

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT  
DEPARTMENT OF THE TRIAL  
COURT

\_\_\_\_\_  
) GARAGE SWEAT LLC f/k/a TRIBE WOD )  
) LLC, JARED BANE, and ALEXANDRE )  
) VITET, )

[Admittance sought into Business Litigation  
Session]

) Plaintiffs, )

) v. )

) CIVIL ACTION NO. )

) FACTORY 14 UK ACQUISITION )  
) IV LTD., RAZOR GROUP GMBH, and )  
) RAZOR GROUP USA, LLC, )

) Defendants. )  
\_\_\_\_\_)

**COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**

**INTRODUCTION**

Plaintiffs Jared Bane (“Bane”) and Alexandre Vitet (“Vitet”) (collectively, the “Founders”) are the founders and former members and managers of Plaintiff Garage Sweat LLC f/k/a Tribe WOD LLC (Plaintiffs hereinafter collectively, “Plaintiffs” or “Sellers”), a company that designed, manufactured, and sold cutting-edge, innovative, tactical-inspired equipment and gear for use in cross-training workout regimens. Launched by the Plaintiffs in a Marblehead, Massachusetts garage in or about 2019, the brand exploded in 2020-2021, progressing from zero to over \$2.5 million in sales in a matter of months. Based on promises of global expansion, refinement and enhancement of its marketing and sales structures, and certain exceedance of “earnout” benchmarks spelled out in the agreement documents, Plaintiffs sold the assets of the company to Defendant Factory 14 UK Acquisition IV Ltd. (“Factory 14”), a UK-based entity, in

September of 2021, which resold Tribe WOD six months later to Defendant Razor Group, GmbH (“Razor”), a German company with operations in Texas. Instead of the enhancements promised, Defendants gutted Tribe WOD’s experienced workforce, disregarded the Founders’ advice provided as paid consultants, and have blatantly violated the parties’ Asset Purchase Agreement (the “APA”) both as to financial reporting requirements, and payment of earnout sums due. Plaintiffs seek injunctive performance of the financial reporting requisites and monetary damages to address Defendants’ fraudulent inducement, unfair and deceptive business practices, and breaches of contract.

### **PARTIES**

1. Plaintiff Jared Bane (“Plaintiff” or “Bane”) is an individual who resides in Marblehead, Essex County, Massachusetts.

2. Plaintiff Jared Bane (“Plaintiff” or “Bane”) is an individual who resides in Marblehead, Essex County, Massachusetts.

3. Plaintiff Garage Sweat LLC f/k/a Tribe WOD LLC, is a Massachusetts limited liability company with a principal place of business in Marblehead, Massachusetts.

4. Defendant Factory 14 UK Acquisition IV Ltd. is a limited liability company incorporated under the laws of England and Wales, with the company number 13562100, and registered office address of 100 Avebury Boulevard, Milton Keynes, United Kingdom, MK9 1FH.

5. Defendant Razor Group GmbH is a limited liability company organized under the laws of Germany, with a principal place of business in the United States at 316 West 12<sup>th</sup> Street, 5<sup>th</sup> Floor, Austin, Texas, and in Germany at Prinzessinnenstr. 20, 10969, Berlin, Germany.

6. Defendant Razor Group USA, LLC, is a corporation organized under the laws of

Delaware, with a principal place of business at 316 West 12<sup>th</sup> Street, 5<sup>th</sup> Floor, Austin, Texas.

### **JURISDICTION and VENUE**

7. This Court has jurisdiction over this dispute pursuant to Mass. Gen. L. c. 212, § 3.

8. Because this is a complex business dispute and meets all of the other criteria, Plaintiffs seek admittance to the Business Litigation Session.

9. The Court has jurisdiction over Defendants pursuant to Mass. Gen. L. c. 223A, § 3, because Defendants have, since no later than September 2021, transacted business in Massachusetts through the Tribe WOD brand, including conduct giving rise to the causes of action asserted herein.

10. The Court also has jurisdiction over Defendants because the Asset Purchase Agreement executed by Factory 14 and assigned to Razor, provides for application of Massachusetts law to any dispute arising out of, relating to, or in connection with such Agreement, and under the related Consulting Agreements between Plaintiffs and Defendants, the parties provide for exclusive jurisdiction over any dispute or claim “that arises out of or in connection with this agreement or its subject matter or formation” in any of the “state or federal courts of the Commonwealth of Massachusetts USA.”

11. Venue is proper in this county because Defendants do business in Suffolk County, are corporate entities with their principal places of business outside of Massachusetts, and because the terms of the Consulting Agreements permit the bringing of such an action in any state or federal court in Massachusetts.

### **FACTS COMMON TO ALL COUNTS**

12. In or about April 2020, Vitet, a talented industrial designer and CrossFit® enthusiast, founded TribeWOD LLC, to market and sell cutting-edge, stylish, tactical-inspired

equipment and gear for use in cross-training workout regimens.

13. Bane, a licensed Nursing Home Administrator who had run nursing homes for over a decade, joined with Vitet in April of 2020 as a member and co-manager to expand and grow the business.

14. Vitet's original designs include the TribeWOD Hammer and Sledgehammer, handled free-weight devices, a weighted vest to be worn for cross-training workouts, the "King Keg," a thirty-five to six hundred pound weighted barrel for strongman or powerlifting training, and other products.

#### Rapid Growth

15. On the strength of Vitet's sleek designs, Bane's executive experience, and the Founders' savvy use of self-produced marketing videos and social media dispersal, TribeWOD made an immediate impact in the market for at-home cross-training gear.

16. In its first year, TribeWOD grossed over \$2.5 million in sales and returned over \$250,000 in earnings before interest, taxes, depreciation, and amortization ("EBITDA").

17. The Founders had begun operations in Vitet's garage, using a container in his driveway to receive and then ship out products – sometimes hundreds in a day.

18. As they grew, the Founders moved distribution from Vitet's garage to a warehouse in Marblehead and established sales channels through Amazon, Shopify, and multiple other online platforms.

19. Vitet continued to design new products, and he and Bane increased brand awareness and spurred sales via self-produced videos and other marketing content that they posted on YouTube, their website, and multiple social media platforms including Facebook and Instagram.

20. As of the spring of 2021, TribeWOD had established manufacturing partners in Asia, was selling and delivering products to the European Union and United Kingdom, had negotiated an advantageous deal with DHL to ship goods it was selling to Canada, Australia, and New Zealand, and was receiving orders faster than it could fulfill them.

Buyers' Interest and Negotiations

21. By July of 2021, the company's rapid growth had attracted interested buyers, which included a potential acquirer who found the company through Shopify, as well as Defendant Factory 14, a UK entity.

22. Tribe WOD also had opportunities to obtain substantial funding to continue to grow the brand.

23. Factory 14 emerged as the leading offeror because, in addition to a cash payment similar to what others offered, it promised to pay multiples of the initial payment through earnouts tied to TribeWOD's annual EBITDA for a lengthy post-closing period, and promised to keep the Plaintiffs on as consultants in "guaranteed" positions to guide and grow the business.

24. To induce the Plaintiffs to sell, Factory 14 represented itself as experts in online marketing and sales who would provide the company with cash to grow, personnel and structural resources, and logistical support to grow overseas, including in the UK, EU, Australia, and New Zealand.

25. Among its other pre-sale promises, and with the specific intent and effect of causing the Founders to choose it as the buyer, Factory 14 promised that the EBITDA benchmark established for the Founders to achieve earnout compensation would not be reduced by "management fees," "acquisition fees," or other one-time expenses or personnel costs that were not narrowly tied to the business's operation.

26. As a direct result of Factory 14's representations, the Founders engaged in an exhaustive and difficult due diligence process.

27. The Founders were obligated to open up their books to Factory 14 and painstakingly tie each purchase order to each sale made, establish TribeWOD's cost of goods sold ("CGS") for each product sold, and calculate a reliable EBITDA figure for the trailing twelve-month period.

28. Keying off of these numbers for the purchase price and earnout compensation, the parties negotiated the terms of and then signed the Asset Purchase Agreement ("APA") on September 1, 2021, and closed on the sale of the business on that date.

The APA

29. The APA governed the sale of the Tribe WOD brand and all of its associated assets to Factory 14. *See* APA, § 2.01, Appendix 1, **Ex. 1** hereto.

30. In exchange, the Plaintiffs received an initial payment of \$2,164,000 shortly after the closing, and were to receive further payments at one-year intervals thereafter based on the ongoing business performance of the Tribe WOD brand, whose operation had been assumed by Factory 14. *See id.*, at § 2.04 (a).

31. Specifically, the APA provided for the Plaintiffs to receive an additional \$512,000 provided that Tribe WOD's EBITDA for the first 12 months after closing was equal to or greater than its EBITDA for the previous 12-month period (the "Stability Payment"). *See id.*, at § 2.04 (b)(i).

32. In order to determine whether the Stability Payment was due, Defendants were required to provide detailed financial information and calculations of "LTM EBITDA" – cumulative EBITDA for the preceding 12-month period – at 6- and 12-month anniversaries of

the transaction's closing. *See* APA, at Definitions, p. 6; § 2.04(b)(ii).

33. The Plaintiffs were then to receive a multiple of 3.25x Tribe WOD's incremental EBITDA for each of the three years post-closing after subtraction of any Stability Payment made (the "Earn-Out Payments"). *Id.* at § 2.04 (c)(i)-(iii).

34. Defendants were required to provide the same detailed financial information and calculations with respect to the Earn-Out Payments within 15 days after the one-year, two-year, and three-year anniversaries of the closing. *Id.* at § 2.04 (c)(iv).

35. The detailed financial reporting and calculations required for determining the Stability Payment and Earn-Out Payments was required to be made "in accordance with Exhibit 2a of Appendix 2" to the APA. *See* APA, at Appendix 2, Exhibit 2a.

36. In the event that Factory 14 were to sell all or substantially all of its assets to a third party, Factory 14 was to remain responsible for all of its Stability and Earn-Out Payment obligations and was required to "make provision for the transferee, or successor to assume and succeed to" such obligations within Section 2.04. *See* APA, § 2.04 (e).

37. In addition to transferring the business to Factory 14, the Plaintiffs were required to enter into and comply with Consulting Agreements executed by the parties at closing, whereby Bane agreed to "fulfill[] the role typically designated to a Chief Operating Officer" and Vitet agreed to fulfill the duties of a "Chief Design Officer" until terminated by Factory 14 upon 30 days' notice, or by the Founders upon 60 days' notice. *See* APA, at § 2.05; Vitet Consulting Agreement, **Ex. 2** hereto, at §§ 1.1, 5.1, and Exhibit A thereto; Bane Consulting Agreement, **Ex. 3** hereto, at §§ 1.1, 5.1, Exhibit A thereto.

38. The APA further required that each party "will permit the other Party and its accountants, counsel, and other Representatives to have reasonable access to and examine and

make copies of all books and records relating to the Business . . .” *See* APA, at § 5.02 (a).

39. The Consulting Agreements had the same effective date and were incorporated into the APA as Appendix 5 thereto. *See* APA, at §§ 2.05, 8.01; Consulting Agreements, **Ex.’s 2, 3**, at p. 1.

40. The facts set forth herein and the subject matter of this lawsuit arises out of or is in connection with the Consulting Agreements and/or their subject matter, as contemplated by Section 10.4 thereof. *See* Consulting Agreements at § 10.4, **Ex.’s 2, 3**.

41. In or about May of 2022, the Plaintiffs were informed that Factory 14, including the Tribe WOD business, had been sold to Defendant Razor Group GmbH and/or Razor Group USA, LLC, and despite an anti-assignment provision in the APA, all of Factory 14’s rights and obligations under the APA had been assigned to Razor. *See* Razor Group Notice of Assignment, May 20, 2022, **Ex. 4** hereto.

42. Upon information and belief, Factory 14 knew of the potential transaction with Razor prior to execution of the APA, but purposely withheld this material fact from the Plaintiffs.

43. Upon information and belief, the acquisition of Tribe WOD and Consulting Agreements were part of a pattern of acquisitions that bolstered the financials of Factory 14 for the primary purpose of raising capital and obtaining investment.

44. Upon information and belief, Factory 14 used the business reputation and success of the Founders and Tribe WOD to falsely represent its business acumen and to increase its value with respect to its transaction with Razor.

Stability and Earn-Out Payments Easily Achievable

45. The Stability and Earn-Out Payments were reasonably expected to generate

substantial additional compensation to the Plaintiffs.

46. The relatively small initial payment and earn-out structure reflected the parties' shared belief, and Factory 14's representations, that the company's value and expected profitability was far in excess of the amount paid at closing.

47. In the Letter of Intent that the parties executed on July 27, 2021, Factory 14 had valued the Tribe WOD brand at \$4,845,756 as of June 2021.

48. The Stability Payment and Earn-Out Payments were designed to -- and were expected to -- achieve total compensation to the Plaintiffs well in excess of this valuation.

49. At the time of the closing Tribe WOD was in the top 4% of the fastest growing brands in the United States and the top 1% for all Shopify stores.

50. Tribe WOD was actively disrupting a \$37 Billion dollar fitness industry and had a devoted group of over 45,000 followers across all social media channels.

51. With the additional resources that Factory 14 promised -- including experts, development of new products, geographic expansion, and access to capital -- Tribe WOD was certain to continue its rapid growth following the closing of the APA.

52. In order for the earn-out benchmarks to be reached, Factory 14 had only to make reasonable efforts to continue to operate and grow an already highly successful brand that had established revenue channels and clear opportunities for expansion.

53. In order to induce the Plaintiffs to choose Factory 14 as its buyer, Factory 14 made multiple representations and promises concerning its plan for Tribe WOD growth. For example, on July 21, 2021, Hanna Nowotzin of Factory 14 stated: "We see huge growth potential for TRIBE WOD, particularly by growing your Amazon presence, launching new products and expanding into new geographies."

54. If Factory 14 or Razor had followed through on these promises, Tribe WOD would have easily exceeded—if not doubled or tripled—what Factory 14 calculated as its trailing 12-month pre-closing annual EBITDA figure of \$468,000, which was almost double the company's EBITDA four or five months prior to the sale.

55. Upon information and belief, Razor has also used the Founders' and Tribe WOD's business skill and success to spur investment and raise capital, while failing to fulfill obligations that Factory 14 incurred through the APA to build and burnish the Tribe WOD brand, while falsifying or obfuscating the business's financials and performance since taking over its operations.

#### Defendants Breach Their Obligations

56. Following the closing of the Tribe WOD sale, however, Factory 14 and then Razor made clear through their actions and omissions that they never intended to grow Tribe WOD's revenues, or increase its profitability.

57. To the contrary, Defendants immediately set about depleting the brand's assets and sabotaging its ability to succeed. For example, Factory 14 promptly fired all of Tribe WOD's in-house creative content specialists, and never took any steps to replace them, instead using unpaid interns with no business experience to run the brand.

58. As a result, scant new visual marketing content had been produced since January 2022, with nothing at all produced for up to 18 months post-closing. Factory 14 and Razor had been repeatedly re-using stale ad content from over a year ago instead of creating any new marketing materials until recent, half-hearted efforts.

59. Factory 14 also asked Mr. Vitet, in his post-closing consulting role, to design new products to expand Tribe WOD's product offerings. Mr. Vitet did so, with several new products

having been prototyped and ready for production as early as January 2022.

60. Purchase orders for samples and first production runs had been paid in advance, and the products had been announced on Tribe WOD's marketing channels. Defendants took no steps to release these new products, or have delayed their launch for months to years because of incompetency or indifference. Factory 14 also promised overseas expansion, and to open up new geographical areas for scaled up operations and revenue growth. Neither Factory 14 nor Razor have ever actually taken any steps in this direction.

61. During negotiation of the APA and as a specific inducement to choose Defendants as the buyer, Factory 14 had specifically touted its ability and intention to provide on-site quality control supervision at product manufacturing facilities. Defendants have provided nothing of the sort.

62. Defendants' failure to inspect Tribe WOD's products before shipping led to avoidable quality discrepancies, which lengthened order delivery times, damaged the brand and harmed sales.

63. Factory 14 also promised that it would be able to partner with known manufacturers with which it had existing relationships, to achieve production cost savings. Once the APA was signed, this was never discussed again, and Defendants have taken no action consistent with this representation and promise.

64. Factory 14 and Razor have also failed to attend to the basic necessities of competent operation of the Tribe WOD business, consistently failing to pay invoices for shippers and suppliers for months at a time, causing lost sales and massive customer order refunds, failing to pay for distribution channels such as Shopify, and failing to maintain access to PayPal, a popular payment channel. Tribe WOD's advertisements on Facebook and Google were shut

down for nonpayment and unavailability of funds.

65. Defendants never transferred, from Tribe WOD LLC, accounts with DHL, UPS, USPS, or the lease on its warehouse, and its former bank account was not reconciled until the sale to Razor.

66. Since the closing, Factory 14 and Razor have also failed to comply with federal and state tax and import laws, wage laws, and have otherwise mismanaged the business financially.

67. Following the closing, Bane repeatedly advised Factory 14 personnel of outstanding state sales tax obligations. To date, upon information and belief, Defendants have failed to even register to do business in any U.S. state, have never applied for a Federal Tax I.D. Number, and have never paid sales tax to any state despite having significant sales volume throughout the United States.

68. To avoid tax and related regulatory requirements, Defendants have continued importing products to the U.S. in the name of Tribe WOD LLC, an entity whose name was changed as part of the APA transaction (with ownership retained by the Founders), and in which neither Factory 14 nor Razor has any ownership or control. This has led to enormous confusion and delays in shipping, in addition to likely violating U.S. import laws.

69. Defendants have also continued using bank accounts in the name of Tribe WOD LLC, and paid employees and contractors through this defunct entity, where these personnel had direct contractual relationships only with Factory 14 or Razor.

70. Defendants' failure to transfer all aspects of the business, their incompetency in fulfilling orders, and their slapdash and unprofessional customer service system has caused irate customers to track down the Founders, who are long removed from the business, to harass and

threaten them because of their frustration with the company.

71. Defendants had no U.S. bank account or credit card and were unable to obtain either, and were thus unable to pay any of the company's bills.

72. Factory 14 had promised to rely on its "experts" to open business to business sales channels, but ignored the Founders' extensive efforts to establish this segment and Defendants have taken none of the steps promised toward this stated intention.

73. Defendants appear to have prioritized Amazon sales, which has lead to massive expenses from Amazon fees and outsourced shipping to Fulfillment by Amazon ("FBA"), and devaluation of the business by converting it from a true brand to essentially an Amazon "drop shipper."

74. Defendants have further diluted and devalued the brand by failing to address blatant trademark violations by sellers of pirated products on Amazon and elsewhere, and even to take routine steps to maintain the company's intellectual property protections.

75. Plaintiffs have received calls from outside counsel that handles Tribe WOD's IP filings to say that representatives from Defendants are not returning his calls with respect to renewals and other protective actions that must be taken.

76. Through the Consulting Agreements and APA, Defendants promised and agreed that the Founders were to have complete access to and control of Tribe WOD during the transition period, and provided the Founders titles and job descriptions that reflected such agreement.

