(L) *[Reserved]*.

(M) *[Reserved]*.

(N) *Maintenance of Properties, Etc.* The Company shall maintain and preserve, and the Company shall cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful (as determined by the Company in good faith) to the conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder (except where the failure to do so would not, individually or in the aggregate, have a material effect on the Company or any Subsidiary).

(O) *Maintenance of Intellectual Property.* The Company will take, and the Company shall cause each of its Subsidiaries to take, all actions necessary or advisable to maintain all of the Intellectual Property Rights (as defined in the Securities Exchange Agreement) of the Company or such Subsidiary that are necessary or material (as determined by the Company in good faith) to the conduct of its business in full force and effect.

(P) *Maintenance of Insurance.* The Company shall maintain, and the Company shall cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated.

(Q) *Transactions with Affiliates.* Neither the Company, nor any of its Subsidiaries, shall enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any affiliate (other than the Company or any of its Wholly Owned Subsidiaries), except (i) transactions for fair consideration and on terms no less favorable to it than would be obtainable in a comparable arm's length transaction with a Person that is not an affiliate thereof, (ii) loans or advances made by the Company or one of its Subsidiaries to its directors, officers and other employees in the ordinary course of business for reasonable travel and entertainment expenses, and relocation costs up to a maximum of one hundred thousand dollars (\$100,000) in the aggregate at any one time outstanding, and (iii) distributions permitted by **Section 9(G)**.

(R) *Restricted Issuances.* The Company shall not, and shall cause its Subsidiaries not to, directly or indirectly, without the prior written consent of the holders of a majority in aggregate principal amount of the Notes then outstanding, (i) issue any Notes (other than as contemplated by the Securities Purchase Agreement, the Securities Exchange Agreement and the Notes) or (ii) issue any other securities or incur any Indebtedness, in each case, that would cause a breach or Default under the Notes or that by its terms would prohibit or restrict the performance of any of the Company's or its Subsidiaries' obligations under the Notes, including without limitation, the payment of interest and principal thereon.

(S) *Independent Investigation.* At the request of the Required Holders (as defined in the Securities Exchange Agreement) at any time the Required Holders have determined in good faith that (i) an Event of Default has occurred or (ii) any event or circumstance has occurred and is continuing which, with the giving of notice or passage of time or both, could constitute an Event of Default but the Company has not timely agreed to such determination in writing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Required Holders to investigate as to whether such Event of Default or event or circumstance has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such Event of Default or event or circumstance has occurred, the Independent Investigator shall notify the Company of such Event of Default or occurrence of such event or circumstance and the Company shall promptly deliver written notice to the Holder of such Event of Default if such Event of Default has occurred. In connection with such investigation, the Independent Investigator may, during normal business hours and upon signing a confidentiality agreement in a form reasonably acceptable to the Company, inspect all contracts, books, records, personnel, offices and other facilities and properties of the Company and its Subsidiaries and, to the extent available to the Company after the Company uses reasonable efforts to obtain them, the records of its accountants (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, any of the Company's officers, directors, key employees and independent public accountants (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries); provided, that the Company's chief executive officer and chief financial officer shall be invited to join any such discussion, all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

(T) Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall on or prior to 9:00 am, New York City time on the Business Day immediately following such notice delivery date, publicly disclose such material, non-public information on a Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this **Section 9(T)** shall limit any obligations of the Company, or any rights of the Holder, under the Securities Exchange Agreement.

(U) The Company acknowledges and agrees that the Holder is not a fiduciary or agent of the Company, the Holder will not have any obligations hereunder except those obligations expressly set forth herein (and in the Securities Exchange Agreement) and the Holder is acting solely in the capacity of an arm's length contractual counterparty to the Company with respect to the Note and not as a fiduciary or agent of the Company. The Company agrees that it will not assert any claim against the Holder based on an alleged breach of fiduciary duty by the Holder in connection with the Note. The Company acknowledges that the Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by an officer of the Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that the Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

(V) The Company shall cause this Note and any shares of Common Stock issuable pursuant to this Note to be eligible to be offered, sold or otherwise transferred by the Holder pursuant to Rule 144, without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice under the Securities Act and without any requirement for registration under any state securities or “blue sky” law. If this Note is to be transferred, the Holder shall notify the Company and surrender this Note to the Company (or provide the Company an affidavit in a form reasonably acceptable to the Company that this Note was lost, stolen or destroyed), whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note, registered as the Holder may request. The Company shall not be obligated to pay any tax which may be payable with respect to any transfer (or deemed transfer) arising in connection with the registration of any certificates for Notes in the name of any Person other than the Holder or any of its Affiliates.