77. Defendants instead excluded the Founders from all such access and control, prematurely terminated the Consulting Agreements, and upon information and belief, diverted income of the business to Defendants' other businesses while handing the reins of Tribe WOD to

unpaid interns and others without experience or know-how to carry through the plan for growth and enhancement that the Earn Out provisions of the APA required.

Defendants Breach Financial Reporting Requirements

78. Factory 14 and Razor have also failed to deliver financial reporting as required under Section 2.04 of the APA, at 6-month and 12-month intervals following the closing.

79. Razor delivered a purported EBITDA calculation on August 5, 2022, and then in April 2023, but both omitted the necessary detail concerning revenues, costs, and what calculations were employed to determine the purported EBITDA figures presented, and fails to break down revenue by originating channel.

80. The financial information in both spreadsheets provided also contradicted information in an earlier profit & loss statement the Founders had received from Factory 14.

81. The Founders have repeatedly demanded the updated, full and complete reporting required by the APA, to no avail.

82. Defendants assert that the business has suffered because of post-Covid 19 changes in consumers' spending habits, but even according to their own opaque and flawed data, the business's net revenues have not diminished, while Defendants falsely claim that EBITDA has dropped from \$468,000 to a negative figure.

83. Despite equivalent purported revenues, Defendants assert that "Other Expenses" (which they do not define or explain), and inexplicably inflated selling costs (for which they provide bare numbers without any detail or explanation) have made a highly profitable brand unprofitable, while they have slashed most of the brand's marketing, product development and other expenses. Defendants have drastically reduced spending on any aspect of the brand's development, yet their financial reporting shows that costs are many multiples greater than prior

to these cuts.

84. There is no rational explanation for this contradiction, except that Defendants are either falsifying the data provided to inflate expenses and thereby deprive the Plaintiffs of the agreed post-closing compensation, or are assigning Razor costs unrelated to operation of the Tribe WOD business to its financial statements, for the same purpose.

85. Defendants have committed fraud in the inducement with respect to Plaintiffs' entering into the APA, are in breach of numerous terms of such agreement, have breached the implied covenant of good faith and fair dealing, their duty to make reasonable efforts to allow Plaintiffs to obtain the benefit of the earn-out and related provisions of the APA, and have committed knowing and willful violations of Mass. Gen. L. Chapter 93A through the unfair and deceptive practices in trade or commerce detailed herein.

86. Defendant Factory 14 also breached the APA's anti-assignment provisions by assigning all of its rights and obligations to Razor.

87. Plaintiffs have fulfilled all of their obligations under the APA and Consulting Agreements, and all other predicates to bringing this action.

## **CAUSES OF ACTION**

### **COUNT I – DECEIT/FRAUD IN THE INDUCEMENT (Factory 14 and Razor)**

88. Plaintiffs repeat and reallege each allegation set forth in the paragraphs above.

89. As more fully set forth above, Defendant Factory 14 (and through its acquisition of such entity, and on its own behalf following such acquisition) and Defendant Razor knowingly misrepresented and/or intentionally or negligently omitted to disclose numerous critical facts prior to and subsequent to the execution of the APA, with the express purpose of persuading Plaintiffs to sell the Tribe WOD business, and to deny the Plaintiffs the benefits of

their agreement, including the Stability Payment and Earn-Out Payments.

90. As more fully set forth above, such false and misleading statements and omissions include, without limitation:

- a. that Factory 14 were experts in online marketing and sales who would provide the company with cash to grow, personnel and structural resources, and logistical support to grow overseas, including in the UK, EU, Australia and New Zealand.
- b. as admitted and acknowledged by Hanna Nowotzin in a February 17, 2022 meeting in Massachusetts, that the EBITDA benchmark established for the Plaintiffs to achieve earnout compensation would not be reduced by “management fees,” “acquisition fees,” or other one-time expenses or personnel costs that were not narrowly tied to the business’s operation.
- c. Hanna Nowotzin’s statement to Jared Bane that: “We see huge growth potential for TRIBE WOD, particularly by growing your Amazon presence, launching new products and expanding into new geographies.”
- d. that the upfront payment being made was a small percentage of the eventual purchase price of the company.
- e. In projections provided to the Plaintiffs, represented that with its added expertise, resources, capital infusions, and other enhancements, the company would launch Plaintiffs’ new product designs and shortly reach monthly figures of \$585,000 in profit, on \$900,000 in revenues, with operating expenses of just \$181,800.
- f. that the EBITDA for the business for the year following the transaction was less than the sum identified in the APA that would trigger the Stability Payment and Earn-Out Payments, and that such EBITDA number was in the negative, despite prior contrary representations and earning the same or greater net revenues during such period.
- g. that the positions granted to them as Consultants were guaranteed for at least as long as the Stability Payments and Earn-Out Payments provisions were unfulfilled.
- h. Factory 14 failed to advise the Plaintiffs that it had plans in place to sell all of its brands and business to Razor, which occurred approximately six months later.
- i. Factory 14 failed to advise the Plaintiffs that it (or its assignee, Razor) planned to terminate their experienced employees and replace them with unpaid

interns who had no experience with brands such as Tribe WOD, fail to transfer the business to a separate entity registered to do business in the U.S., and fail to comply with Federal and State tax and other regulatory obligations.

- j. Factory 14 failed to advise the Founders that it intended to ignore their input, fail to act on their advice, and terminate the Consultant Agreements soon after the closing.

91. Each of these misrepresentations and omissions was made as a statement (or omission) of fact, and was knowingly or recklessly false when made, as became apparent within months after the closing.

92. The Plaintiffs justifiably relied on these misrepresentations and omissions in choosing Factory 14 as the buyer of Tribe WOD and closing on the sale for the small initial payment agreed to, and subsequent to the closing, in continuing with the company as consultants, and in forbearing to file suit to enforce their rights.

93. As a direct and proximate result, the Plaintiffs suffered detriment and harm in an amount to be determined at trial.

## **COUNT II -- BREACH OF CONTRACT (Factory 14 and Razor)**

94. Plaintiffs repeat and reallege each allegation set forth in the paragraphs above.

95. Defendants and Plaintiff entered into the APA as a binding contract.

96. As described more fully above, the APA included explicit financial reporting requirements to allow the parties to calculate the EBITDA figures that determine whether Stability and Earn-out Payments are due.

97. Despite repeated demand from the Plaintiffs, and Defendants' repeated promises to provide full, complete, and accurate financial reports pursuant to the APA, Defendants have failed and refused to do so.

98. The APA also required Defendants to make the books and records of the business

available at reasonable notice to Plaintiffs.

99. Despite repeated requests, Defendants have failed and refused to provide access to the books and records of the business, as required by the APA.

100. Defendants have further failed and refused to make the Stability Payment required at the one-year anniversary of the execution date of the APA, and by their actions and representations, have repudiated the Earn-Out Payment provisions of the APA, rendering their breach of the obligation to make the Earn-Out Payments certain.

101. By their conduct set forth above, Defendants have breached the APA without excuse or right.

102. Such breaches of contract have directly and proximately caused, and will cause further, monetary damage to Plaintiffs, including consequential, incidental, and other forms of damages to which Plaintiffs may be entitled, plus interest, costs, and attorney's fees, in an amount to be proven at trial.

**COUNT III -- BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING  
AND OBLIGATION TO MAKE REASONABLE EFFORTS  
(Factory 14 and Razor)**

103. Plaintiffs repeat and reallege each allegation set forth in the paragraphs above.

104. As more fully set forth above, Defendants are bound by the terms of the APA, which imposed upon them a duty of good faith in the performance of each contractual obligation.

105. Defendants are sophisticated business entities, which are experienced in the acquisition of businesses and the obligation of good faith that accompanies every contract.

106. In any "earn-out" provision of a contract for the acquisition of a business, there is an implied obligation to use reasonable efforts to conduct the business during the period subject to such provision so that the earn-out targets will be met, and the selling party shall then receive

the compensation triggered thereby.

107. Defendants breached such duties of good faith and to use reasonable efforts as more fully set forth above, including, inter alia, by: (a) terminating Tribe WOD's experienced and skillful employees, and replacing them with unpaid or incompetent interns, who understood nothing about the business or industry; (b) failing and refusing to register and/or license the business to operate in the United States and in the individual States in which it was operating, and continuing to operate the business through its former entity in breach of the APA; (c) failing and refusing to comply with State and U.S. Federal tax and other regulatory obligations of the business, thereby exposing the Plaintiffs and the business itself to penalties, fines, and a potential exclusion from doing business in such jurisdictions; (d) failing to make reasonable efforts to bring to market new product designs provided by Vitet, which promised to increase the business's revenues and profitability; (e) failing and refusing to take any actions to facilitate, enhance, augment, or further develop the brand's access to and sales in the European Union, Australian, New Zealand, United Kingdom, or other markets outside the United States and harming its business in Canada and other markets by failing to continue its advantageous shipping agreement with DHL; (f) failing and refusing to produce, or use the Founders pursuant to their Consulting Agreements to produce new marketing material for months to years, including (without limitation) videos, social media posts, or other content to maintain or increase the brand's following and sales; (g) utilize its own purported greater and more international resources and capital, to expand the business and its sales and profitability; (h) employ its purported well-established vendor and manufacturing contacts, resources, supply chains and QA/QC experts to render the business more efficient and thereby more profitable, or even to use Tribe WOD's existing contacts and resources to efficiently bring products to market and deliver

them to customers; (g) misrepresenting costs and expenses of their separate businesses as those generated by the Tribe WOD business, characterizing such costs as “Other Expenses” without explanation or detail, and providing a fraction of the information and data required under the APA for Plaintiffs to determine whether the requisite EBITDA numbers have been met; and other failures and refusals both set forth above, and as will be revealed in discovery.

108. As a direct and proximate result of such breaches, Plaintiffs have been damaged in an amount to be determined at trial, including (without limitation) compensatory, incidental, consequential and all other available damages, plus attorney’s fees and costs.

**COUNT IV -- UNFAIR AND DECEPTIVE PRACTICES IN TRADE OR COMMERCE  
UNDER M.G.L. c. 93A, § 2, 9, 11, et seq.  
(Factory 14 and Razor)**

109. Plaintiffs repeat and reallege each allegation set forth in the paragraphs above.

110. Plaintiffs are entitled to the protections provided under Mass. Gen. L. c. 93A, § 9, 11, and related sections.

111. Insofar as required under M.G.L. c. 93A, § 9, Plaintiffs made demand in accordance with such statute to Defendants on or about September 27, 2022.

112. Defendants responded to such demand on or about October 27, 2022, but made no reasonable offer of settlement as required under Chapter 93A in such response, or anytime thereafter.

113. At all relevant times and with respect to the transactions and occurrences described above, Plaintiffs and Defendants were engaged in trade or commerce, and their transaction and dealings described herein took place in a business context, within the Commonwealth of Massachusetts.

114. The parties’ transaction, performance, Defendants’ misconduct detailed herein,

and the harm incurred by Plaintiffs, all occurred primarily and substantially in Massachusetts, including (without limitation) the principal place of business of Tribe WOD (and the same business as operated by Defendants following its acquisition) was located in Massachusetts, Plaintiffs' location at all times relevant to the negotiation and pre-closing misrepresentations by Defendants was in Massachusetts, Defendants representatives made most if not all of such misrepresentations while in meetings with Plaintiffs in the Commonwealth, Defendants continued to operate the business almost exclusively in the United States and in Massachusetts, and Plaintiffs incurred all of the harm described herein, in Massachusetts.

115. As more fully set forth above, Defendants' unfair and deceptive acts and conduct include, without limitation, the following: (a) terminating Tribe WOD's experienced and skillful employees, and replacing them with unpaid or incompetent interns, who understood nothing about the business or industry; (b) failing and refusing to register and/or license the business to operate in the United States and in the individual States in which it was operating, and continuing to operate the business through its former entity in breach of the APA; (c) failing and refusing to comply with State and U.S. Federal tax and other regulatory obligations of the business, thereby exposing the Plaintiffs and the business itself to penalties, fines, and a potential exclusion from doing business in such jurisdictions; (d) failing to make reasonable efforts to bring to market new product designs provided by Vitet, which promised to increase the business's revenues and profitability; (e) failing and refusing to take any actions to facilitate, enhance, augment, or further develop the brand's access to and sales in the European Union, Australian, New Zealand, United Kingdom, or other markets outside the United States; (f) failing and refusing to produce or use the Founders pursuant to their Consulting Agreements to produce new marketing material for months to years, including (without limitation) videos,

social media posts, or other content to maintain or increase the brand's following and sales; (e) failing to utilize its own purported greater and more international resources and capital, to expand the business and its sales and profitability; (f) failing to employ its purported well-established vendor and manufacturing contacts, resources, supply chains and QA/QC experts to render the business more efficient and thereby more profitable, or even to use Tribe WOD's existing contacts and resources to efficiently bring products to market and deliver them to customers; (g) misrepresenting costs and expenses of their separate businesses as those generated by the Tribe WOD business, characterizing such costs as "Other Expenses" without explanation or detail, and providing a fraction of the information and data required under the APA for Plaintiffs to determine whether the requisite EBITDA numbers have been met; (h) repeatedly promising to provide the transparent, full and complete financial information required by the APA, and repeatedly reneging on such promise, misrepresenting inaccurate and incomplete information as accurate and complete, and failing and refusing to communicate with Plaintiffs for months at a time in breach of their obligations and in bad faith; (i) the bad faith repudiation of the Earn-Out Payment provisions and requirements of the APA and obstruction of Plaintiffs' ability to receive the benefits of their bargain; and other failures and refusals both set forth above, and as will be revealed in discovery.

116. Defendants, by the conduct set forth above, have violated Mass. Gen. L. c. 93A, §11 and related sections, to the proximate and reasonably foreseeable monetary detriment and damage of Plaintiffs.

117. In remedy, Plaintiffs seek an award of all damages recoverable at law, including (without limitation) compensatory, consequential, incidental, multiple, punitive, and all other forms of damages, plus pre- and post-judgment interest, and attorney's fees and costs, all in an

amount to be proven at trial.

118. Because Defendants' conduct has been wanton, willful, knowing and malicious, Plaintiffs seek double to treble damages under the applicable sections of Mass. Gen. L., c. 93A, and reserve the right to seek such preliminary and permanent injunctive relief as they may deem appropriate.

119. Plaintiffs further seek, as set forth below, other and further relief that they may deem proper, including (without limitation) preliminary and/or permanent injunctive relief.

**COUNT V – UNJUST ENRICHMENT  
(Factory 14 and Razor)**

120. Plaintiffs repeat and reallege each allegation set forth in the paragraphs above.

121. As more fully set forth above, Defendants have derived revenues, profits, and other benefits and compensation from the sale of the business, their wrongful denial of accurate, full and complete financial information to Plaintiffs, and their refusal to pay the amounts due as the Stability Payment and Earn-Out Payments, and have otherwise been unjustly enriched at Plaintiffs' expense and to their detriment.

122. Defendants thus profited by engaging in the wrongful conduct set forth more fully above, and the benefits they have received are directly and causally related to the detriment of Plaintiffs.

123. The profits and other benefits that accrued to Defendants were accepted by them under such circumstances that it would be inequitable for Defendants to retain such benefits without payment to Plaintiffs.

124. Due to their wrongful conduct as described above, Defendants are not justified in retaining the benefits conferred upon them.

125. Plaintiffs therefore demand restitution, and all other damages available as a result

of such unjust enrichment, plus interest, costs, and attorney's fees as set forth below.

**COUNT VI -- ACCOUNTING  
(Factory 14 and Razor)**

126. Plaintiffs repeat and reallege each allegation set forth in the paragraphs above.

127. As described more fully above, Defendants have failed and refused to provide the financial data and information required under the APA, both as specifically set forth as to the Stability and Earn-Out Payments, and access to the books and records of the business as otherwise required under the APA.

128. Plaintiffs demand that Defendants provide a full and complete accounting for the Tribe WOD business for the period beginning on or about the execution date of the APA, September 1, 2021, to the present, and as an ongoing obligation throughout the pendency of this case and beyond, as required by the APA.

**PRAYERS FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the Court order judgment in its favor, requiring Defendants to pay, jointly and severally:

1. Compensatory damages in the greatest amount supported by law;
2. Preliminary and permanent injunctive relief, compelling Defendants to provide the accurate, full, and complete financial and other data required of them by the APA, including the Stability Payment and Earn-Out Payment provisions, as well as access to the books and records for the business as required therein, including (without limitation) all related supporting documents and information, tax returns and related data and information, from the date of the APA's execution through the termination date for such requirements as set forth therein.
3. Special, punitive or exemplary damages to the fullest extent allowed by law, including but not limited to double to treble damages and attorney's fees allowable in accord with the terms of M.G.L. c. 93A.
4. Interest, costs and attorney's fees; and
5. Such other and further relief as is fair and just.

**JURY TRIAL DEMAND**

Plaintiffs demand a trial by jury on all claims and issues so triable.

Respectfully submitted,

PLAINTIFFS GARAGE SWEAT LLC f/k/a  
TRIBE WOD LLC, JARED BANE and  
ALEXANDRE VITET,  
By their attorneys,

Dated: May 25, 2023

/s/ Matthew J. Ginsburg  
Matthew J. Ginsburg, Esq. (BBO#641089)  
ASCENDANT LAW GROUP LLC  
2 Dundee Park Drive, Suite 102  
Andover, MA 01810  
Tel.: (978) 409-6238  
[mg@ascendantlawgroup.com](mailto:mg@ascendantlawgroup.com)

## **EXHIBIT 1**



## ASSET PURCHASE AGREEMENT

BY AND AMONG

**TRIBE WOD LLC**

(**"SELLER"**)

AND

**MR. ALEXANDRE H. VITET, MR. JARED BANE**

(**"FOUNDERS"**),


AND

**Factory 14 UK Acquisition IV Ltd**

(**"BUYER"**),

DATED AS OF

September 1<sup>st</sup>, 2021

<sup>DS</sup> <sup>DS</sup> <sup>DS</sup> <sup>DS</sup>

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “**Agreement**”) is made and entered into as of September 1<sup>st</sup>, 2021 by and between:

- A. **TRIBE WOD LLC**, a limited liability company under the laws of the Commonwealth of Massachusetts, U.S.A., with the registered address of 100 Hoods Lane, Suite 2111, Marblehead 01945, MA, USA, with the company number 001454994 (the “**Seller**”);
- B. **Mr. Alexandre H. Vitet**, a U.S. citizen, residing at the address of 18 Hawthorn Road, Marblehead, Massachusetts, USA 01945, who is the ultimate owner of 75% of the membership interest of the Seller and a Manager of the Seller (“**Mr. Vitet**”) and **Mr. Jared Bane**, a U.S. citizen, residing at the address of 23 Hawthorn Road, Marblehead, Massachusetts, USA 01945, who is the ultimate owner of 25% of the membership interest of the Seller and a Manager of the Seller (“**Mr. Bane**”, and jointly with Mr. Vitet, the “**Founders**”);
- C. **Factory 14 UK Acquisition IV Ltd**, a limited liability company incorporated under the laws of England and Wales, with the registered address of 11 Laura Place, Bath, BA2 4BL, United Kingdom, with the company number 13562100 (the “**Buyer**”) (each a “**Party**” and, collectively, the “**Parties**”)

### RECITALS

WHEREAS, Seller is engaged in the business of selling sports equipment and activewear through e-commerce (the “**Business**”);

WHEREAS, the Buyer desires to purchase from Seller, and Seller and the Founders desire to sell to Buyer, substantially all of the properties, business, and assets of Seller used and/or useful in the operation of the Business, constituting substantially all of Seller’s assets, and Buyer desires to assume from Seller, and Seller and Founders desire to assign to Buyer, certain liabilities and obligations of Seller with respect to the operation of the Business, in each case for the consideration and in accordance with the terms and conditions of this Agreement; and

WHEREAS, Buyer, the Founders and Seller desire to enter into this Agreement for the purpose of setting forth their mutual understandings and agreements with respect to the foregoing; and

WHEREAS, capitalized terms used but not defined in the context of the Section in which such terms first appear shall have the meanings set forth in Section 1.01.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### Article I. DEFINITIONS.

#### Section 1.01 Certain Defined Terms.

For purposes of this Agreement:

“**Acquired Assets**” has the meaning set forth in Section 2.01.

“**Acquisition Proposal**” means (i) the sale of any equity or any assets (other than in the ordinary course of business) of Seller, (ii) any acquisition, divestiture, merger, equity exchange, consolidation, redemption,

financing, or similar transaction involving Seller or Founder (iii) any similar sale or acquisition transaction or business combination involving Seller or Founder.

**“Actual Inventory Value”** means the at-cost value of the items, goods, and materials held by the Seller for sale (including in transit or production), in the market to earn a profit.

**“Adjusting Payment”** has the meaning given in Clause 2.3.2.

**“Affiliate”** means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by, or is under common control with such Person. For the purposes of this definition, “control” (including the terms “controlled by” and “under common control with”), with respect to the relationship between or among two or more Persons, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, by agreement or otherwise.

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

**“Ancillary Agreements”** means the Assignment and Assumption Agreement, the Intellectual Property Assignment Agreement and the Consulting Agreements.

**“Anticorruption Laws”** has the meaning set forth in Section 3.13.

**“Assignment and Assumption Agreement”** has the meaning set forth in Section 2.07.

**“Assumed Contracts”** has the meaning set forth in Section 2.01 .

**“Assumed Liabilities”** has the meaning set forth in Section 2.01.

**“Business”** has the meaning set forth in the recitals.

**“Buyer”** has the meaning set forth in the preamble.

**“Buyer Indemnitee”** has the meaning set forth in Section 7.03.

**“Buyer Warranty Breach”** has the meaning set forth in Section 7.03.

**“Cap Amount”** has the meaning set forth in Section 7.06.

**“CARES Act”** means the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116-136) and any administrative or other guidance published with respect thereto by any Governmental Entity.

**“Closing”** has the meaning set forth in Section 2.06.

**“Closing Date”** has the meaning set forth in Section 2.06.

**“Competing Business”** means the manufacturing, marketing or selling of products or services which are competitive with any Products and that are directly or indirectly marketed or sold anywhere in the world.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

**“Consideration”** shall mean the Purchase Price, Stability Payment and the Earn-out Payment.

**“Consulting Agreements”** has the meaning set forth in Section 2.06.

**“Contract”** means any legally binding contract, subcontract, agreement, license, sublicense, lease, sublease, instrument, indenture, promissory note, or other written or oral and legally binding commitment or undertaking.

**“COVID-19”** means SARS-Cov-2 or COVID-19, and any evolutions or mutations thereof of related or associated epidemics, pandemics, or disease outbreaks.

**“COVID-19 Measures”** means any quarantine, shelter in place, stay at home, workforce reduction, social distancing, shut down, closure, sequester, or any other Law, directive, guidelines, or recommendations by any Governmental Authority in connection with or in response to COVID-19.

**“Current Financial Statements”** has the meaning set forth in Section 3.04.

**“Default”** means any breach or violation of, default under, contravention of, or conflict with, any contract, Law, Order, or Permit, any occurrence of any event that with the passage of time or the giving of notice or both would constitute a breach or violation of, default under, contravention of, or conflict with, any contract, Law, Order, or Permit, or any occurrence of any event that with or without the passage of time or the giving of notice would give rise to a right of any Person to exercise any remedy or obtain any relief under, terminate or revoke, suspend, cancel, or modify or change the current terms of, or renegotiate, or to accelerate the maturity or performance of, or to increase or impose any liability under, any contract, Law, Order, or Permit.

**“Earn-out Payment”** has the meaning given in Section 2.04.

**“Earn Out Payment Calculations”** has the meaning given in Section 2.04.

**“EBITDA”** means the definition given in Exhibit 2a of Appendix 2.

**“Exchange Act”** has the meaning set forth in Section 3.04.

**“Excluded Assets”** has the meaning set forth in Section 2.01.

**“FCPA”** has the meaning set forth in Section 3.13.

**“Financial Statement Date”** has the meaning set forth in Section 3.04 .

**“Financial Statements”** has the meaning set forth in Section 3.04.

**“Final Purchase Price Calculations”** has the meaning given in Clause 2.04(iii).

**“Founders”** has the meaning set forth in recitals.

**“Fundamental Representations”** has the meaning set forth in Section 7.01.

**“Governmental Authority”** means any national, state, local, domestic, foreign, or international governmental or judicial, legislative, executive, administrative or regulatory authority, tribunal, agency, body, entity or commission, or other governmental, quasi-governmental or regulatory authority or agency, domestic, foreign, or international.

**"Indebtedness"** of any Person means, without duplication, (a) the principal of, accrued and unpaid interest and any premium or penalty in respect of (i) Indebtedness of such Person for money borrowed and (ii) Indebtedness evidenced by notes, debentures, bonds or other similar instruments the payment of which such Person is responsible or liable for; (b) all liabilities of such Person issued or assumed as the deferred purchase price of property (but excluding trade accounts payable incurred in the ordinary course); (c) all liabilities in respect of letters of credit and bank guarantees; (d) all liabilities for capitalized leases; (e) the amount of any net payments due upon settlement of outstanding hedges, swaps or similar arrangements; and (f) all obligations of the type referred to in clauses (a) through (e) of any Person the payment of which such Person is responsible or liable for, directly or indirectly, as obligor, guarantor or surety.

**"Indemnitee"** has the meaning set forth in Section 7.04.

**"Indemnitor"** has the meaning set forth in Section 7.04.

**"Intellectual Property"** means and includes (i) patents, applications for patents (including divisions, provisionals, continuations, continuations in-part and renewal applications), and any renewals, extensions or reissues thereof, in any jurisdiction; (ii) inventions, discoveries, and ideas, whether patentable or not in any jurisdiction; (iii) trademarks, service marks, brand names, certification marks, trade dress, assumed names, domain names, trade names and other indications of origin, the goodwill associated with the foregoing and registrations in any jurisdiction of, and applications in any jurisdiction to register, the foregoing, including any extension, modification or renewal of any such registration or application; (iv) nonpublic information, trade secrets, know-how, formulae, processes, procedures, research records, records of invention, test information, market surveys, and confidential information, whether patentable or not in any jurisdiction and rights in any jurisdiction to limit the use or disclosure thereof by any Person; (v) writings and other works, whether copyrightable or not in any jurisdiction, and any renewals or extensions thereof; (vi) any similar intellectual property or proprietary rights; (vii) software, including all types of computer software programs, operating systems, application programs, software tools, firmware (including all types of firmware, firmware specifications, mask works, circuit layouts and hardware descriptions) and software imbedded in equipment, including both object code and source code, and all written or electronic data, documentation and materials that explain the structure or use of software or that were used in the development of software, including software specifications, or are used in the operation of the software (including logic diagrams, flow charts, procedural diagrams, error reports, manuals and training materials, look-up tables and databases), whether patentable or not in any jurisdiction and rights in any jurisdiction to limit the use or disclosure thereof and registrations thereof in any jurisdiction, and applications in any jurisdiction to register, the foregoing, including any extension, modification or renewal of any such registration or application; and (viii) any claims or causes of action (pending, threatened or which could be filed) arising out of any infringement or misappropriation of any of the foregoing.

**"Intellectual Property Assignment Agreement"** has the meaning set forth in Section 2.07.

**"Inventories"** has the meaning set forth in Section 2.01

**"IRS"** means the Internal Revenue Service of the United States of America.

**"Knowledge"** of Seller, Founders or Buyer with respect to any fact or matter means:

- a) an individual will be deemed to have "Knowledge" of a particular fact or matter: (i) if such individual has actual knowledge of such fact or matter or (ii) if such individual could reasonably have acquired actual knowledge of such fact or matter in the ordinary course of performance of his duties as an officer of the Seller or Buyer, as applicable, after inquiry, with respect to such fact or matter; and
- b) an entity will be deemed to have "Knowledge" of a particular fact or matter only if any individual who, as of a given time of determination, is a director, officer, manager, partner of such entity (or in any similar capacity) has, or at any time had, Knowledge of such fact or matter.

**"Law"** has the meaning set forth in Section 3.10.

**"Liabilities"** means, with respect to any Person, any liability or obligation of such Person of any kind, character, or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

**"Lien"** means, with respect to any property or asset, all pledges, liens, mortgages, charges, claims, encumbrances, hypothecations, options, rights of first refusal, rights of first offer, and security interests of any kind or nature whatsoever.

**"LTM EBITDA"** means the cumulative EBITDA for the preceding 12-month period.

**"Material Adverse Effect"** means any state of facts, change, development, event, effect, condition, occurrence, action or omission that, individually or in the aggregate, has or could be reasonably expected to have, a material adverse effect on any aspect of the business, prospects, assets, properties, financial condition, results of operations or prospects of the Business, individually or taken as a whole, or prevent, materially impede or materially delay the consummation by Seller of the transactions contemplated by this Agreement.

**"Material Contract"** has the meaning set forth in Section 3.12.

**"Medicare"** has the meaning ascribed to such term in the CARES Act.

**"Non-Solicitation Period"** has the meaning set forth in Section 5.01.

**"Order"** has the meaning set forth in Section 3.10.

**"Parties"** has the meaning set forth in the preamble.

**"Party"** has the meaning set forth in the preamble.

**"Permits"** has the meaning set forth in Section 3.10.

**"Person"** means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

**"Proceeding"** has the meaning set forth in Section 3.10.

**"Promissory Note"** means the Promissory Note from Kenneth Bane to Tribe Wod LLC dated June 24<sup>th</sup> 2021.

**“Product”** means (A) any product or service that Seller is manufacturing, marketing, selling or developing on the date of this Agreement and (B) any other product or service that Seller has marketed, sold, or developed at any time during the three-year period immediately prior to the date of this Agreement.

**“Purchase Price”** has the meaning set forth in Section 2.04.

**“Release”** means any release, spill, leaking, dumping, pouring, emitting, emptying, pumping, discharge, injection, escaping, leaching, dispersal, disposal of or migration into or through the environment or within any building, structure, or facility.

**“Representative”** means Persons acting, directly or indirectly, on behalf of another Person, including such Person's officers, directors, employees, representatives, agents, independent accountants, investment bankers, and counsel.

**“Restricted Period”** has the meaning set forth in Section 5.01.

**“Retained Liabilities”** has the meaning set forth in Section 2.03.

**“Retaining Party”** has the meaning set forth in Section 2.03.

**“Revenue Share Agreement”** means the Revenue Share Agreement Inventory Advance #103582 signed between CFT Clear Finance Technology Corp. and Tribe Wod LLC on April 15<sup>th</sup>, 2021

**“Seller”** has the meaning set forth in preamble.

**“Seller Employers”** has the meaning set forth in Section 3.07.

**“Seller Indemnitee”** has the meaning set forth in Section 7.02.

**“Seller Warranty Breach”** has the meaning set forth in Section 7.02.

**“Stability Payment”** has the meaning given in Section 2.04.

**“Subsidiary”** of any Person means any corporation, partnership, limited liability company, joint venture or other legal entity of which such Person (either above or through or together with any other subsidiary), owns, directly or indirectly, more than fifty percent (50%) of the shares or other equity interests the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.

**“Tax(es)”** means any and all U.S. federal, state, local and non-U.S. taxes, assessments and other governmental charges, duties (including stamp duty), impositions and liabilities, including capital gains tax, taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, escheat, excise and property taxes as well as public imposts, fees and social security charges (including health, unemployment, workers' compensation and pension insurance), together with all interest, penalties, and additions imposed by a Governmental Authority with respect to such amounts.

**“Tax Returns”** has the meaning set forth in Section 3.09.

**“Threshold Amount”** has the meaning set forth in Section 7.05.

**“Transfer Taxes”** means all sales, use, transfer and all other non-income taxes, and any fees incurred in connection with the purchase and sale of the Acquired Assets.

**“TTM EBITDA”** means the EBITDA for the twelve months from July 1<sup>st</sup> 2020 to June 30<sup>th</sup> 2021, agreed to be \$468,000.

**Year 1** means the period commencing on July 1<sup>st</sup> 2021 and ending on June 30<sup>th</sup> 2022 (inclusive).

**Year 2** means the period commencing on July 1<sup>st</sup> 2022 and ending on June 30<sup>th</sup> 2023 (inclusive).

**Year 3** means the period commencing on July 1<sup>st</sup> 2023 and ending on June 30<sup>th</sup> 2024 (inclusive).

**Year 1 EBITDA** means the cumulative EBITDA generated in Year 1.

**Year 2 EBITDA** means the cumulative EBITDA generated in Year 2.

**Year 3 EBITDA** means the cumulative EBITDA generated in Year 3.

**Year 1 Incremental EBITDA** means Year 1 EBITDA minus TTM EBITDA, with a floor of nil.

**Year 2 Incremental EBITDA** means Year 2 EBITDA minus the greater of Year 1 EBITDA and TTM EBITDA, with a floor of nil.

**Year 3 Incremental EBITDA** means Year 3 EBITDA minus the greater of Year 1 EBITDA, Year 2 EBITDA and TTM EBITDA, with a floor of nil.

## **Article II. PURCHASE AND SALE OF ASSETS.**

### **Section 2.01 Purchase and Sale of Assets.**

Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Seller shall sell, transfer, assign, convey, and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all of the Acquired Assets, free and clear of all Liens. **“Acquired Assets”** means all right, title, and interest in and to all of the assets of Seller, used and/or useful in the operation of the Business excluding only those **“Excluded Assets”** of Seller listed on Appendix 1 to this Agreement, including the following assets:

- a) all tangible personal property (whether as owner, lessor, lessee or otherwise), including, without limitation, all machinery, equipment, instruments, wiring, tools, molds, tooling, dies, fixtures, material handling equipment, and packaging equipment;
- b) all Intellectual Property, associated goodwill, related licenses and sublicenses (in each case, whether granted or obtained), and other rights, remedies against infringements of, and rights to protection of interests in Intellectual Property under the Laws of all jurisdictions, including without limitation those listed in Appendix 1 to this Agreement;
- c) the contracts and all associated rights of Seller (the **“Assumed Contracts”**) listed in Appendix 1 to this Agreement;
- d) all approvals, Permits, licenses, orders, registrations, certificates, variances, and similar rights obtained by, on behalf of, or for the benefit of Seller from any Governmental Authority;
- e) all books, records, ledgers, files, documents, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, email lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, correspondence with any Governmental

Authority, operation manuals and procedures, sales material and records (including pricing history, total sales, terms and conditions of sale, sale and pricing policies and practices), strategic plans, lists, plats, drawings, specifications, creative materials, advertising, marketing and promotional materials, studies, reports, and other printed or written materials used and/or useful in the operation of the Business;

- f) except as otherwise listed as Excluded Assets on Appendix 1 to this Agreement, all prepaid expenses; all choses in action, causes of action, claims, and demands of Seller (whether known or unknown, matured or unmatured, accrued or contingent), including rights to returned or repossessed goods and rights as an unpaid vendor; rights of recovery, rights of warranty and indemnity, rights to product liability insurance proceeds, rights of set-off and rights of recoupment; all security deposits, utility deposits and other deposits; all marketing and advertising materials, all supplies and miscellaneous assets; the Uniform Product Code Symbols of Seller; and the use of any telephone numbers that are used in the operation of the Business;
- g) all inventories of Seller, wherever located, including all finished goods, work in process, raw materials, spare parts and all other materials and supplies to be used or consumed by Seller in the production of finished goods ("**Inventories**");
- h) except as otherwise listed as Excluded Assets on Appendix 1 to this Agreement, all claims of Seller against third parties relating to the Acquired Assets, whether choate or inchoate, known or unknown, contingent or noncontingent;
- i) all insurance benefits, including rights and proceeds, arising from or relating to the Acquired Assets or the Assumed Liabilities prior to the Closing, unless expended in accordance with this Agreement;
- j) except as otherwise listed as Excluded Assets on Appendix 1 to this Agreement, those rights relating to deposits and prepaid expenses and claims for refunds and rights to offset; and
- k) except as otherwise listed as Excluded Assets on Appendix 1 to this Agreement, all of Seller's rights under warranties, indemnities, and all similar rights against third parties to the extent related to the Acquired Assets.

## **Section 2.02 Assumption of Liabilities.**

At the Closing, Buyer shall assume and agree to pay or discharge when due in accordance with their respective terms, only the following liabilities of the Seller:

- a) the obligations listed in Appendix 1 to this Agreement (the "**Assumed Liabilities**");
- b) liabilities in respect of Taxes (as defined below) for which Buyer is responsible; and
- c) any warranty or other obligations to provide service on, or to repair or replace, any products manufactured or sold by Seller prior to the Closing Date.
- d) Buyer shall not assume or be liable for any liabilities or obligations of Seller arising at or prior to the Closing.