(W) The Company shall at all times have a number of authorized and unissued shares of Common Stock no less than a number of shares of Common Stock equal to the sum of (i) 100% of the maximum number of shares of Common Stock as shall be necessary to satisfy the Company’s obligation to issue shares of Common Stock under the warrants then outstanding issued under the Prior Securities Exchange Agreement and/or the Securities Purchase Agreement, reserved for the purpose of issuance pursuant to such warrants, plus (ii) a fraction, the numerator of which shall be the then outstanding Principal Amount of this Note plus an amount equal to all interest accrued on such outstanding Principal Amount and the denominator of which shall be the Conversion Price (as such term is defined in the Initial Exchange Notes) of the Initial Exchange Notes (the “**Required Reserve Amount**”), provided that at no time shall the number of shares of Common Stock reserved pursuant to this **Section 9(W)** be reduced other than in connection with any stock combination, reverse stock split or other similar transaction. If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company’s obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, obtain stockholder approval (if required) of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

(X) On or before the date that is thirty (30) days after the Issue Date, the Company shall have delivered to the Holder the results of a recent lien, bankruptcy and judgment search in each relevant jurisdiction with respect to the Company and its Subsidiaries and such search shall reveal no Liens on any of the Collateral (as such term is defined in the Security Agreement Amendments) or other assets of the Company and its Subsidiaries except, in the case of assets other than Collateral, for Permitted Liens.

Section 10. SUCCESSORS.

The Company will not consolidate with or merge with or into, or (directly, or indirectly through one or more of its Subsidiaries) sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to another Person, other than the Holder or any of its Affiliates (a “**Business Combination Event**”), unless:

(A) the resulting, surviving or transferee Person either (x) is the Company or (y) if not the Company, is a corporation (the “**Successor Corporation**”) duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia that expressly assumes (by executing and delivering to the Holder, at or before the effective time of such Business Combination Event, a supplement to this instrument) all of the Company’s obligations under this Note; and

(B) immediately after giving effect to such Business Combination Event, no Default or Event of Default will have occurred and be continuing.

At the effective time of any Business Combination Event, the Successor Corporation (if not the Company) will succeed to, and may exercise every right and power of, the Company under this Note with the same effect as if such Successor Corporation had been named as the Company in this Note, and, except in the case of a lease, the predecessor Company will be discharged from its obligations under this Note.

Section 11. DEFAULTS AND REMEDIES

(A) *Events of Default.* “**Event of Default**” means the occurrence of any of the following:

(i) a default in the payment when due of the Principal Amount, any amount due under **Section 8** or the Fundamental Change Repurchase Price under this Note;

(ii) a default for three (3) Business Days in the payment when due of the interest on this Note;

(iii) a default in the Company’s obligation to issue shares pursuant to this Note (or any portion of this Note) in accordance with **Section 7(C)** upon the exercise of the Holder’s right with respect thereto;

(iv) a default in the Company’s obligation to timely deliver a Fundamental Change Notice pursuant to **Section 6(C)**, or a Compliance Certification pursuant to **Section 9(G)** or **Section 9(K)(ii)**, and such default continues for three (3) Business Days, or the delivery of a materially false or inaccurate Fundamental Change Notice, Company Redemption Notice or Compliance Certification;

(v) a default in the Company’s obligation to deliver when due any Event of Default Acceleration Amount;

(vi) any failure to timely deliver an Event of Default Notice or a materially false or inaccurate certification as to whether any Event of Default has occurred;

(vii) a default in any of the Company's obligations or agreements under this Note or the Transaction Documents (in each case, other than a default set forth in clauses (i) - (vi) or (viii) - (xix) of this **Section 11(A)**), or a breach of any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality qualifications, which may not be breached in any respect) of any Transaction Document; *provided, however*, that if such default can be cured, then such default shall not be an Event of Default unless the Company has failed to cure such default within ten (10) Business Days after its occurrence;

(viii) any provision of any Transaction Document at any time for any reason (other than pursuant to the express terms thereof) ceases to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof is contested, directly or indirectly, by the Company or any of its Subsidiaries, or a proceeding is commenced by the Company or any of its Subsidiaries or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof;

(ix) the Company fails to comply with any covenant set forth in **Section 9(D), Section 9(E), Section 9(F), Section 9(G), Section 9(H), Section 9(J), Section 9(K), Section 9(L), Section 9(R), Section 9(W), or Section 9(X)** of this Note;