## **Section 2.03 Retained Liabilities**

Notwithstanding anything to the contrary contained in this Section or elsewhere in this Agreement, Seller shall maintain sole responsibility of, and solely shall retain, pay, perform, and discharge, all liabilities of Seller other than the Assumed Liabilities, including the following (collectively, the "**Retained Liabilities**"):

- a) any Liability for Taxes, including (i) any Taxes arising as a result of Seller's operation of its Business or ownership of the Acquired Assets prior to the Closing, (ii) any Taxes that will arise as a result of the sale of the Acquired Assets pursuant to this Agreement, (iii) any employment Taxes paid or to be paid by Seller for any reason whatsoever, and (iv) any deferred Taxes of any nature;

- b) any Liability under any Contract that is not an Assumed Contract plus any Liability under an Assumed Contract that is not assumed by Buyer, including any Liability arising out of or relating to Seller's credit facilities, any security interest related thereto, or any warranty claim;
- c) any Liability under any employee benefit plans or relating to payroll, vacation, sick leave, workers' compensation, unemployment benefits, pension benefits, employee stock option or profit-sharing plans, healthcare plans or benefits or any other employee plans or benefits of any kind for Seller's employees or former employees or both, including any Liability with respect to the payment of bonuses for any reason;
- d) any Liability under any employment, severance, retention or termination agreement with any employee of Seller or any of its Affiliates;
- e) any Liability of Seller to any Member or Affiliate of Seller, other than Liabilities incurred in the ordinary course of business;
- f) any Liability to indemnify, reimburse or advance amounts to any Member, Manager, employee, or agent of Seller, other than Liabilities incurred in the ordinary course of business;
- g) any Liability for wages, remuneration, compensation (including any equity grants, bonuses or commissions due any employee arising in connection with the transactions contemplated hereby), benefits, severance or other accrued obligations (i) associated with any current or former employee, consultant, director or other service provider of any Seller or any Affiliate of any Seller who does not become a Transferred Employee (or any dependent or beneficiary thereof), and (ii) with respect to any Transferred Employee, arising solely in connection with his or her service to Seller or any Affiliate of Seller prior to the date hereof, and
- h) any claim of an unfair labor practice, or any claim under any state unemployment compensation or worker's compensation Law or regulation or under any federal or state employment Law or other Law or regulation relating to employment, discrimination, classification or other matters relating to current or former employees, consultants, directors or other service providers (including any service providers), in any case, with respect to (i) any individual who does not become a Transferred Employee (or any dependent or beneficiary thereof), and (ii) any Transferred Employee, arising solely in connection with his or her service to Seller or any Affiliate of the Seller prior to the date hereof; "**Transferred Employee**" means each employee of Seller or its Affiliates who commences employment with Buyer or an Affiliate thereof, whether upon or following the Closing;
- i) any Liability to distribute to or otherwise apply to any of Seller's Members all or any part of the consideration received hereunder;
- j) any Liability arising out of any Proceeding pending as of the Closing;
- k) any Liability arising out of any Proceeding commenced after the Closing and arising out of or relating to any occurrence or event happening prior to the Closing;
- l) any Liability arising out of or resulting from Seller's compliance or noncompliance with any Law or Order of any Governmental Authority;
- m) any Liability of Seller under this Agreement or any other document executed in connection with the transactions contemplated hereby, including any Liability of Seller for expenses incurred by Seller or its Affiliates in connection with this Agreement and any Liability of Seller for any bonuses, commissions, or incentive payments paid or payable to any Person by reason of the consummation of the transactions contemplated hereby; and
- n) any Liability of Seller based upon Seller's acts or omissions occurring after the Closing.

## **Section 2.04 Purchase Price and Earn-Out**

- a) **Tranche 1 – Purchase Price** - Tranche 1 of the Consideration consists of a purchase price for the Acquired Assets and Assumed Liabilities, which shall be paid by way of a cash consideration in the amount of **\$2,164,000** (the "**Purchase Price**") plus estimated Actual Inventory Value as of Closing calculated in accordance with the principles set forth in Appendix 2.

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- i. No later than fifteen (15) Business Days after Closing, the Seller shall deliver to the Buyer the calculations of the Actual Inventory Value as of Closing (the “**Final Purchase Price Calculations**”). The calculations shall be prepared in accordance with Exhibit 1 of Appendix 2. Any payments pursuant to these calculations shall be made within 10 Business Days after receipt of the calculations.
- b) **Tranche 2 – Stability Payment** - Tranche 2 of the Consideration consists of a potential stability payment to be made from the Buyer to the Seller dependent on the business performance of the Seller (the “**Stability Payment**”) to be calculated as follows:
  - i. \$512,000, if the LTM EBITDA 12 months after Closing is equal to or greater than TTM EBITDA.
  - ii. No later than fifteen (15) Business Days after the 6-month and one-year anniversaries, respectively, of the Closing, the Buyer shall deliver to the Seller the calculations of the respective LTM EBITDA pursuant to clause i above. The calculations shall be prepared in accordance with Exhibit 2a of Appendix 2. Any payments pursuant to these calculations shall be made within 30 Business Days after receipt of such calculations.
- c) **Tranche 3 – Earn-out Payment** - Tranche 3 of the Consideration consists of a potential earn-out payment to be made in three potential instalments from the Buyer to the Seller dependent on the business performance of the Seller (the “**Earn-out Payment**”) to be calculated as follows:
  - i. **First instalment:** a multiple of 3.25x on Year 1 Incremental EBITDA, minus the Stability Payment.
  - ii. **Second instalment:** a multiple of 3.25x on Year 2 Incremental EBITDA, minus the remainder of the Stability Payment which has not already been deducted from the first instalment of the Earn-out Payment.
  - iii. **Third instalment:** a multiple of 3.25x on Year 3 Incremental EBITDA, minus the remainder of the Stability Payment which has not already been deducted from the first or second instalments of the Earn-out Payment.
  - iv. No later than fifteen (15) Business Days after the one-year, two-year and three-year anniversaries, respectively, of the Closing, the Buyer shall deliver to the Seller the calculations of the respective instalments of the Earn-Out Payment and the earn-out calculations made pursuant to clauses i-iii above (collectively, the “**Earn Out Payment Calculations**”). The calculations shall be prepared in accordance with Exhibit 2a of Appendix 2. Any payments pursuant to these calculations shall be made within 30 Business Days after receipt of such calculations.
- d) The Purchase Price and the Earn Out Payment shall be paid by the Buyer for the Seller’s benefit to:

Bank Name: Bank of America

Address: 21 Paradise Rd, Salem, MA 01970

Beneficiary Name: Tribe WOD LLC

Account Number: 466011261333

Fedwire routing number: 011000138 (paper & electronic) / 026009593 (wires)

- e) **Sale of Buyer.** At any time prior to the payment of the Third Instalment Earn-Out Payment to Seller, or a final determination that no Third Instalment Earn-Out Payment is or may be payable to Seller, if Buyer effects a sale, exchange or other transfer, directly or indirectly, in one transaction or a series of related transactions, of all or substantially all of the assets of the Buyer or a merger, consolidation, recapitalization or other transaction involving transfer of 50% or more of the combined voting power of all interests in the Buyer, Buyer shall (i) remain responsible for all of its obligations with respect to the Stability Payment and Earn-Out Payments set forth in Section 2.04

hereof; and (ii) make provision for the transferee, or successor to assume and succeed to the obligations of Buyer in this this clause 2.04.

#### **Section 2.05 The Founders' Post-Closing Consulting Engagement**

As part of the mutual exchange and consideration of the Agreement, Mr. Vitet and Mr. Bane agree to enter into consulting agreements ("**Consulting Agreements**"), substantially in the form set forth in Appendix 5. Mr. Vitet's and Mr. Bane's rights to potentially receive any Stability Payment or Earn-out Payment shall be revoked and cancelled if Mr. Vitet and Mr. Bane in their respective performance of the services under the Consulting Agreements do any of the following:

- a) commit any gross misconduct affecting the business of the Company; or
- b) either of them is convicted of any criminal offence which brings or is likely to bring the Company into disrepute.

If only Mr. Vitet does any of the above, but not Mr. Bane, then the Stability Payment and Earn-out Payment shall be reduced by 75%. If only Mr. Bane does any of the above, but not Mr. Vitet, then the Stability Payment and Earn-out Payment shall be reduced by 25%.

#### **Section 2.06 Closing Date.**

The signing and closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place by portable document format (pdf) email and exchange of documents, or by other agreed upon electronic means at 6:00 p.m., CET, on September 1<sup>st</sup>, 2021 or on another date not later than September 3<sup>rd</sup>, 2021, as the Parties may mutually agree. The date and time at which the Closing occurs is referred to as the "**Closing Date.**"

#### **Section 2.07 Closing Deliverables.**

In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing:

- a) Seller shall deliver to Buyer:
  - i. **Assignment and Assumption Agreement.** Seller shall deliver an assignment of all of the Acquired Assets that are intangible personal property in the form set forth in Appendix 3, which assignment shall also contain Buyer's undertaking and assumption of the Assumed Liabilities (the "**Assignment and Assumption Agreement**"), duly executed by Seller;
  - ii. **Intellectual Property Assignment.** Seller, the Founder, and the designated third parties affiliated with the Seller and Founder, shall deliver assignments of all Intellectual Property Assets and separate assignments of all registered Marks, Patents and Copyrights substantially in the form set forth in Appendix 4 (the "**Intellectual Property Assignment Agreement**"), duly executed by Seller the Founder, and the designated third parties affiliated with the Seller and Founder;
  - iii. **Consulting Agreements.** Each of the Founders shall deliver to the Buyer, the relevant duly signed Consulting Agreement;
  - iv. **Proof of repayment of the Revenue Share Agreement and Promissory Note.** Seller shall deliver to the Buyer a confirmation of full repayment of the outstanding balance of the Revenue Share Agreement and Promissory Note, provided, that Seller may, at the time of Closing, use the Purchase Price money or any portion thereof to repay the outstanding balances of the Revenue Share

- Agreement and Promissory Note pursuant to agreed upon payoff instructions in accordance with customary practice;
- v. **Bill of Sale.** Seller shall deliver to the Buyer a Bill of Sale of duly executed on behalf of the Seller; and
  - vi. such other documents as may be reasonably necessary to consummate the transaction contemplated by this Agreement as reasonably requested by Buyer or its counsel.
- b) Buyer shall deliver to Seller or cause to be delivered to Seller:
- i. **Closing Consideration.** Buyer shall deliver the Purchase Price by wire transfer to a bank account of the Sellers;
  - ii. **Assignment and Assumption Agreement.** Buyer shall deliver the Assignment and Assumption Agreement, duly executed by Buyer;
  - iii. **Intellectual Property Assignment Agreement.** Buyer shall deliver the Intellectual Property Assignment Agreement, duly executed by Buyer;
  - iv. **Consulting Agreements.** The Buyer shall deliver to the Founders the duly signed Consulting Agreement; and
  - v. such other documents as may be reasonably necessary to consummate the transactions contemplated by this Agreement as reasonably requested by Seller or its counsel.

## **Section 2.08 Third-Party Consents.**

To the extent that Seller's rights under any of the Contracts or any other Acquired Asset may not be assigned to Buyer without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach or be unlawful, and Seller, at its sole expense, shall use its best efforts to obtain any such required consent(s) as promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer's rights under the Acquired Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Seller, to the maximum extent permitted by Law shall act after the Closing as Buyer's agent in order to obtain for it without cost to Buyer the benefits thereunder and shall cooperate, to the maximum extent permitted by Law, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer. Each indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any indemnifiable loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such indemnifiable loss.

## **Article III. REPRESENTATIONS AND WARRANTIES OF SELLER AND THE FOUNDERS.**

Seller and the Founders hereby jointly and severally represent and warrant to Buyer as of the date hereof and as of the Closing as follows:

### **Section 3.01 Organization and Corporate Power.**

Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the Commonwealth of Massachusetts and has all organizational power and authority necessary to own or lease its properties and assets and to carry on the Business as currently conducted. Seller is duly qualified or licensed to do business and is in good standing in each of the jurisdictions in which the character of the properties owned or held under lease by it or the nature of the Business makes such qualification necessary.

### **Section 3.02 Authorization.**

Seller has the requisite organizational power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and to perform its obligations hereunder. The execution, delivery and performance by Seller of this Agreement, and the consummation by Seller of the transactions contemplated hereby, have been duly and validly authorized by Seller's Members and Managers and no other corporate proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby or to perform its obligations hereunder. This Agreement has been duly and validly executed and delivered by Seller and, assuming this Agreement constitutes the legal, valid and binding agreement of Buyer, constitutes a legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws, now or hereafter in effect, affecting creditors' rights generally and by general principles of equity. Upon the execution and delivery by Seller of any other document to which Seller is a party in connection with this Agreement, other than this Agreement, each of such other documents will constitute the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws, now or hereafter in effect, affecting creditors' rights generally and by general principles of equity.

### **Section 3.03 Non-Contravention; Filings and Consents.**

- a) The Seller is not subject to and is not a party to any charter or bylaw, or mortgage, Lien, lease, agreement, contract, instrument, law, rule, regulation, Order, judgment or decree, or any other restriction of any kind or character that:
  - i. adversely affects the Business, or financial condition of the Business or any of the Assets;
  - ii. would prevent such Seller from complying with the terms, conditions and provisions of this Agreement;
  - iii. would adversely affect the ability of Buyer to operate the Business and Assets after the Closing on substantially the same basis as theretofore operated by Seller; or
  - iv. would require the consent of any third party to the transactions contemplated hereby.
- b) The execution, delivery and performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not and will not (with or without notice or lapse of time, or both):
  - i. contravene, conflict with, or result in any violation or breach of any provision of the certificate of incorporation or bylaws of Seller;
  - ii. contravene, conflict with or result in a violation or breach of any provision of any Law or Order;
  - iii. require any consent or approval under, violate, conflict with, result in any breach of or any loss of any benefit under, or constitute a change of control or Default under, or result in termination or give to others any right of termination, vesting, amendment, acceleration or cancellation of any Contract to which Seller is a party, or by which its properties or assets may be bound or affected or any Governmental Authority affecting, or relating in any way to the Business; or
  - iv. result in the imposition or creation of any Lien on, or with respect to, any of the Acquired Assets.
- c) The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby by Seller do not and will not require any consent, approval,

authorization or permit of, action by, filing with or notification to, any other Person or Governmental Authority

### **Section 3.04 Financial Statements.**

- a) Seller has previously delivered to Buyer true and complete copies of its: (i) balance sheets and statements of income, retained earnings and cash flows as of and for its fiscal year ended December 31, 2020, including all applicable footnotes; and (ii) unaudited interim balance sheets and statements of income, retained earnings and cash flows as of and for the seven-month period ended July 31, 2021 (the “**Current Financial Statements**” and, together with the items described in clause (i) above, the “**Financial Statements**”).
- b) The Financial Statements present fairly in all material respects the financial condition of Seller as at the end of the covered periods and the results of its operations and its cash flows for the covered periods covered thereby. The Financial Statements were prepared using consistent and sound accounting practices throughout the covered periods, subject, in the case of the Current Financial Statements, to year-end audit adjustments).
- c) Except as and to the extent disclosed in the Current Financial Statements, Seller has no Liabilities of any kind other than (x) executory obligations under Seller agreements that are not required to be set forth in the Current Financial Statements in accordance with consistent and sound accounting practices for the periods and dates presented, (y) liabilities incurred in connection with the transactions contemplated by this Agreement and the other Transaction Documents, and (z) liabilities incurred in the ordinary course of business since July 31, 2021 (the “**Financial Statement Date**”).
- d) To the Knowledge of Seller and Founders, the books of account and other financial records of Seller with respect to the Business, all of which have been made available to Buyer are materially complete and correct and represent actual, bona fide transactions and have been maintained materially in accordance with sound business practices and the requirements of Section 13(b)(2) of the Exchange Act (regardless of whether Seller is subject to that Section or not), including the maintenance of a materially adequate system of internal controls.
- e) Seller maintains a system of internal accounting controls sufficient, in all material respects, to provide reasonable assurances (i) that transactions are recorded as necessary to permit preparation of financial statements in accordance with consistent and sound accounting practices for the periods and dates presented, (ii) that receipts and expenditures are being made in accordance with appropriate authorizations of Seller’s management and (iii) regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets of Seller or its Affiliates.

### **Section 3.05 Absence of Certain Changes.**

To the Knowledge of Seller and Founders, no event has occurred since the date of the Current Financial Statements which has had, individually or in the aggregate, a Material Adverse Effect on the Business. Since the date of the Current Financial Statement, Seller has conducted the Business only in the ordinary course of business consistent with past practice, except for actions taken in respect of this Agreement and Seller has not taken any action that, if taken after the date hereof without the consent of Buyer, would constitute a breach of any Laws.

### **Section 3.06 Intellectual Property.**

- a) Seller owns, or is licensed or otherwise has the right to use (in each case, without payments to third parties and free and clear of any Liens), all Intellectual Property necessary for or material to the conduct of the Business as currently conducted and such rights are not subject to termination

by any third party. Section 2.01 sets forth a true and complete list of all issued patents, registered trademarks, registered trade names, registered service marks, registered copyrights and in each case applications therefor, and domain names and applications therefor, if any, owned by or licensed to Seller and used in the Business as of the date of this Agreement. All issued patents, patent applications, registered trademarks, trade names and service marks and, in each case, applications therefor, registered copyrights and applications therefor and domain names and applications therefor owned by Seller and used in the Business have been duly registered and/or filed, as applicable, with or issued by each applicable Governmental Authority in each applicable jurisdiction, all necessary affidavits of continuing use have been filed, and all necessary maintenance fees that are due have been paid to continue all such rights in effect. Seller has made available to Buyer complete and correct copies of, all license agreements relating to Intellectual Property used in the Business to or by which Seller is a party or bound.

- b) To the Knowledge of Seller and Founders, none of Seller nor any of its products or services has infringed upon or otherwise violated, or is infringing upon or otherwise violating, the Intellectual Property rights of any Person. Except as listed on Appendix 1 to this Agreement, there is no suit, claim, action, investigation or proceeding pending or, to the Knowledge of Seller or Founders, threatened with respect to, and Seller has not been notified in writing of, any possible infringement or other violation by Seller or any of its products or services of the Intellectual Property rights of any Person and to the Knowledge of Seller and Founders there is no valid basis for any such claim. To the Knowledge of Seller and Founders, there is no investigation pending or threatened with respect to any possible infringement or other violation by Seller or any of its products or services of the Intellectual Property rights of any Person.
- c) To the Knowledge of Seller or Founders, no Person nor any product or service of any Person is infringing upon or otherwise violating any Intellectual Property rights of Seller.
- d) The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and compliance with this Agreement do not and will not conflict with, or result in any violation of or Default under, or give rise to any right, license or encumbrance relating to, any Intellectual Property owned or used by Seller or with respect to which Seller now has or has had any agreement with any third party, or any right of termination, cancellation or acceleration of any Intellectual Property right or obligation set forth in any agreement to or by which Seller is a party or bound, or the loss or encumbrance of any Intellectual Property or material benefit related thereto, or result in the creation of any Lien in or upon any Intellectual Property or right.
- e) Seller has taken reasonable measures to maintain the confidentiality of its Intellectual Property.
- f) None of the former or current members of management or key personnel of Seller, including all former and current employees, agents, consultants, and independent contractors who have contributed to or participated in the conception and development of Intellectual Property owned, intended to be owned or used by Seller, have a valid claim against Seller in connection with the involvement of such Persons in the conception and development of any Intellectual Property owned, intended to be owned or used by Seller, and no such claim has been asserted or, to the Knowledge of Seller or Founders, threatened. To the Knowledge of Seller or Founders, none of the current employees of Seller has any patents issued or applications pending for any device, process, design or invention of any kind now used or needed by Seller in furtherance of the Business as currently conducted, which patents or applications have not been assigned to Seller.

### **Section 3.07 Labor and Employment Matters.**

- a) Appendix 1 to this Agreement contains a complete list of Persons who regularly perform services for the Business as employees, independent contractors and/or consultants to the Seller or any of its Affiliates.

- b) No independent contractor or employee performing services for the Business is bound by any Contract that purports to limit the ability of such Person to engage in any activity, services, duties, or practice on behalf of the Business, and, to the Knowledge of Seller and Founders, there is no legal restriction impeding Buyer from continuing to engage such employees, independent contractors and/or consultants, effective as of the Closing.
- c) Seller is not delinquent in payments to any employees, independent contractors and/or consultants for the Business for wages, salaries, commissions, bonuses, fees, or other compensation for any services performed.
- d) Seller has taken reasonable steps as required by applicable Laws to protect employees, independent contractors and/or consultants performing services for the Business in the workplace with respect to COVID-19.
- e) Seller has never sponsored, maintained, administered or contributed to any employee benefit plans as defined in Section 3 of the Employee Retirement Security Act of 1974 (93 P.L. 406) nor any collective bargaining, stock purchase, stock option, employment compensation, deferred compensation, pension, retirement, post-retirement, employment, consulting, severance, termination, change-in-control, separation, retention, vacation, sickness, life or other insurance, welfare, fringe benefit or incentive bonus contract, agreement, plan, program, policy, payroll practice or arrangement.

### **Section 3.08 Litigation.**

- a) Except as listed on Appendix 1 to this Agreement, there is no complaint, claim, action, suit, litigation, proceeding or governmental or administrative investigation pending or, to the Knowledge of Seller or Founders, threatened against or affecting Seller, the Business, or any of the Acquired Assets, including in respect of the transactions contemplated hereby that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. Seller is not subject to any outstanding Order (i) that prohibits Seller from conducting the Business as now conducted or proposed to be conducted or (ii) that would, individually or in the aggregate, have had or would reasonably be expected to have had a Material Adverse Effect.
- b) Except as listed on Appendix 1 to this Agreement, to the Knowledge of Seller or Founders, no event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement of any complaint, claim, action, suit, litigation, proceeding or governmental or administrative investigation that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

### **Section 3.09 Tax Matters.**

- a) Seller has timely filed all federal, state, local and foreign Tax Returns, extensions, estimates, information statements and reports relating to any and all Taxes of Seller or its operations (the "**Tax Returns**") required to be filed by Law by Seller as of the date hereof. All such Tax Returns not otherwise extended are true, correct and complete, and Seller has timely paid all Taxes attributable to Seller that were due and payable, except with respect to matters contested in good faith.
- b) There are no pending sales, use or other tax dispute relating to the Acquired Assets or the Business, including the nature and amount of the controversy, the respective positions of the parties as to any material amounts claimed to be due thereunder, and the current status thereof.
- c) There is no tax sharing agreement, tax allocation agreement, tax indemnity obligation or similar written or unwritten agreement, arrangement, understanding or practice with respect to Taxes (including any advance pricing agreement, closing agreement or other arrangement relating to Taxes) that will require any payment by Seller.

- d) Seller (i) has not been a member of an affiliated group within the meaning of Section 1504(a) of the Code or any similar group defined under a similar provision of state, local or foreign law and (ii) has no liability for Taxes of any Person other than Seller and its Subsidiaries under Treas. Reg. ss. 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor by contract or otherwise.
- e) Seller has withheld (and timely paid to the appropriate Governmental Authority) proper and accurate amounts for all periods through the date hereof in compliance with all Tax withholding provisions of applicable federal, state, local and foreign Laws other than provisions of employee withholding (including, without limitation, withholding of Tax on dividends, interest, and royalties and similar income earned by non-resident aliens and foreign corporations and withholding of Tax on United States real property interests).
- f) No claim or investigation is pending, or to Seller's or Founders' Knowledge, threatened, by any state, local, or other jurisdiction alleging that Seller, with respect to the Business, has a duty to file Tax Returns and pay Taxes or is otherwise subject to the taxing authority of any jurisdiction other than those jurisdictions in which Seller has filed and paid Taxes nor has Seller received any notice or questionnaire from any such jurisdiction which suggests or asserts that Seller, with respect to the Business, may have a duty to file such returns and pay such Taxes, or otherwise is subject to the taxing authority of such jurisdiction.
- g) There are outstanding no agreements or waivers extending the statutory period of limitations applicable to any Tax return or report. Seller is not delinquent in the payment of any Tax or in the filing of any Tax return, and no deficiencies for any Tax have been threatened, claimed, proposed or assessed against Seller. Seller has not consented to extend the time in which any amount of Taxes may be assessed or collected by any Governmental Authority, which extension is still outstanding.
- h) There is no liability for sales or transfer tax with respect to the Acquired Assets which accrues to Buyer as a result of the transfer of the Acquired Assets to Buyer or the consummation of the transactions contemplated hereby, except such taxes as will be paid by Seller pursuant to the terms hereof.
- i) Seller has not extended, deferred or delayed the payment of any Taxes under the CARES Act or otherwise as a result of COVID-19.

### **Section 3.10 Compliance with Laws; Permits.**

- a) The Seller has not been in conflict with, in Default or, with notice, lapse of time or both, would be in Default, with respect to or in violation of any (i) statute, law, ordinance, rule, regulation or requirement of a Governmental Authority (each, a "**Law**"), including any COVID-19 Measure, or (ii) Order, judgment, writ, decree, or injunction issued by any court, agency or other Governmental Authority (each, an "**Order**") applicable to Seller or by which any property or asset of Seller is bound or affected, including any COVID-19 Measure.
- b) The Seller has not received any written notice:
  - i. of any Default or violation as described in clause (a) above;
  - ii. of any administrative, civil or criminal investigation or audit by any Governmental Authority relating to Seller; or
  - iii. from any Governmental Authority alleging that Seller is not in compliance with any Law or Order.
  - iv. Seller has all Permits, licenses, authorizations, consents, approvals from Governmental Entities required to conduct the Business as currently conducted ("**Permits**") and such Permits are valid and in full force and effect. Seller is in compliance with the terms of such Permits and, as of the date of this Agreement, has not received written notice from any Governmental Authority threatening to revoke, or indicating that it is investigating whether to revoke, any such Permit.

### Section 3.11 Real Property.

Except as listed on Appendix 1 to this Agreement, the Seller has not owned and does not own or lease any real property.

### Section 3.12 Material Contracts.

- a) Appendix 1 to this Agreement contains a complete and accurate list as of the date hereof, and Seller has made available to Buyer true, correct and complete copies of each of the following contracts, including any and all amendments or restatements thereto (each, a "**Material Contract**") to which Seller is a party or which bind or affect its properties or assets including full and accurate summaries of the material terms and conditions of any and all oral Contracts:
- i. any Contract or group of related Contracts for the purchase or lease of services, products, materials, supplies, goods, equipment, or other assets providing for either (A) annual payments related to the Business in excess of \$1,000, including any and all purchase orders; or (B) give rise to anticipated receipts by the counterparty to the Contract of more than \$5,000 in any calendar year, in each case that cannot be terminated on more than 90 days' notice without payment of a penalty in excess of \$5,000;
  - ii. any Contract involving the obligation of Seller relating to the Business to sell products or services pursuant to which the aggregate payments to become due exceeds \$5,000 annually;
  - iii. any Contract relating to the acquisition or disposition of any material business (whether by merger, sale of membership interest, asset sale, or otherwise);
  - iv. any Contract relating to any swap, forward, futures, warrant, option or other derivative transaction;
  - v. any Contract appointing any agent to act on behalf of the Seller with respect to the Business or any power of attorney;
  - vi. any option, license, franchise or similar Contract;
  - vii. any employment, severance, retention, change in control, or similar Contract with any current or former director, officer or employee related to the Business in respect of which Buyer has or could reasonably be expected to have ongoing payment obligations after the Closing Date;
  - viii. any Contract with a Governmental Authority;
  - ix. any Contract containing provisions that limit the ability of the Business to compete in any business or with any Person or in any geographic area, or to sell, supply or distribute any services or products related to the Business (including any non-compete, exclusivity, "most-favored-nation" or similar requirements) or pursuant to which any benefit or right is required to be given or lost, or any penalty or detriment is incurred, as a result of so competing or engaging;
  - x. any Contract that provides for or governs the formation, creation, operation, management or control of any strategic partnership, joint venture, joint development, or similar arrangement or partnership; and
  - xi. any Contract that relates to Indebtedness having an outstanding principal amount in excess of \$1,000 in connection with which the aggregate actual contingent obligations of Seller under such contract are greater than \$5,000.
- b) Each Material Contract is valid and binding on Seller that is a party thereto and, to the Knowledge of Seller or Founders, each other party thereto, and is in full force and effect and enforceable in accordance with its terms, except to the extent enforceability may be subject to applicable

bankruptcy, insolvency, reorganization, moratorium or other similar Laws, now or hereafter in effect, relating to creditors' rights generally, and to general equitable principles, and unless expired or terminated in accordance with its terms. Seller and, to the Knowledge of Seller or Founders, each other party to each Material Contract, have performed and complied with all obligations required to be performed or complied with by them under each Material Contract. There is no Default under any Material Contract by Seller or, to the Knowledge of Seller or Founders, by any other party, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a Default thereunder by Seller or, to the Knowledge of Seller or Founders, by any other party thereto.

### **Section 3.13 Anticorruption; Antiboycott Laws.**

- a) Seller, including its Representatives, have not, directly or indirectly, taken any action that would cause Seller to be in violation of the Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), or any other anticorruption or anti-bribery Laws applicable to Seller (collectively with the FCPA, the "**Anticorruption Laws**"). Seller, including its Representatives, have not, directly or indirectly, corruptly given, loaned, paid, promised, offered or authorized payment of money or anything of value to any "foreign official" as defined in the FCPA or, in violation of Law, to any other government official, to secure any improper advantage or to obtain or retain business for any Person or to achieve any other purpose prohibited by the Anticorruption Laws. Seller has established and implemented reasonable internal controls and procedures intended to ensure compliance with the Anticorruption Laws.
- b) Seller has been in compliance with: (i) all Laws or regulations regarding the importation of goods, including any import laws and specifically the U.S. import laws administered by U.S. Customs and Border Protection; and (ii) all other applicable Laws, including the Export Administration Regulations administered by the U.S. Department of Commerce.
- c) Neither Seller nor any of its applicable Affiliates, nor to the Knowledge of Seller or Founders, any Member or Manager of any of the foregoing Persons, is (i) a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), regulation, or other governmental action, (ii) a "specially designated global terrorist" or other person listed in Appendix A to Chapter V of 31 C.F.R., as the same has been from time to time updated and amended, or (iii) a person either (A) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R Part 515 or (B) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or a person similarly designated under any related enabling legislation or any other similar executive orders.

### **Section 3.14 Insurance.**

Seller maintains policies of insurance, including property, fire, workers' compensation, products liability, directors' and officers' liability and other casualty and liability insurance, that is in form and amount as customary for the Business and as may be additionally required under the terms of any contract or agreement. Appendix 1 to this Agreement sets forth (i) a complete and correct list of all insurance policies and fidelity bonds maintained by Seller as of the date of this Agreement. There is no claim pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed. To the Knowledge of the Seller and the Founders, there is no threatened termination of, or pending material premium increase with respect to, any such policies or bonds.

### **Section 3.15 Suppliers.**

Appendix 1 to this Agreement sets forth a correct and complete list of the top 10 suppliers of Seller for its fiscal year ended December 31, 2020 and for the current calendar year through July 31, 2021 and indicates with respect to each the name, address and dollar volume of business with Seller (including the primary categories, based on purchases or sales, of products bought or sold). Seller is not required to provide any material bonding or other financial security arrangements in connection with its transactions with any customer or supplier. Since the Financial Statement Date, no supplier has failed to renew or indicated an intent not to renew its relationship with, or materially reduced its sales to the Seller.

### **Section 3.16 Sufficiency of Assets.**

- a) The Acquired Assets include, and upon the purchase of the Acquired Assets Buyer will own or have the uncontested right to use, all rights, properties (including Seller's Intellectual Property), interests in properties, and assets necessary to permit Buyer to carry on the Business as presently conducted by Seller.
- b) The Seller owns good and transferable title to all of the Acquired Assets, free and clear of any Liens.
- c) The Acquired Assets constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary to operate the Business in the manner presently operated by Seller.

### **Section 3.17 Product Warranty, Recalls, and Product Liability.**

Appendix 1 to this Agreement sets forth the aggregate annual cost to the Business of performing product warranty obligations for each of the previous six (6) fiscal years and the current fiscal year through July 31, 2021. The Seller has not materially changed the scope of its contractual obligations for standard warranties with respect to the return, repair or replacement of products manufactured or sold in the Business. Set forth in Appendix 1 to this Agreement is a list of all warranty obligations, whether or not based on any standard warranty form, which are still in force for products of the Business and where Seller has, after the issuance of the warranty, either (i) postponed the commencement of the warranty period; (ii) extended the duration of the warranty period; or (iii) changed the terms of the warranty, including without limitation the available remedies. To the Knowledge of Seller and Founders, none of the products currently manufactured or sold in the Business has been or currently is the subject of any campaign for replacement, field fix, retrofit, modification or recall.

### **Section 3.18 Accounts Receivable.**

All accounts receivable that are reflected on any balance sheet contained in the Financial Statements or on the accounting records of Seller as of the Closing Date represent or will represent valid obligations arising from sales actually made or services actually performed by Seller in the ordinary course of business. Except to the extent paid prior to the Closing Date, such accounts receivable are or will be as of the Closing Date collectible in an amount not less than the amount reflected on any balance sheet in the Financial Statements, net of the respective reserves shown thereon (which reserves are adequate and calculated consistent with past practice). To Seller's and Founders' Knowledge, there is no material contest, claim, defense or right of setoff, other than returns in the ordinary course of business of Seller, under any Contract with any account debtor of an account receivable relating to the amount or validity of such account receivable. Appendix 1 to this Agreement contains a complete and accurate list of all accounts receivable as of the date of the balance sheet contained in the Current Financial Statements, which list sets forth the aging of each such account receivable.

### **Section 3.19 Inventories.**

Except as listed on Appendix 1 to this Agreement, all items included in the Inventories consist of a quality and quantity usable and, with respect to finished goods, saleable, in the ordinary course of business of Seller except for obsolete items and items of below-standard quality, all of which have been written off or written down to net realizable value in the balance sheets contained in the Financial Statements. Seller is not in possession of any inventory not owned by Seller, including goods already sold. All of the Inventories have been valued at the lower of cost or net realizable value on a first in, first out basis. Inventories now on hand that were purchased after the date of the balance sheet contained in the Current Financial Statements were purchased in the ordinary course of business of Seller at a cost not exceeding market prices prevailing at the time of purchase. The quantities of each item of Inventories (whether raw materials, work-in-process or finished goods) are not excessive but are reasonable in the present circumstances of Seller. Work-in-process Inventories are now valued, and will be valued on the Closing Date, according to consistent and sound accounting practices for the periods and dates presented.

### **Section 3.20 Solvency.**

- a) Seller is not now insolvent and will not be rendered insolvent by any of the transactions contemplated hereby. As used in this Section, "insolvent" means that the sum of the debts and other probable liabilities of Seller exceeds the present fair saleable value of Seller's assets.
- b) Immediately after giving effect to the consummation of the transactions contemplated hereby: (i) Seller will be able to pay its liabilities as they become due in the usual course of its business; (ii) Seller will not have unreasonably small capital with which to conduct its present or proposed business; (iii) Seller will have assets (calculated at fair market value) that exceed its liabilities; and (iv) taking into account all pending and threatened litigation, final judgments against Seller in actions for money damages are not reasonably anticipated to be rendered at a time when, or in amounts such that, Seller will be unable to satisfy any such judgments promptly in accordance with their terms (taking into account the maximum probable amount of such judgments in any such actions and the earliest reasonable time at which such judgments might be rendered) as well as all other obligations of Seller. The cash available to Seller, after taking into account all other anticipated uses of the cash, will be sufficient to pay all such debts and judgments promptly in accordance with their terms.

### **Section 3.21 Title to Assets.**

Seller has, and will transfer to Buyer on the Closing Date, good and valid title to all of the Acquired Assets free and clear of all Liens.

### **Section 3.22 Related Party Transactions.**

No officer, director or manager of Seller or any of its Subsidiaries, or, to Seller's and Founders' Knowledge, any entity in which any of the foregoing Persons owns greater than 5% of the equity interests of such entity, is a party to any Contract related to the Business.

### **Section 3.23 CARES Act.**

The Seller has not (a) obtained a Paycheck Protection Program Loan pursuant to Section 1102 of the CARES Act, (b) applied for loan forgiveness pursuant to Section 1106 of the CARES Act, (c) deferred payment of the employer portion of the United States Federal Insurance Contributions Act and Medicare Tax pursuant to Section 2302 of the CARES Act, (d) claimed the employee retention credit pursuant to Section 2301 of the

CARES Act, or (e) had employees teleworking from a state other than their regular work location on a regular and consistent basis as part of any COVID-19 Measure.

**Section 3.24 Full Disclosure.**

To the Knowledge of Seller and Founders, no representation or warranty of Seller in this Agreement or in any exhibit, certificate, or schedule attached or furnished, contains any untrue statement of material fact or omits to state any fact necessary in order to make the statements contained therein, in light of the circumstances in which they are made, not misleading. All such statements, representations, warranties, exhibits, certificates, and schedules shall be true and complete in all material respects on and as of the Closing Date. Seller and Founders do not have Knowledge of any fact that has specific application to Seller (other than general economic or industry conditions) and that may materially adversely affect the assets, business, prospects, financial condition or results of operations of Seller.

**Article IV. REPRESENTATIONS AND WARRANTIES OF BUYER.**

Buyer hereby represents and warrants to Seller as of the date hereof and as of the Closing Date as follows:

**Section 4.01 Organization.**

Buyer is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the requisite corporate power to carry on its business as now conducted.

**Section 4.02 Authority for this Agreement.**

Buyer has all necessary corporate power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement or to consummate the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by Buyer and, assuming due authorization, execution, and delivery of this Agreement by Seller, constitutes a legal, valid, and binding agreement of Buyer, enforceable in accordance with its terms against Buyer, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar Laws relating to creditors' rights generally and by general principles of equity.

**Section 4.03 Consents and Approvals.**

The execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby require no consent, approval, authorization, or filing with or notice to any Governmental Authority, other than any actions or filings the absence of which are not reasonably likely to prevent, materially delay or materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement.

**Section 4.04 Non-Contravention.**

The execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions contemplated by this Agreement do not and will not (with or without notice or lapse of time or both) (i) contravene, conflict with, or result in any violation or breach of any provision of the certificate of incorporation or bylaws of Buyer; (ii) contravene, conflict with or result in a violation or breach of any Law or

Order; or (iii) require any consent or approval under, violate, conflict with, result in any breach of any loss of any benefit under, or constitute a change of control or Default under, or result in termination or give to others any right of termination, vesting, amendment, acceleration or cancellation of any Contract to which Buyer is a party, or by which its properties or assets may be bound or affected, with such exceptions, in the case of each of this Section , as would not reasonably be expected to prevent, materially delay or materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement.

#### **Section 4.05 Brokers.**

Buyer has not employed or engaged any broker, finder or investment banker or incurred any liability for any investment banking fees, financial advisory fees, brokerage fees or finders' fees in connection with this Agreement or the transactions contemplated hereby.