(x) [Reserved];

(xi) (i) the failure of the Company or any of its Subsidiaries to pay when due or within any applicable grace period any Indebtedness having an individual principal amount in excess of at least five hundred thousand dollars (\$500,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, whether such Indebtedness exists as of the Issue Date or is thereafter created, and whether such default has been waived for any period of time or is subsequently cured; or (ii) the occurrence of any breach or default under any terms or provisions of any other Indebtedness of at least five hundred thousand dollars (\$500,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such indebtedness, to cause, Indebtedness having an individual principal amount in excess of five hundred thousand dollars (\$500,000) to become or be declared due prior to its stated maturity;

(xii) one or more final judgments, orders or awards (or any settlement of any litigation or other proceeding that, if breached, could result in a judgment, order or award) for the payment of at least five hundred thousand dollars (\$500,000) (or its foreign currency equivalent) in the aggregate (excluding any amounts covered by insurance pursuant to which the insurer has been notified and has not denied coverage), is rendered against the Company or any of its Subsidiaries and remains unsatisfied and (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement or (ii) there shall be a period of ten (10) consecutive Trading Days after entry thereof during which (A) a stay of enforcement thereof is not in effect or (B) the same is not vacated, discharged, stayed or bonded pending appeal;

(xiii) [Reserved];

(xiv) any Security Document shall for any reason fail or cease to create a separate valid and perfected first priority Lien on the Collateral, in each case, in favor of the Collateral Agent in accordance with the terms thereof, or any material provision of any Security Document shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof;

(xv) [Reserved];

(xvi) [Reserved];

(xvii) the Company or any of its Significant Subsidiaries, pursuant to or within the meaning of any Bankruptcy Law, either:

- (1) commences a voluntary case or proceeding;
- (2) consents to the entry of an order for relief against it in an involuntary case or proceeding;
- (3) consents to the appointment of a custodian of it or for any substantial part of its property;
- (4) makes a general assignment for the benefit of its creditors;
- (5) takes any comparable action under any foreign Bankruptcy Law; or
- (6) generally is not paying its debts as they become due; or

(xviii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that either:

- (1) is for relief against Company or any of its Significant Subsidiaries in an involuntary case or proceeding;
- (2) appoints a custodian of the Company or any of its Significant Subsidiaries, or for any substantial part of the property of the Company or any of its Significant Subsidiaries;
- (3) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries; or
- (4) grants any similar relief with respect to the Company or any of its Significant Subsidiaries under any foreign Bankruptcy

Law,

and, in each case under this **Section 11(A)(xviii)**, such order or decree remains unstayed and in effect for at least thirty (30) days.

(xix) the Company's stockholders approve any plan for the liquidation or dissolution of the Company:

(B) *Acceleration.*

(i) *Automatic Acceleration in Certain Circumstances.* If an Event of Default set forth in **Section 11(A)(xvii)** or **Section 11(A)(xviii)** occurs with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company), then the then outstanding portion of the Principal Amount of, and all accrued and unpaid interest on, this Note will immediately become due and payable without any further action or notice by any Person.

(ii) *Optional Acceleration.* If an Event of Default (other than an Event of Default set forth in **Section 11(A)(xvii)** or **Section 11(A)(xviii)**) with respect to the Company and not solely with respect to a Subsidiary of the Company) occurs and has not been waived by the Holder, then the Holder, by notice to the Company, may declare this Note (or any portion thereof) to become due and payable immediately for cash in an amount equal to the Event of Default Acceleration Amount.

(C) *Notice of Events of Default.* Promptly, but in no event later than two (2) Business Days after an Event of Default, the Company will provide written notice of such Event of Default to the Holder (an "**Event of Default Notice**"), which Event of Default Notice shall include (i) a reasonable description of the applicable Event of Default, (ii) the date on which the Event of Default occurred and (iii) the date on which the Default underlying such Event of Default initially occurred, if different than the date on which the Event of Default occurred.

Section 12. RANKING.

All payments due under this Note shall rank (i) *pari passu* with all Other Notes, (ii) effectively senior to all unsecured indebtedness of the Company to the extent of the value of the Collateral securing the Notes for so long as the Collateral so secures the Notes in accordance with the terms hereof and (iii) senior to any Subordinated Indebtedness.

Section 13. REPLACEMENT NOTES.