#### **Section 4.06 Legal Proceedings.**

There are no material actions, suits or proceedings pending, or to the Knowledge of Buyer, threatened against, relating to or affecting the Buyer which would reasonably be expected to result in the issuance of any order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

### **Article V. COVENANTS.**

#### **Section 5.01 Non-Competition and Non-Solicitation.**

- a) During the period commencing on the date of this Agreement and ending on the fourth anniversary of the Closing Date (the "**Restricted Period**"), Seller and Founders shall not, and shall cause its Affiliates not to, directly or indirectly, engage in, own, be employed by, consult with, or otherwise render services to any Person who is engaged in any Competing Business;
- b) Until the third anniversary of the Closing Date (the "**Non-Solicitation Period**"), Seller and Founders shall not, and shall cause its Affiliates not to, directly or indirectly:
  - i. induce or attempt to induce or encourage others to induce or attempt to induce, any Person who is, or during the Non-Solicitation Period, becomes an independent contractor and/or consultant to terminate such Person's employment with Buyer; or
  - ii. induce or attempt to induce or encourage others to induce or attempt to induce any Person who is a customer of Buyer to cease doing business with Buyer or any of its Affiliates, reduce the amount of business that it does (or, but for that inducement or encouragement, would do) with Buyer or any of its Affiliates, or otherwise materially alter their relationship with Buyer or any of its Affiliates or to place their business with any Person engaged in the Competing Business (other than Buyer and its Affiliates).
  - iii. If Seller is in breach of either subsection (i) or subsection (ii) above, then the time periods set forth in those subsections shall be extended by the length of time during which Seller is in breach of any of those provisions.
- c) Seller and Founders acknowledge and agree that Buyer would be irreparably damaged if this Sections are not complied with in accordance with their specific terms or are otherwise breached and that monetary damages would not be sufficient to compensate Buyer for such damage. Accordingly, it is agreed that Buyer shall be entitled to an injunction or injunctions to prevent breaches of this Section and shall have the right to specifically enforce this Section and its terms

and provisions against Seller and the Founders in addition to any other remedy to which Buyer may be entitled under this Agreement, at law or in equity.

- d) It is the intent of the Parties that each provision of this Section be adjudicated valid and enforced to the fullest extent permissible under the laws and public policies of each jurisdiction in which adjudication of the validity or enforcement of this Section is sought. In furtherance of the foregoing, each provision of this Section shall be severable from each other provision, and any provision of this Section that is prohibited or unenforceable in any jurisdiction shall be subject to the following: (i) if the prohibited or unenforceable provision is contrary to or conflicts with any requirement of any statute, rule or regulation in effect in the jurisdiction, then the requirement shall be incorporated into, or substituted for, the prohibited or unenforceable provision to the minimum extent necessary to make the provision valid or enforceable; (ii) the Governmental Authority or arbitrator considering the matter is authorized to (or, if that Governmental Authority or arbitrator is unwilling or fails to do so, then the Parties shall) amend the unenforceable provision to the minimum extent necessary to make the provision valid or enforceable, and the Parties consent to the entry of an order amending the provision to that extent for that purpose; and (iii) if any unenforceable provision cannot be or is not reformed and made valid or enforceable under this Section, then the prohibited or unenforceable provision shall be ineffective in that jurisdiction to the minimum extent necessary to make the remainder of this Section valid or enforceable in that jurisdiction. Any application of the foregoing provisions to any provision of this Section shall not (x) affect the validity or enforceability of any other provision of this Agreement or (y) prevent the prohibited or unenforceable provision from being adjudicated valid or enforced as written in any other jurisdiction.
- e) Seller agrees that during the Restricted Period it will not, either on its own account or directly or indirectly in conjunction with or on behalf of any other Person, disparage or otherwise speak or write negatively about Buyer or the Products or cause any other person to disparage or speak or write negatively about Buyer or the Products.

#### **Section 5.02 Access to Information.**

- a) For so long as a Party maintains books, records, files, and other information that is subject to this Section, during normal business hours following reasonable prior notice, such Party will permit the other Party and its accountants, counsel, and other Representatives to have reasonable access to and examine and make copies of all books and records relating to the Business and all other books and records of a Party which are reasonably requested by the other Party and are necessary or useful in connection with: (i) any Tax inquiry, audit, investigation or dispute with a third party; (ii) any Proceeding by any Governmental Authority or any dispute with any third party reasonably requiring access to any such books and records; or (iii) with respect to Buyer, transactions or events occurring prior to the Closing and that relate to the Acquired Assets; provided, however, that a Party may restrict the foregoing access to the extent that (i) any Law requires such Party to restrict or prohibit access to any such properties or information, or (ii) the disclosure of such information to the other Party or its Representatives would violate confidentiality obligations owed to a third party and such confidentiality obligations were in effect prior to the execution and delivery of this Agreement, or (iii) such restriction is required to comply with any COVID-19 Measures. The Party requesting access to any such books and records or other information shall bear all of the out of pocket costs and expenses (including attorney's fees but excluding reimbursement for salaries and employee benefits) reasonably incurred in connection with providing access to and copies of such books and records or other information.
- b) Buyer and Sellers will direct their respective employees (without substantial disruption of employment) to render any assistance that Buyer or Seller may reasonably request in any examination in accordance with this Section.

- c) Neither Buyer nor Seller will destroy any books, records, files or other information or data that are subject to this Section until the expiration of the applicable regulatory record retention period under applicable Laws (giving effect to any and all extensions or waivers) without giving at least twenty (20) days' prior written notice to the other Party (the "**Retaining Party**"). Upon receipt of such notice, the Retaining Party may (i) cause to be delivered to it the books and records intended to be destroyed, at its expense or (ii) notify the Party intending to destroy the books and records that it will pay the cost of storing and maintaining such books and records (including any necessary costs of moving such books and records to a location under control of the Retaining Party and the costs of reviewing and removing from such books and records any information that the Retaining Party is not entitled to receive).
- d) Any investigation pursuant to this Section shall be conducted in such manner as not to interfere unreasonably with the conduct of the Business.
- e) Information obtained by Buyer pursuant to Section shall not prejudice any of Buyer's rights or remedies under this Agreement.
- f) After the Closing Date, Buyer shall retain for a period consistent with Buyer's record-retention policies and practices those records of Seller delivered to Buyer. Seller shall have the right to retain copies of any and all such records for all legitimate purposes of Seller, including preparation of financial statements and Tax Returns. Buyer also shall provide reasonable access thereto, during normal business hours and on at least three days' prior written notice, to enable them to prepare financial statements or tax returns or deal with tax audits.

#### **Section 5.03     Efforts to Closing; Government Filings.**

Subject to the terms and conditions of this Agreement, each of Seller, Founders and Buyer shall use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, and to assist and cooperate with the other Party in doing, all things necessary, proper or advisable under Law to consummate transactions contemplated by this Agreement, including (i) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from Governmental Authorities and the making of all necessary registrations and filings (including filings with Governmental Authorities, if any) and the taking of all reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Authorities, (ii) the delivery of required notices to, and the obtaining of required consents or waivers from, third parties, and (iii) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated hereby and to fully carry out the purposes of this Agreement.

#### **Section 5.04     Public Announcements.**

Buyer and Seller shall consult with each other before issuing any press release or making any other public statement with respect to this Agreement or the transactions contemplated hereby and shall not issue any such press release or make any such other public statement without the consent of the other Party, which shall not be unreasonably withheld, conditioned, or delayed.

#### **Section 5.05     Notification of Certain Matters.**

Except as prohibited by Law, Seller shall promptly notify Buyer in writing of:

- a) any inaccuracy of any representation or warranty contained in this Agreement that could reasonably be expected to cause the conditions set forth in Article VI. hereof not to be satisfied;
- b) the failure of Seller or Founders to perform in any material respect any obligation to be performed by it under this Agreement;

- c) any notice or other communication from any Person alleging that notice to or consent of such Person is required in connection with the transactions contemplated by this Agreement;
- d) any notice or other communication from any customer, distributor or reseller to the effect that such customer, distributor or reseller is terminating or otherwise materially adversely modifying its relationship with the Business as a result of the transactions contemplated by this Agreement;
- e) any material notice or other material communication from any Governmental Authority in connection with the transactions contemplated by this Agreement, and a copy of any such notice or communication shall be furnished to Buyer;
- f) any filing or notice made by Seller with any Governmental Authority in connection with the transactions contemplated by this Agreement, and a copy of any such filing; and
- g) any actions, suits, claims, investigations or Proceedings commenced or, to the Knowledge of Seller or Founders, threatened against, relating to or involving or otherwise affecting the Business or the Acquired Assets or that relate to the consummation of the transactions contemplated by this Agreement.

#### **Section 5.06 No Negotiation.**

Except as otherwise contemplated in this Agreement, Seller and Founders shall not, and directly or indirectly, take (and the Seller shall not authorize any of its Representatives or, to the extent within Seller's control, other Affiliates to take) any action to (a) encourage, solicit, initiate, or facilitate any Acquisition Proposal, (b) enter into any agreement with respect to any Acquisition Proposal or enter into any agreement requiring it to abandon, terminate or fail to consummate the transactions contemplated by this Agreement, or (c) participate in any way in negotiations with, or furnish any information to, any Person in connection with, or the making of any proposal that constitutes an Acquisition Proposal. Upon execution of this Agreement, Seller shall, and shall cause its Representatives to, cease immediately and cause to be terminated any and all existing discussions or negotiations with any Persons conducted heretofore with respect to an Acquisition Proposal other than in connection with the transactions contemplated hereby.

#### **Section 5.07 Payment of All Taxes Resulting from Sale of Assets by Seller.**

Seller shall pay in a timely manner all Taxes resulting from or payable in connection with the sale of the Acquired Assets pursuant to this Agreement, regardless of the person or entity on whom such Taxes are imposed by Laws. Under no circumstances shall this Section be interpreted to (a) obligate Seller to pay the income Taxes of any of its Members or (b) create any rights, as a third party beneficiary or otherwise, in favor of any person or entity other than Buyer or Seller.

#### **Section 5.08 Payment of Other Retained Liabilities.**

In addition to payment of Taxes pursuant to Section 5.07, Seller shall pay, or make adequate provision for the payment, in full all of the Retained Liabilities.

#### **Section 5.09 Post-Closing Transfers.**

If at any time or from time to time after the Closing Date, (i) Seller or Founders, on the one hand, or Buyer, on the other, shall receive or otherwise possess any asset (including cash) that should belong to Buyer, on the one hand, or Seller, on the other, pursuant to this Agreement, such Person shall promptly transfer, or cause to be transferred, such asset to the Person so entitled thereto. Prior to any such transfer in accordance with this Section, the Person receiving or possessing such asset shall hold such asset in trust for such other Person. Without limiting the foregoing, in the event that Seller receives payment in respect of any accounts receivable of Seller (including payment to any lock-box account maintained by Seller prior to the Closing for such purpose), Seller shall deliver such payments to an account designated in writing by Buyer by wire transfer of

immediately available funds. For the avoidance of doubt, any moneys received by the Seller from post-Closing sales shall be swept up into the Buyer's bank account, once such an account is established.

#### **Section 5.10 Reports and Returns.**

After the Closing, Seller promptly shall prepare and file all reports and returns required by Laws relating to the business of Seller as conducted using the Acquired Assets, to and including the Closing.

#### **Section 5.11 Customer and Other Business Relationships.**

After the Closing, Seller and Founders will cooperate with Buyer in its efforts to continue and maintain for the benefit of Buyer those business relationships of Seller existing prior to the Closing and relating to the Business, including relationships with lessors, employees, regulatory authorities, licensors, customers, suppliers and others, and Seller will satisfy the Retained Liabilities in a manner that is not detrimental to any of such relationships. Seller will refer to Buyer all inquiries relating to the Business. Seller shall not, and shall use its best efforts to be sure that none of its Members, Managers, employees, or agents shall, take any action that would tend to diminish the value of the Acquired Assets after the Closing or that would interfere with the Business, including disparaging the name of the Business.

### **Article VI. CLOSING AND CLOSING CONDITIONS.**

#### **Section 6.01 Conditions Precedent to Obligations of Buyer.**

The obligations of Buyer under this Agreement to proceed with the Closing shall be subject to the satisfaction by Seller on or prior to the Closing Date of each of the following conditions precedent:

- a) **Accuracy of Representations and Warranties.** The representations and warranties of Seller set forth in this Agreement shall be true and correct in all respects (other than de minimis inaccuracies) on and as of the Closing Date (except for such representations and warranties that are made as of a specific date, which representations and warranties shall be true and correct as of such date).
- b) **Performance and Compliance.** Seller shall have performed or complied in all material respects with each covenant and agreement to be performed or complied with by it under this Agreement on or prior to the Closing Date.
- c) **Litigation.** There shall be no pending or threatened action by or before any Governmental Entity or arbitrator (i) seeking to restrain, prohibit or invalidate any of the transactions contemplated by this Agreement or (ii) seeking monetary relief against Buyer by reason of the consummation of these transactions, and there shall not be in effect any order, writ, judgment, injunction or decree issued by any Governmental Entity by which Buyer or any of its properties or assets is bound that has that effect.
- d) **Material Adverse Change.** No event shall have occurred and no condition shall exist that constitutes or, with the giving of notice or the passage of time or both, is likely to constitute a Material Adverse Change.
- e) **Accuracy of Schedules.** Examination by Buyer shall not have disclosed any material inaccuracy in the Schedules delivered to Buyer pursuant hereto.
- f) **Condition of Acquired Assets.** On the Closing Date, all of the Acquired Assets shall be in substantially the same condition as at the close of business on the date hereof, except for ordinary use and wear thereof.
- g) **Maintenance of Owned Intellectual Property.** All maintenance and renewal fees for all Intellectual Property owned by Seller shall have been paid in a timely manner, and all requisite acts, preparations and filings of all applications, responses, affidavits and all other documents shall

have been taken in a timely manner in the course of prosecution and maintenance of the Intellectual Property owned by Seller.

- h) **Maintenance of Licensed Intellectual Property.** To the Knowledge of Seller and Founders, all maintenance and renewal fees for all Intellectual Property licensed by Seller shall have been paid in a timely manner, and all requisite acts, preparations and filings of all applications, responses, affidavits and all other documents shall have been taken in a timely manner in the course of prosecution and maintenance of the Intellectual Property licensed by Seller.
- i) **Document Deliverables.** Seller shall have provided duly executed copies of all Ancillary Agreements and other agreements, certificates, instruments of transfer, and other documents and not otherwise provided in this Section.

## **Section 6.02 Conditions Precedent to Obligations of Seller.**

The obligations of Seller under this Agreement to proceed with the Closing shall be subject to the satisfaction by Buyer on or prior to the Closing Date of each of the following conditions precedent:

- a) **Accuracy of Representations and Warranties.** The representations and warranties of Buyer set forth in this Agreement shall be true and correct on and as of the Closing Date.
- b) **Performance and Compliance.** Buyer shall have performed or complied in all material respects with each covenant and agreement to be performed or complied with by it under this Agreement on or prior to the Closing Date.
- c) **Consents and Approvals.** Buyer shall have obtained or made each consent, authorization, approval, exemption, filing, registration or qualification required to be obtained or made by it in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement.
- d) **Litigation.** There shall be no pending action by or before any Governmental Entity or arbitrator seeking to restrain, prohibit or invalidate any of the transactions contemplated by this Agreement, and there shall not be in effect any Governmental Order that has that effect.
- e) **Ancillary Agreement.** Buyer shall have provided duly executed copies of all Ancillary Agreements and other agreements not otherwise provided in this Section.

## **Article VII. INDEMNIFICATION.**

### **Section 7.01 Survival.**

All representations and warranties made in this Agreement shall survive the Closing until the second anniversary of the Closing Date, or, other than (i) the representations and warranties set forth in Section 3.01 (Organization and Corporate Power), Section 3.03; (Non-Contravention; Filings and Consents), Section 4.01 (Organization), and Section 4.02 (Authority for this Agreement) (the representations and warranties referred to in the foregoing clause, collectively, the “**Fundamental Representations**”), which shall survive for a period of 10 years, and (ii) the representations and warranties set forth in (Tax Matters), and Section 3.06 (Intellectual Property), which shall survive until sixty (60) days following the expiration of the applicable statute of limitations. Each of the covenants and agreements made in this Agreement to be performed prior to the Closing shall survive the Closing for a period of eighteen (18) months following the Closing Date, and each of the covenants and agreement made in this Agreement to be performed following the Closing shall survive the Closing until they are fully performed or terminate in accordance with their respective terms.

### **Section 7.02 Indemnification by Seller.**

Except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of Buyer, Seller and the Founders shall jointly and severally defend, indemnify and hold harmless Buyer and

its respective directors, officers, employees and agents (each a **"Seller Indemnitee"**) from and against any and all claims (including without limitation any investigation, action or other proceeding, damages, losses, liabilities, costs and expenses (including without limitation reasonable attorney's fees and court costs)) that constitute, or arise out of or in connection with:

- a) any misrepresentation or breach of warranty under Article III;
- b) any default by Seller or the Founders in the performance or observance of any of its covenants or agreements under this Agreement;
- c) specifically, any claim which may arise from any alleged IP infringements related to the U.S. Patent No. 9,820,514 and
- d) any Retained Liabilities (collectively points a-c, **"Seller's Breach"**)

Any Seller's Breach shall be first set-off against any potential Stability Payment and Earn-Out Payment. If such set-off is not sufficient, the Seller and the Founders shall be jointly and severally liable for any further amounts due to Seller's Breach.

### **Section 7.03 Indemnification by Buyer.**

Buyer shall defend, indemnify and hold harmless Seller and the Founders (each a **"Buyer Indemnitee"**) from and against any and all claims, damages, losses, liabilities, costs and expenses (including without limitation reasonable attorney's fees and court costs) that constitute, or arise out of or in connection with:

- a) any misrepresentation or breach of warranty under Article IV (a **"Buyer Warranty Breach"**);
- b) any default by Buyer in the performance or observance of any of its covenants or agreements under this Agreement; and
- c) any Assumed Liabilities.

### **Section 7.04 Representation, Settlement and Cooperation.**

If any investigation, action or other proceeding (each a **"Proceeding"**) is initiated against any Seller Indemnitee or Buyer Indemnitee (each, an **"Indemnitee"**) and the Indemnitee intends to seek indemnification from Seller or Buyer (each an **"Indemnitor"**), as applicable, under this Article XII on account of the Indemnitee's involvement in the Proceeding, then the Indemnitee shall give prompt notice to the applicable Indemnitor; *provided, however*, that the failure to so notify the Indemnitor shall not relieve the Indemnitor of its obligations under this Article VII, but instead shall reduce those obligations by the amount of damages or increased costs and expenses attributable to the failure to give notice. Upon receipt of notice of a Proceeding for which indemnification is available under this Article VII, the Indemnitor shall diligently defend against the Proceeding on behalf of the Indemnitee at the Indemnitor's own expense using counsel reasonably acceptable to the Indemnitee; *provided, however*, that if the Indemnitor shall fail or refuse to conduct the defense, or if the Indemnitee has been advised by counsel that it may have defenses available to it which are different from or in addition to those available to the Indemnitor or that its interests in the Proceeding are adverse to the Indemnitor's interests, then the Indemnitee may defend against the Proceeding at the Indemnitor's expense. The Indemnitor or Indemnitee, as applicable, may participate in any Proceeding being defended against by the other at its own expense and shall not settle any Proceeding without the prior consent of the other, which consent shall not be unreasonably withheld. The Indemnitor and Indemnitee shall cooperate with each other in the conduct of any Proceeding.

### **Section 7.05 Indemnification Threshold.**

Notwithstanding any other provision of this Agreement, no Indemnitor shall have any indemnification obligations under Section 7.2.(a), or Section 7.3.(a) (other than with respect to a breach of a Fundamental

Representation) unless and until the claims asserted against the applicable Indemnitor exceed \$10,000 in the aggregate (the “**Threshold Amount**”). If indemnification claims exceed the Threshold Amount, the Indemnitor shall be liable for all indemnification claims properly asserted against it, including those comprising the Threshold Amount.

#### **Section 7.06 Indemnification Cap**

Notwithstanding anything herein to the contrary, Seller and Founders shall not be liable to any Buyer Indemnitee for indemnification under this Article VII for any amount in excess of the Consideration payment (the “**Cap Amount**”); *provided, however*, that the Cap Amount shall not apply to any claim based on fraud, intentional misrepresentation or willful misconduct or for or with respect to Losses suffered or incurred by reason of, or arising out of, or based upon any breach of or inaccuracy in any Fundamental Representation.

#### **Section 7.07 Effect of Investigation.**

The rights of Buyer to indemnification or any other remedy under this Agreement shall not be impacted or limited by any knowledge that Buyer may have acquired, or could have acquired, whether before or after the Closing Date, nor by any investigation or diligence by Buyer. Seller hereby acknowledges that, regardless of any investigation made (or not made) by or on behalf of Buyer, and regardless of the results of any such investigation, Buyer has entered into this transaction in express reliance upon the representations and warranties of Seller made in this Agreement.

#### **Section 7.08 Exclusive Remedy.**

Except for: (a) any equitable remedies which the Parties may pursue; (b) actions based on fraud; and (c) for enforcement actions of any kind or nature regarding the terms and provisions of this Article VII, the indemnification under this Section shall be the Parties’ sole and exclusive remedy, each against another, with respect to matters arising under this Agreement.

#### **Section 7.09 Determination of Losses.**

Notwithstanding anything to the contrary in this Agreement, for purposes of the indemnification provisions in this Article VII the determination of (i) whether any representation warranty or covenant has been breached and (ii) the amount of any losses shall be made without giving effect to the terms “material,” “materiality,” “in all material respects,” “Material Adverse Effect,” or any similar qualification contained in the representations, warranties, covenants or agreements herein.

#### **Section 7.10 Punitive, Incidental or Other Special or Indirect Damages.**

In no event shall any indemnifying Party be liable to any indemnified Party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, or loss of business reputation.

### **Article VIII. MISCELLANEOUS.**

#### **Section 8.01 Entire Agreement; Assignment; Amendments.**

This Agreement (including the appendixes to this Agreement) constitutes the entire agreement and supersedes all oral agreements and understandings and all written agreements prior to the date hereof between or on behalf of the Parties with respect to the subject matter hereof. This Agreement shall not be assigned by any Party by operation of law or otherwise without the prior written consent of the other Party

hereto. This Agreement may be amended only by a writing signed by each of the Parties, and any amendment shall be effective only to the extent specifically set forth in that writing.

#### **Section 8.02 Severability; Expenses; Further Assurances.**

If any term, condition or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible. Except as otherwise specifically provided in this Agreement, each Party shall be responsible for the expenses it may incur in connection with the negotiation, preparation, execution, delivery, performance and enforcement of this Agreement. The Parties shall from time to time do and perform any additional acts and execute and deliver any additional documents and instruments that may be required by Law or reasonably requested by any Party to establish, maintain or protect its rights and remedies under, or to effect the intents and purposes of, this Agreement.

#### **Section 8.03 Notices.**

All notices and other communications pursuant to this Agreement must be in writing and will be deemed to have been duly delivered and received (i) four Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service; (iii) if sent by e-mail in portable document format (PDF) or similar electronic attachment (A) on a Business Day before 5:00 p.m. in the time zone of the receiving Party, when transmitted and the sender has received confirmation of receipt by the recipient and (B) on a day other than a Business Day or after 5:00 p.m. in the time zone of the receiving Party, and the sender has received confirmation of receipt by the recipient, on the following Business Day; or (iv) immediately upon delivery by hand or by fax (with a written or electronic confirmation of delivery), in each case to the intended recipient as set forth below:

If to Seller, to:

Mr. Vitet

18 Hawthorn Road  
Marblehead, Massachusetts USA 01945

E-mail: alex@tribe-wod.com

Mr. Bane

23 Hawthorn Road,  
Marblehead, Massachusetts USA 01945

E-mail: jared.bane@tribe-wod.com

With a concurrent copy (which alone shall not constitute sufficient notice) to:

Glovsky & Glovsky LLC  
8 Washington Street  
Beverly, Massachusetts 01915  
Attention: Brandon M. Ruggieri, Esq.

Email: [bruggieri@glovsky.com](mailto:bruggieri@glovsky.com)

If to Buyer, to:

Factory 14 UK Acquisition IV Ltd.

11 Laura Place Bath, United Kingdom, BA2 4BL

Attention: Radek Pawlowski

E-mail: [radek@factory14.lu](mailto:radek@factory14.lu) and [legal@factory14.com](mailto:legal@factory14.com)

**Section 8.04 Governing Law. No Jury Trial.**

- a) This Agreement, and any dispute arising out of, relating to, or in connection with this Agreement, shall be governed by and construed in accordance with the Laws of Commonwealth of Massachusetts.
- b) EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR OTHER PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY HERETO CERTIFIES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY ACTION, SUIT OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 8.05 Descriptive Headings.**

The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

**Section 8.06 Parties in Interest.**

This Agreement shall be binding upon and inure solely to the benefit of the Parties, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

**Section 8.07 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. At the Closing, signature pages of counterparts may be exchanged by electronic transmittal of scanned images thereof, in each case subject to

appropriate customary confirmations in respect thereof by the signatory for the Party providing a scanned image and that Party's closing counsel.

#### **Section 9.9. Interpretation.**

The words "hereof," "herein," "hereby," "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified. Whenever the words "include," "includes" or "including" are used in this Agreement they shall be deemed to be followed by the words "without limitation." The words describing the singular number shall include the plural and vice versa, words denoting either gender shall include both genders and words denoting natural Persons shall include all Persons and vice versa. The phrases "the date of this Agreement," "the date hereof," "of even date herewith" and terms of similar import, shall be deemed to refer to the date set forth in the preamble to this Agreement. Any reference in this Agreement to a date or time shall be deemed to be such date or time in New York City, unless otherwise specified. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Person by virtue of the authorship of any provision of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on its behalf by its officers thereunto duly authorized, all at or on the date and year first above written.

-----

**Factory 14 UK Acquisition IV Ltd**

DocuSigned by:  
By: Guilherme Steinbruch  
33B7D41C27E0413...  
Name: Guilherme Steinbruch  
Title: Director

DocuSigned by:  
By: Marcos Ramirez  
E995A9A8D65043B...  
Name: Marcos Ramirez  
Title: Director

**TRIBE WOD LLC**

DocuSigned by:  
By: Alex Vitet  
E7D9AEDB499D4EA...  
Name: Mr. Vitet  
Title: Manager

DocuSigned by:  
By: Mr. Bane  
E060C6D1492F405...  
Name: Mr. Bane  
Title: Manager

\*\*\*

**Mr. Vitet, as Founder**

DocuSigned by:  
By: Alex Vitet  
E7D9AEDB499D4EA...  
Founder

**Mr. Bane, as Founder**

DocuSigned by:  
By: Mr. Bane  
E060C6D1492F495...  
Founder

# APPENDIX 1

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 [Signature] [Signature] [Signature] [Signature]

<b>Excluded Assets</b>	<ul style="list-style-type: none"> <li>Cash</li> <li>Cash in Seller's PayPal account (\$6,265.06 as of August 16, 2021)</li> <li>UPS claims reimbursements</li> </ul>
<b>Assumed Contracts</b>	<ul style="list-style-type: none"> <li>Buyer to assume all pending Purchase Orders as detailed on Exhibit 1 – Inventory Calculations</li> </ul>
<b>Material Contracts</b>	<ul style="list-style-type: none"> <li>Exclusive Right to Sell effective August 2020 between Seller and Guangzhou Huasheng Tourist Articles Co, Ltd.</li> <li>Commercial Lease dated July 24, 2020 between Lime Street Realty Limited Partnership and Exonaute, LLC d/b/a Tribe-WOD</li> </ul>
<b>Assumed Liabilities</b>	<ul style="list-style-type: none"> <li>Buyer to assume all pending Purchase Orders as detailed on Exhibit 1 – Inventory Calculations</li> </ul>
<b>Intellectual Property</b>	<ul style="list-style-type: none"> <li>Internet domains:               <ul style="list-style-type: none"> <li>tribe-wod.com</li> </ul> </li> <li>Seller's Amazon Storefronts</li> <li>Seller's Shopify accounts</li> <li>Seller's US trademarks (pending Applications):               <ul style="list-style-type: none"> <li>90543242</li> <li>90543244</li> </ul> </li> <li>Seller's patents (pending Application):               <ul style="list-style-type: none"> <li>29799070</li> </ul> </li> <li>Seller's social media accounts on Facebook, Instagram, Twitter and any other social media platform</li> <li>Any and all standard operating procedures (SOPs)</li> </ul>
<b>Employees</b>	<ul style="list-style-type: none"> <li>Vincent M. Chandler</li> <li>Jack N. Dalton</li> <li>Francis M. Raboy</li> <li>Mackenzie L. Rubitschung</li> </ul>
<b>Independent contractors and consultants</b>	<ul style="list-style-type: none"> <li>None</li> </ul>
<b>Insurance policies</b>	<ul style="list-style-type: none"> <li>08 WEC AH7C02</li> <li>08 SBA AH7BXE</li> </ul>
<b>Threatened Claims</b>	<ul style="list-style-type: none"> <li>Buyer received a Cease and Desist letter from Attorney John F. Wicks dated August 10, 2020 alleging infringement of U.S. Patent No. 9,820,514. Seller, through patent counsel Diamant Patent Law, responded in correspondence dated August 27, 2020 and November 20, 2020. Seller ultimately elected to voluntarily stop selling the allegedly infringing product. Seller has received no further correspondence on this matter since November 20, 2020. Buyer has been provided with copies of all correspondence on this matter referenced herein.</li> </ul>

<b>Leases</b>	<ul style="list-style-type: none"> <li>Commercial Lease dated July 24, 2020 by and between Lime Street Realty Limited Partnership, as Lessor, and Exonaute, LLC, as Lessee, as to the premises located at 100-200 Hoods Lane, Marblehead, Massachusetts</li> </ul>
<b>Inventory</b>	<ul style="list-style-type: none"> <li>Seller has less than 50 units left of the version of the weighted vest that had been subject to the Cease and Desist letter more fully described above in the section entitled "Threatened Claims". As described herein, Seller voluntarily elected to stop selling the allegedly infringing product. As a result, Seller has less than 50 of these remaining vests that are not saleable.</li> </ul>
<b>Complete list of suppliers</b>	<ul style="list-style-type: none"> <li>Guangzhou Huasheng Tourist Articles Co, Ltd.</li> <li>Precision Cast and Forge (A Division of H.G. Carroll &amp; Associates, Ltd.)</li> <li>Founder Industrial Products Co.</li> <li>Yiwu Junben e-commerce Company</li> <li>Advanced Cutting Systems, Inc.</li> <li>Sihui Hongyuan Metal Products Co. Lt</li> <li>SMA/Shuimin AG</li> </ul>
<b>Aggregate annual cost to the business of performing product warranty obligations for each of the previous four (4) fiscal years and the current fiscal year through July 31, 2021.</b>	<ul style="list-style-type: none"> <li>\$0</li> </ul>

**APPENDIX 2**

**Exhibit 1**

**FINAL PURCHASE PRICE CALCULATION**

[attached on separate sheets]

**Exhibit 2**

**EARN OUT PAYMENT CALCULATION**

[attached on separate sheets]

### APPENDIX 3

#### ASSIGNMENT AND ASSUMPTION AGREEMENT

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** is entered into as of September 1<sup>st</sup>, 2021 (this "**Agreement**") by and between

- A. **TRIBE WOD LLC**, a limited liability company under the laws of the Commonwealth of Massachusetts, U.S.A., with the registered address of 100 Hoods Lane, Suite 2111, Marblehead 01945, MA, USA, with the company number 001454994 ("**Assignor**");
- B. **Mr. Alexandre H. Vitet**, a U.S. citizen, residing at the address of 18 Hawthorn Road, Marblehead, Massachusetts, USA 01945, who is the ultimate owner of 75% of the membership interest of the Seller and a Manager of the Seller ("**Mr. Vitet**") and **Mr. Jared Bane**, a U.S. citizen, residing at the address of 23 Hawthorn Road, Marblehead, Massachusetts, USA 01945, who is the ultimate owner of 25% of the membership interest of the Seller and a Manager of the Seller ("**Mr. Bane**", and jointly with Mr. Vitet and the Assignor, the "**Assignors**").
- C. **Factory 14 UK Acquisition IV Ltd**, a limited liability company incorporated under the laws of England and Wales, with the registered address of 11 Laura Place, Bath, BA2 4BL, United Kingdom (the "**Assignee**").

WHEREAS, the Assignors and the Assignee have entered into a certain Asset Purchase Agreement of even date herewith (the "**APA**") pursuant to which, among other things, the Assignors desire to assign all of its rights, interests and obligations under certain contracts to which it is a party to Assignee as set forth herein, and Assignee wishes to assume such rights, interests and obligations.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual agreements and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Assignment.** Assignors hereby assign and convey to Assignee for the benefit of Assignee, its successors and assigns, all of Assignors' right, title and interest in, to and under the contracts set forth in the APA (the "**Assumed Contracts**"), together with all rights, privileges and benefits appertaining thereto (collectively with the Assumed Contracts, the "**Assigned Rights**").
2. **Assumption.** Assignee hereby accepts the assignment and conveyance of the Assigned Rights by Assignor pursuant to paragraph 1 above and does hereby assume, and undertake and agree to hereafter pay, perform and discharge in accordance with their terms any and all of the liabilities, obligations and commitments of Assignor relating to the Assigned Rights.
3. **Benefit of the Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, shall confer on any person or entity other than the parties hereto, and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, including any third party beneficiary rights.
4. **Headings.** The headings used in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
5. **Governing Law.** This Agreement shall be governed by and interpreted and construed in accordance with the substantive laws of the Commonwealth of Massachusetts without regard to applicable choice of law provisions thereof.
6. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which taken together shall constitute one and the same agreement, it being understood that all of the parties hereto need not sign the same counterpart. Delivery of an executed

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counterpart of a signature page to this Agreement by facsimile or electronic mail shall be as effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Assignment and Assumption Agreement as of the date first above written.

\*\*\*

**ASSIGNEE**

**Factory 14 UK Acquisition IV Ltd**

DocuSigned by:  
By: Guilherme Steinbruch  
33B7D41C27E0413...  
Name: Guilherme Steinbruch  
Title: Director

= DocuSigned by:  
By: Marcos Ramirez  
E995A9A8D65043B...  
Name: Marcos Ramirez  
Title: Director

**ASSIGNOR**

**TRIBE WOD LLC**

DocuSigned by:  
By: Alex Vitet  
E7D9AEDB499D4EA...  
Name: Mr. Vitet  
Title: Manager

DocuSigned by:  
By: JB Bane  
E960C6D1492F495...  
Name: Mr. Bane  
Title: Manager

**\*\*\* FOUNDERS AS ASSIGNORS**

**Mr. Vitet, as Founder**

DocuSigned by:  
By: Alex Vitet  
E7D9AEDB499D4EA...  
Founder

**Mr. Bane, as Founder**

DocuSigned by:  
By: JB Bane  
E960C6D1492F495...  
Founder

## APPENDIX 4

### INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This **INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT** (this “**IP Assignment**”), dated as of September 1<sup>st</sup>, 2021, is made by and between:

- A. **TRIBE WOD LLC**, a limited liability company under the laws of the Commonwealth of Massachusetts, U.S.A., with the registered address of 100 Hoods Lane, Suite 2111, Marblehead 01945, MA, USA, with the company number 001454994 (“**Assignor**”);
- B. **Mr. Alexandre H. Vitet**, a U.S. citizen, residing at the address of 18 Hawthorn Road, Marblehead, Massachusetts, USA 01945, who is the ultimate owner of 75% of the membership interest of the Seller and a Manager of the Seller (“**Mr. Vitet**”) and **Mr. Jared Bane**, a U.S. citizen, residing at the address of 23 Hawthorn Road, Marblehead, Massachusetts, USA 01945, who is the ultimate owner of 25% of the membership interest of the Seller and a Manager of the Seller (“**Mr. Bane**”, and jointly with Mr. Vitet, and the Assignor the “**Assignors**”).
- C. **Factory 14 UK Acquisition IV Ltd**, a limited liability company incorporated under the laws of England and Wales, with the registered address of 11 Laura Place, Bath, BA2 4BL, United Kingdom (the “**Assignee**”).

WHEREAS, Assignee, Assignors, and certain other parties signatory thereto are parties to that certain Asset Purchase Agreement of even date herewith (the “**APA**”). Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the APA.

WHEREAS, under the terms of the APA, Assignors have agreed to convey, transfer, and assign to Assignee, among other assets, certain intellectual property of Assignors, and have agreed to execute and deliver this IP Assignment for recording with Governmental Authorities, including, but not limited to, the Australian Patent Office.