If the Holder of this Note claims that this Note has been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver a replacement Note upon surrender to the Company of such mutilated Note, or upon delivery to the Company of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Company. In the case of a lost, destroyed or wrongfully taken Note, the Company may require the Holder to provide such security or an indemnity that is reasonably satisfactory to the Company to protect the Company from any loss that it may suffer if this Note is replaced.

Section 14. NOTICES.

Any notice or communication to the Company will be deemed to have been duly given if in writing and delivered in person or by first class mail (registered or certified, return receipt requested), electronic transmission (including e-mail) or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

Agrify Corporation
2468 Industrial Row Drive
Troy, Michigan 48084
Attention: Joshua Savitz, Esq., General Counsel
Email address: josh.savitz@agrify.com

Burns & Levinson LLP
125 High Street
Boston, MA 02110
Telephone: 617-345-3684
Attention: Frank A. Segall, Esq.
Email: FSegall@burnslev.com

The Company, by notice to the Holder, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication to the Holder will be by email to its email address, which initially are as set forth in the Securities Exchange Agreement. The Holder, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

If a notice or communication is mailed in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

Section 15. SUCCESSORS AND ASSIGNS.

All agreements of the Company in this Note will bind its successors and will inure to the benefit of the Holder's successors and assigns.

Section 16. SEVERABILITY.

If any provision of this Note is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Note will not in any way be affected or impaired thereby.

Section 17. HEADINGS, ETC.

The headings of the Sections of this Note have been inserted for convenience of reference only, are not to be considered a part of this Note and will in no way modify or restrict any of the terms or provisions of this Note.

Section 18. AMENDMENTS

This Note may not be amended or modified unless in writing by the Company and the Required Holders (as defined in the Securities Exchange Agreement), and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit.

Section 19. GOVERNING LAW; WAIVER OF JURY TRIAL.

All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. The Company and each Holder hereby irrevocably submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude any Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Holder or to enforce a judgment or other court ruling in favor of such Holder. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.

Section 20. SUBMISSION TO JURISDICTION.

The Company and each Holder (A) agree that any suit, action or proceeding against it arising out of or relating to this Note shall be instituted in the Court of Chancery of the State of Delaware; (B) waive, to the fullest extent permitted by applicable law, (i) any objection that it may now or hereafter have to the laying of venue of any such suit, action or proceeding; and (ii) any claim that it may now or hereafter have that any such suit, action or proceeding in such a court has been brought in an inconvenient forum; and (C) submit to the nonexclusive jurisdiction of such court in any such suit, action or proceeding.

Section 21. ENFORCEMENT FEES.

The Company agrees to pay all costs and expenses of the Holder incurred as a result of enforcement of this Note and the collection of any amounts owed to the Holder hereunder (whether in cash, Common Stock or otherwise), including, without limitation, reasonable attorneys' fees and expenses.

Section 22. ELECTRONIC EXECUTION.

The words "execution," "signed," "signature," and words of similar import in the Note shall be deemed to include electronic or digital signatures or the keeping of records in electronic form, each of which shall be of the same effect, validity, and enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000 (15 U.S.C. §§ 7001-7006), the Electronic Signatures and Records Act of 1999 (N.Y. State Tech. §§ 301-309), or any other similar state laws based on the Uniform Electronic Transactions Act.

* * *

Exhibit A

Conversion Notice

AGRIFY CORPORATION

Senior Secured Convertible Note due 2025

Subject to the terms of this Note, by executing and delivering this Conversion Notice, the undersigned Holder of this Note directs the Company to convert the following Principal Amount of this Note: \$_____,000 in accordance with the following details.

Shares of Common Stock to be delivered (the “**Delivered Shares**”):

Accrued interest amount:

Date: _____

(Legal Name of Holder)

For the purposes of that certain Irrevocable Letter of Instructions to Transfer Agent, dated as of March 8, 2023, by and between the Company and the Holder (the “**Instruction Letter**”), to the extent the Delivered Shares exceed the Note Shares Reserve (as such term is defined in the Instruction Letter) as of the date hereof (such amount, the “**Excess Shares**”), the Note Shares Reserve shall be deemed to be increased by a number of shares of Common Stock equal to the Excess Shares.

By: _____

Name:

Title:

SECOND AMENDED AND RESTATED JUNIOR SECURED PROMISSORY NOTE

\$1,000,000.00

January 25, 2024
Boston, Massachusetts

FOR VALUE RECEIVED, **AGRIFY CORPORATION**, a Nevada corporation (“Maker”), promises to pay to the order of **GIC ACQUISITION LLC**, a Delaware limited liability company with an office at 675 VFW Parkway, Suite 152, Chestnut Hill, Massachusetts 02467-3656 (“Holder”), the principal sum advanced to Maker from time to time up to a maximum of **ONE MILLION DOLLARS (\$1,000,000.00)** in lawful money of the United States of America, under the terms and at the times stated herein.

The principal and interest due under this Second Amended and Restated Junior Secured Promissory Note (this “Note”) shall be payable in full on June 30, 2024.

This Note may be prepaid, in whole or in part, at any time without any penalty, fee, or premium of any kind.

This Note represents a junior security interest in Maker, and such junior security interest herein granted and provided for is made and given to secure, and shall secure, the payment and performance of this Note, *provided that* such security interest and any payments due under this Note shall be subordinate to any obligations of and interests granted in those certain senior secured notes previously issued by Maker (the “Senior Secured Notes”).

The principal balance outstanding under this Note from time to time shall bear interest at the rate of ten percent (10%) per annum computed on the basis of a 360 day year.

Upon the occurrence a payment default, and at all times thereafter until this Note is paid in full, the principal balance of this Note shall bear interest at the default rate of eighteen percent (18%) per annum computed on the basis of a 360 day year.

Maker waives presentment, demand, notice, protest, and delay in connection with the delivery, acceptance, performance, collection, and enforcement of this Note.

No delay or omission on the part of Holder in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note. A waiver on anyone occasion shall not be construed as a bar to or a waiver of any such right and/or remedy on any future occasion.

Holder shall be entitled to an award of its reasonable costs and expenses, including, but not limited to, reasonable attorney’s fees, incurred in enforcing and collecting the amounts due under this Note.

This Note shall be governed by the laws of the Commonwealth of Massachusetts.

Maker will take all reasonably necessary steps to publish and file any financing statements associated with the security interest contained herein under applicable law.

This Note constitutes an amendment and restatement, but not an extinguishment, of the Promissory Note dated as of July 12, 2022, made by Maker, as amended and restated on October 27, 2023 (as previously amended and restated, the “Prior Note”). Nothing herein shall be construed to constitute satisfaction of the outstanding obligations under the Prior Note, *provided, however*, that upon the execution and delivery of this Note, such obligations shall be enforceable in accordance with this Note and not the Prior Note.

This Note is intended to be consolidated, amended and restated and replaced in its entirety with and into certain of the Senior Secured Notes held now or in the future by Holder.

[Signature Page Follows]

IN WITNESS WHEREOF, Maker has executed this Note as a sealed instrument as of the date first hereinabove written.

AGRIFY CORPORATION

By: /s/ Joshua Savitz

Name: Joshua Savitz

Title: General Counsel

**Agrify Announces the Result of its Reconvened Annual Meeting, At Premium \$3.9 Million Debt Conversion,
and the Exercise of a Majority of Previously Issued Warrants**

TROY, Michigan, January 25, 2024 – Agrify Corporation (Nasdaq: AGFY) (“Agrify” or the “Company”), a leading provider of innovative cultivation and extraction solutions for the cannabis industry, today announced that the shareholders of the Company approved an amendment to the Company’s Articles of Incorporation to increase the number of authorized shares of the Company’s common stock from 10,000,000 to 35,000,000 (the “Charter Amendment”), that all its outstanding debt held by CP Acquisitions LLC (the “New Lender”), an entity affiliated with Raymond Chang, the Chief Executive Officer of the Company and a member of the Board of Directors (the “Board”), and I-Tseng Jenny Chan, a member of the Board, has been consolidated under a single convertible note and approximately \$3.9 million of the outstanding debt has been converted into equity at a conversion price per share equal to \$1.46, or 212% premium to the latest closing price, and that its prior secured lender (the “Prior Lender”) has exercised 2,475,629 of the warrants previously issued in October 2023 on a cashless basis for a net issuance of 2,473,542 shares of common stock, thus greatly reducing the number of outstanding warrants.

The Company’s Annual Meeting of Stockholders on January 8, 2024 (the “Annual Meeting”) was adjourned until January 22, 2024 (the “Reconvened Meeting”), only with respect to the proposal to approve the Charter Amendment, owing to Item 3 receiving less than the affirmative vote of a majority of the Company’s outstanding common stock as of the record date of December 6, 2023, which was the required minimum vote to approve the Charter Amendment. At the Reconvened Meeting, shares representing approximately 51.6% of the outstanding shares of common stock as of the record date were voted in favor of the Charter Amendment, representing approximately 94.6% of votes cast on the proposal, resulting in the Charter Amendment being approved. The Charter Amendment will provide the Company with a number of shares of common stock so that common stock can be issued in connection with conversion of the Restated Note into equity, among other things.

In addition, the New Lender, which previously purchased from the Prior Lender the Senior Secured Note issued by the Company to the Prior Lender on August 19, 2022 (the “Exchange Note”) and the Senior Secured Convertible Note issued by the Company to the Prior Lender on March 10, 2023 (the “Convertible Note”), and to which the Company previously issued a junior secured promissory note (the “Junior Secured Note”) with a maximum principal amount of \$4,000,000, entered into a consolidation, amendment and restatement of the Convertible Note with the Company to consolidate the outstanding principal and interest due under the Junior Secured Note and the Exchange Note into the Convertible Note and to amend and restate the Convertible Note (the “Restated Note”) consistent with the terms contained in the proposal approved by the stockholders of the Company at the Annual Meeting, with an outstanding principal amount of approximately \$18.9 million at the time of issuance of the Restated Note. Immediately following the execution of the Restated Note, the New Lender elected to convert approximately \$3.9 million of outstanding principal into an aggregate of 2,671,633 shares of common stock, at a conversion price of \$1.46 per share, and assigned its rights to receive such shares to entities affiliated with Mr. Chang and Ms. Chan. Concurrently, GIC Acquisition, another entity affiliated with Mr. Chang, agreed to increase the principal amount under its previously-issued junior secured note from \$0.5 million to \$1 million.

On January 22, 2024, pursuant to notices of exercise received from the Prior Lender, the Company issued an aggregate of 2,473,542 shares of common stock (to the Prior Lender upon the cashless exercise of two warrants issued to the Prior Lender on October 27, 2023. The issuance of the Warrant Shares represents the full exercise of the Abeyance Warrant as described in the Company’s Current Report on Form 8-K filed on October 30, 2023 (the “October 30 Form 8-K”) and the partial exercise of the Exchange Warrant as described in the October 30 Form 8-K, which remains exercisable for up to 659,669 shares of common stock, subject to adjustment pursuant to its terms.

The consolidation of the outstanding debt held by the New Lender into the Restated Note and the conversion of some amount of the debt thereunder, together with the reduction in the number of outstanding warrants held by the Prior Lender is expected to result in a reduction in liabilities on the Company’s balance sheet, which the Company believes will help it to regain compliance with Nasdaq’s Listing Rule 5550(b)(1), which requires that listed companies maintain a minimum of \$2.5 million in stockholders’ equity.

“We are very pleased to achieve yet another major milestone in our effort to restructure Agrify’s balance sheet. The \$3.9 million conversion at a significant premium to our current market price exemplifies our continuous confidence and support in Agrify’s turnaround initiatives,” noted Raymond Chang, Chief Executive Officer of Agrify.

About Agrify

Agrify is a leading provider of innovative cultivation and extraction solutions for the cannabis industry, bringing data, science, and technology to the forefront of the market. Our proprietary micro-environment-controlled Vertical Farming Units (VFUs), enable cultivators to produce the highest quality products with unmatched consistency, yield, and ROI (return on investment) at scale. Our comprehensive extraction product line, which includes hydrocarbon, ethanol, solventless extraction, post-processing, and lab equipment, empowers producers to maximize the quantity and quality of extract required for premium concentrates. For more information, please visit our website at <http://www.agrify.com>.

Forward-Looking Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 concerning Agrify and other matters. All statements contained in this press release that do not relate to matters of historical fact should be considered forward-looking statements including, without limitation, statements regarding future financial results, including the ability to regain compliance with Nasdaq listing standards and the ability to reduce liabilities on its balance sheet. In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “could,” “intends,” “targets,” “projects,” “contemplates,” “believes,” “estimates,” “predicts,” “potential,” or “continue” or the negative of these terms or other similar expressions. The forward-looking statements in this press release are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition, and results of operations. Forward-looking statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance, or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. You should carefully consider the risks and uncertainties that affect our business, including those described in our filings with the Securities and Exchange Commission (“SEC”), including under the caption “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2022 that was filed with the SEC on November 28, 2023, which can be obtained on the SEC website at www.sec.gov. These forward-looking statements speak only as of the date of this communication. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements, whether as a result of any new information, future events, or otherwise. You are advised, however, to consult any further disclosures we make on related subjects in our public announcements and filings with the SEC.

Agrify Investor Relations

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