WHEREAS, in connection with the consummation of the transactions contemplated by the APA, Assignors hereby desire to convey, transfer, and assign to Assignee all of Assignors’ right, title, and interest in, to, and under all of the Assigned IP (as hereinafter defined), and Assignee hereby desires accept from Assignors all of Assignors’ right, title, and interest in, to, and under all of the Assigned IP.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Assignment. In consideration for the execution of the APA, the payment of the consideration stipulated in the APA, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignors hereby irrevocably convey, transfer, and assign to Assignee, all of which Assignors represent and warrant are exclusively owned by Assignors free and clear of any encumbrances, and Assignee hereby accepts, all of Assignors’ right, title, and interest in, to, and under the following (collectively, the “Assigned IP”):

(a) all inventions, including without limitation, the patents and patent applications set forth on Schedule 1 hereto, and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, re-examinations, and renewals thereof, including all priority rights, and the right to claim priority rights and the privileges and benefits thereof, including those under the International Convention, and all other conventions, and the worldwide right to file applications for said inventions in Assignee’s own name;

(b) all trade secrets, non-public know-how, discoveries, improvements, concepts, ideas, methods, processes, procedures, designs, plans, schematics, invention disclosure statements, drawings, formulae, technical data, specifications, research and development information, technology and product roadmaps and data bases and other proprietary or confidential information, including customer, supplier and mailing lists;

(c) all marks, names, trade dress, whether registered or unregistered, including without limitation, the trademark registrations and applications set forth in Schedule 1 hereto, together with the goodwill connected with the use thereof and symbolized thereby, and all issuances, extensions, and renewals thereof, provided, that with respect to the United States intent-to-use trademark applications, if any, set forth in Schedule 1 hereto, the transfer of such applications accompanies, pursuant to the APA, the transfer of Assignors' business, or portion of the business to which the trademark pertains, and that business is ongoing and existing; all social media names and accounts;

(d) all copyrights, including, without limitation, the copyrights set forth in Schedule 1 hereto, including, without limitation, any unregistered copyrights, applications, any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the copyrights, and in and to all rights corresponding to the foregoing throughout the world, and all the rights embraced therein, including but not limited to, the right to duplicate, reproduce, copy, distribute, display, license, adapt, and prepare derivative works from the copyrights, together with all physical or tangible embodiments of the copyrights, in Assignors' possession or under Assignors' control;

(e) the domain names set forth in Schedule 1 4 hereto;

(f) the intellectual property rights, information or assets arising from or related to the agreements set forth in Schedule 1 hereto;

(g) in the case of each of the foregoing:

- i. all rights of any kind whatsoever of Assignors accruing under any of the foregoing provided by applicable law of any jurisdiction, by international treaties and conventions, and otherwise throughout the world;
- ii. any and all royalties, fees, income, payments, and other proceeds now or hereafter due or payable with respect to any and all of the foregoing; and
- iii. any and all claims and causes of action with respect to any of the foregoing, whether accruing before, on, and/or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal and equitable relief for past, present, and future infringement, dilution, misappropriation, violation, misuse, breach, or default, with the right but not the obligation to sue for such legal and equitable relief and to collect, or otherwise recover, any such damages.

2. Assignors' Use and Enjoyment. The rights, title and interest assigned under Section 1 above shall be for Assignee's own use and enjoyment, and for the use and enjoyment of Assignee's successors, assigns or other legal representatives, as fully and entirely as the same would have been held and enjoyed by Assignors if this IP Assignment had not been made.

3. Remainder of Intellectual Property. Assignors hereby declare that, as to any of the assets, rights or interests intended to be included in the Assigned IP hereby conveyed, the title to which may not have passed to the Assignee by virtue of this Assignment or any transfer or assignment which may from time to time be executed and delivered pursuant to the provisions hereof, Assignors hold such assets, rights or interests in trust for the benefit of the Assignee to transfer and assign the same as the Assignee may from time to time direct. Assignors shall hold such asset or other right for the exclusive benefit of the Assignee and shall take any and all action with respect thereto as the Assignee may reasonably direct for the Assignee's account and benefit.

4. Recordation. Assignors authorize the Commissioner for Patents, the Commissioner for Trademarks, and any other governmental officials to record and register this IP Assignment upon request by Assignee.

5. Cooperation. Assignors agree to perform all commercially reasonable acts deemed necessary or desirable by the Assignee to permit and assist the Assignee, at the Assignee's expense, in obtaining and enforcing the full benefits, enjoyment, rights and title throughout the world in the Assigned IP, to be assigned, or licensed to the Assignee under this Agreement. Such acts may include, but are not limited to, execution of documents and assistance or cooperation (i) in the filing, prosecution, registration, and memorialization of assignment of any applicable patents, copyrights, trademark, mask work, or other applications, (ii) in the enforcement of any applicable patents, copyrights, trademark, mask work, moral rights, trade secrets, or other proprietary rights, and (iii) in other legal proceedings related to the Assigned IP. In the event that the Assignee is unable for any reason to secure Assignors' signature(s) to any document required to file, prosecute, register, or memorialize the assignment of any patent, copyright, trademark, mask work or other applications or to enforce any patent, copyright, mask work, moral right, trade secret or other proprietary right under any Assigned IP (including derivative works, improvements, renewals, extensions, continuations, divisionals, continuations in part, continuing patent applications, reissues, and re-examinations of such Assigned IP), Assignors hereby irrevocably designate and appoint the Assignee and the Assignee's duly authorized officers and agents as Assignors' agents and attorneys-in-fact to act for and on Assignors' behalf and instead of Assignors, (i) to execute, file, prosecute, register and memorialize the assignment of any such application, (ii) to execute and file any documentation required for such enforcement, and (iii) to do all other lawfully permitted acts to further the filing, prosecution, registration, memorialization of assignment, issuance, and enforcement of patents, copyrights, mask works, moral rights, trade secrets or other rights under the Assigned IP, all with the same legal force and effect as if executed by Assignors.

6. Terms of the APA. The terms of the APA, including, but not limited to, the representations, warranties, covenants, agreements, and indemnities relating to the Assigned IP are incorporated herein by this reference. The parties hereto acknowledge and agree that the representations, warranties, covenants, agreements, and indemnities contained in the APA shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the APA and the terms hereof, the terms of the APA shall govern.

7. Successors and Assigns. This IP Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

8. Governing Law. This IP Assignment shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Massachusetts or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Massachusetts.

9. Counterparts. This IP Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this IP Assignment delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this IP Assignment.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this IP Assignment Agreement as of the date first above written.

\*\*\*

**ASSIGNEE**

**Factory 14 UK Acquisition IV Ltd**

DocuSigned by:  
By: Guilherme Steinbruch  
33B7D41C27E0413...  
Name: Guilherme Steinbruch  
Title: Director

DocuSigned by:  
By: Marcos Ramirez  
E995A9A8D65043B...  
Name: Marcos Ramirez  
Title: Director

**ASSIGNOR**

**TRIBE WOD LLC**

DocuSigned by:  
By: Alex Vitet  
E7D9AEDB499D4EA...  
Name: Mr. Vitet  
Title: Manager

DocuSigned by:  
By: JBane  
E960C6D1492F495...  
Name: Mr. Bane  
Title: Manager

**\*\*\* FOUNDERS AS ASSIGNORS**

**Mr. Vitet, as Founder**

DocuSigned by:  
By: Alex Vitet  
E7D9AEDB499D4EA...  
Founder

**Mr. Bane, as Founder**

DocuSigned by:  
By: JBane  
E960C6D1492F495...  
Founder

### **SCHEDULE 1 to the IP Assignment Agreement**

**SELLER'S AND FOUNDERS' PATENTS**  
(registered or pending)

- USPTO Application No. 29/799,070 (Thor Hammers Design Patent)

**SELLER'S AND FOUNDERS' COPYRIGHTS** (registered or pending)

- None

**SELLER'S AND FOUNDERS' TRADEMARKS** (registered or pending)

- USA:
  - USPTO Serial No. 90542242 (Pending Application for design mark); and
  - USPTO Serial No. 90543244 (Pending Application for word mark)

**SELLER'S DOMAIN NAMES**

- tribe-wod.com

**AGREEMENTS**

- None

**APPENDIX 5**  
**FOUNDERS CONSULTING AGREEMENTS**

## **EXHIBIT 2**



## CONSULTING AGREEMENT

This Consulting Agreement ("**Agreement**") sets forth terms under which **Mr. Alexandre H. Vitet**, an individual, having his residential address at 18 Hawthorn Road, Marblehead, Massachusetts, USA 01945 ("**Consultant**") will perform the services set forth below for **Factory 14 Acquisitions S.à r.l.**, a private limited liability company (*société à responsabilité limitée*) formed under the laws of Luxembourg, with its registered office located at 121, Avenue de la Faïencerie L – 1511, Luxembourg, registered with the Luxembourg Register of Commerce and Companies under number B253395 (the "**Company**"). This Agreement is effective as of 1<sup>st</sup> September 2021 ("**Effective Date**"). Consultant and the Company agree as follows:

### 1. Services; Payment; No Violation of Rights or Obligations.

1.1. Services. During the Term (as defined in **Exhibit A**), Consultant agrees to undertake and complete the Services (as defined in **Exhibit A**) in accordance with and on the schedule specified in **Exhibit A**, and to provide the Services with all due care, skill and ability.

1.2. Payment. In full consideration for the Services and other matters under this Agreement (unless and except as expressly noted), the Company will pay Consultant the fee as set forth in **Exhibit A**. Consultant will assume full responsibility for the payment of all federal, state, and local taxes or contributions imposed or required under employment insurance, social security, workers' compensation, and income tax laws arising by reason of the performance of the Services.

1.3. No Violation of Rights or Obligations. Consultant will not (and will not permit others to) knowingly violate any agreement with or rights of any third party in connection with the Services or any activities with or for the Company. In addition, except as expressly authorised by the Company in writing hereafter, Consultant shall not use or disclose at any time a third party's confidential information or intellectual property in connection with the Services without known consent to do so and Company's approval and acceptance of such.

1.4. No Right to Assign/Subcontract. Unless and except to the extent, if any, otherwise specifically agreed upon by the Company in writing (and notwithstanding any other provision of this Agreement), all activity relating to Services will be performed by and only by Consultant.

1.5. Other Activities. During the Term, the Consultant shall devote sufficient time and attention as needed to perform the Services. Consultant may engage in any other business, trade, profession, or other activity which does not place Consultant in a conflict of interest with the Company; provided, that, during the Term, Consultant shall not engage in any business activities that competes with the business of the Company.

1.6. Group Companies. At any time during or after the term of this Agreement, Company may share, grant or assign any of its rights, interests or obligations under and related to this Agreement to any Group Company (as defined), especially with respect to its rights and interests in and to any Inventions or Proprietary Information, each as defined below. For purposes of this Agreement, a "**Group Company**" means any undertaking which is a parent undertaking of the Company or a subsidiary undertaking of the Company or of any such parent undertaking.

### 2. Ownership Rights; Proprietary Information; Intellectual Property Warranties; Publicity.



2.1. Ownership Rights. The Company shall own all right, title and interest (including all intellectual property rights of any sort throughout the world) relating to any and all inventions, works of authorship, designs, logos, know-how, trade secrets, trade names, trademarks, copyrights, patents, ideas, information and other intellectual property made or conceived or reduced to practice, in whole or in part which directly relate to the performance of the Services by Consultant during the Term of this Agreement (collectively, "**Inventions**"). Consultant shall take any and all further actions, if any, to make any and all further assignments necessary to accomplish the foregoing assignment of ownership.

2.2. Inventions. Consultant shall notify Company in writing with full details of any Inventions promptly on their creation and to keep confidential details of all such Inventions. Whenever requested to do so by the Company, and in any event on the termination of this Agreement or completion of Services under Exhibit A, whichever is earlier, Consultant shall promptly deliver to Company all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Inventions and the process of their creation which are in Consultant's possession, custody or power.

2.3. Execution of Documents; Assistance. Consultant shall assist the Company, at the Company's expense, to further evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce and defend any rights assigned.

2.4. Power of Attorney. Consultant hereby irrevocably designates and appoints the Company as its agent with a power of attorney, coupled with an interest, at the Company' sole cost and expense, to act for and on Consultant's behalf to execute and file any document and to do all other lawfully permitted acts to accomplish the assignments set forth herein with the same legal force and effect as if executed by Consultant, however, for clarity's sake, solely as it pertains to Company obtaining or enforcing its rights in or to any Inventions, if any.

2.5. Proprietary Information. Consultant hereby agrees that all Inventions and all other business, technical and financial information (including, without limitation, the identity of and information relating to customers or employees) or other intellectual property developed, learned or obtained by or for or on behalf of Consultant during the period that Consultant is providing the Services that relate to the Company or the business of the Company is "**Proprietary Information.**"

2.6. Intellectual Property Registration. Consultant shall not register nor attempt to register any of the intellectual property rights in the Inventions unless requested to do so by the Company and then in such a case, only in accordance with the Company's express written instructions.

2.7. Intellectual Property Warranty. Consultant warrants to the Company that:

2.7.1. All work under this Agreement shall be Consultant's original work and none of the Services or Inventions nor any development, use, production, distribution or exploitation thereof will infringe, misappropriate or violate any intellectual property or other right of any person or entity (including, without limitation, Consultant);

2.7.2. Consultant has not given and will not give permission to any third party to use any of the Inventions, nor any of the intellectual property rights in or related to the Inventions; and

2.7.3. Consultant is unaware of any use by any third party of any of the Inventions or intellectual property rights in or related to the Inventions.



2.7.4. License Rights. Consultant will not use any third party intellectual property or technology (which is not owned or licensed by the Company) in performance of the Services or incorporate such into any Invention, without Company's prior consent. If any third party intellectual property or technology is used by Consultant to perform the Services or incorporated into any Inventions which cannot be assigned to Company as required above, Consultant hereby grants the Company and its successors a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, sublicensable right and license to exploit such technology and exercise all such intellectual property rights ("Use") in support of the Company's exercise or exploitation of the Services, Inventions, other work or information performed or provided hereunder, or any assigned rights (including any modifications, improvements and derivatives of any of them). If Consultant does not have the right to grant such a license, Consultant shall procure such a license for the Company or its designee.

2.8. Confidentiality. Consultant shall hold in strict confidence and not disclose or, except in performing the Services, use any Proprietary Information. This restriction does not apply to information where Consultant can reasonably demonstrate (a) that such use or disclosure of the information is authorised by the Company or required by law to be disclosed (of which Consultant notified Company prior to such disclosure); (b) that such information is already in, or comes into, the public domain otherwise than through Consultant's unauthorised disclosure (c) that such information which is or was developed outside the scope of this Agreement which is not based on or does not reference in any manner the Proprietary Information.

2.9. Copies. Upon termination or as otherwise requested by the Company, Consultant will promptly provide to the Company all items and copies containing or embodying Proprietary Information (and immediately and permanently destroy any copies Consultant has of such information), provided that Consultant may keep its personal copies of its compensation records and this Agreement.

2.10. No Expectation of Privacy. Consultant also recognizes and agrees that Consultant has no expectation of privacy with respect to the Company's telecommunications, networking or information processing systems (including, without limitation, stored computer files, email messages and voice messages) and that Consultant's activity, and any files or messages, on or using any of those systems may be monitored at any time without notice in compliance with applicable law.

2.11. Publicity Rights. Subject to receiving Consultant's express prior written permission, the Company may use Consultant's name in connection with promotion of its business, products or services.

### **3. Data Protection.**

3.1. Data Protection. The Consultant consents to the Company holding and processing data relating to it for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined under Regulation (EU) 2016/679 (GDPR) and/or such legislation as may give effect to its terms in Luxembourg) relating to the Consultant including, as appropriate:

- 3.1.1. information about the Consultant's physical or mental health or condition solely for purposes of monitoring sickness absence;
- 3.1.2. the Consultant's racial or ethnic origin or religious or similar beliefs solely for purposes of monitoring compliance with equal opportunities legislation; and



3.1.3. information relating to any criminal proceedings in which the Consultant has been involved, for insurance purposes and in order to comply with legal requirements and obligations to third parties.

3.2. Disclosure of Data. The Consultant consents to the Company making such information available to any Group Company and those who provide products or services to the Company such as advisers, regulatory authorities, governmental or quasi-governmental organisations and potential purchasers of the Company or any part of its business, provided that (i) the Company shall require any party receiving such information to maintain the confidentiality of such information, and (ii) the Company shall be responsible for any unauthorized disclosure of such information by any any Group Company and those who provide products or services to the Company.

3.3. Transfer of Consultant's Data. The Consultant consents to the transfer of such information to the Company's business contacts outside the European Economic Area in order to further their business interest.

3.4. Compliance with Data Protection Act. The Consultant shall comply with the Company's data protection policies and relevant obligations under applicable US law and associated codes of practice when processing personal data relating to any employee, worker, customer, client, supplier or agent of the Company.

#### **4. Warranties and Covenants**

4.1. Performance Standards. Consultant covenants and warrants that the Services will be performed in a professional and workmanlike manner and that none of such Services nor any part of this Agreement is or will be inconsistent with any obligation Consultant may have to others.

4.2. Due Authority. Consultant covenants and warrants that he has the full right to allow him to provide the Company with the assignments and rights provided for herein (and has written enforceable agreements with all persons necessary to give him the rights to do the foregoing and otherwise fully perform this Agreement).

4.3. Compliance with Laws. Consultant covenants and warrants that he shall comply with all applicable laws and the Company safety rules in the course of performing the Services;

4.4. Rights. Consultant covenants and warrants that if his work requires a license or other permission, Consultant has obtained that license or permission and the license or permission is in full force and effect as at the Effective Date of this Agreement and at any time when Services are being performed.

#### **5. Term and Termination.**

5.1. Term. This Agreement will commence on the Effective Date and continue for the Term (as defined in **Exhibit A**), unless as otherwise terminated or set forth under this Agreement. This Agreement will terminate on the last day of the Term.

5.2. Without Cause by Either Party. Company may terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice. The Consultant may terminate this Agreement upon sixty (60) days' written notice. In the event termination by Company is without cause, Company shall upon such termination pay Consultant all unpaid, undisputed amounts due for the Services completed through the date of such termination.



5.3. For Cause. If either party breaches a material provision of this Agreement, the other party may terminate this Agreement upon ten (10) days' written notice, unless the breach is cured within the notice period, provided that, if such breach cannot reasonably be cured during such ten (10) day period, but the breaching party has commenced the cure within such ten (10) day period and thereafter is diligently pursuing such cure to completion, then the total aggregate cure period shall extend to thirty (30) days. Notwithstanding the foregoing, this Agreement may be terminated with immediate effect, with no liability to make any further payment to the Consultant, by the Company upon the Company notifying Consultant of such termination if at any time the Consultant:

- 5.3.1. commits any intentional misconduct or gross negligence affecting the business of the Company;
- 5.3.2. commits any material breach or non-observance of any of the provisions of this Agreement beyond any applicable cure period;
- 5.3.3. is convicted of any criminal offence which brings or is likely to bring the Company into disrepute;
- 5.3.4. is incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of thirty (30) days in any 10 -week consecutive period; or
- 5.3.5. commits any material breach of the Company's policies and procedures.

5.4. Effect of Termination. Upon termination of this Agreement, Consultant shall:

- 5.4.1. immediately deliver to the Company all Company property, including any Proprietary Information as required under clause 2.10, in its possession or under its control and irretrievably delete any information relating to the Company stored on any magnetic or optical disk or memory and all matter derived from such sources which is in Consultant's possession or under its control outside the premises of the Company; and
- 5.4.2. if requested, provide a signed statement that Consultant has complied fully with its obligations under this clause.

5.5. Survival. Clauses 1.5, 2-5, 6.2, 7 through 10 of this Agreement and any remedies for breach of this Agreement shall survive any termination or expiration. The Company may communicate the obligations contained in this Agreement to any other (or potential) client or employer of Consultant.

## **6. Relationship of the Parties and Related Matters.**

6.1. Independent Consultant.

- 6.1.1. Notwithstanding any provision hereof, Consultant is an independent contractor and is not an employee, agent, partner or joint venturer of the Company and Consultant shall not bind nor attempt to bind the Company to any contract or commit it to any obligation (including with regard to incurring any expenditures in the name of or for the account of Company) or hold itself out as having the right to do so.
- 6.1.2. Consultant shall accept any directions issued by the Company pertaining to the goals to be attained and the results to be achieved by Consultant, but Consultant



shall be solely responsible for the manner, location and hours in which the Services are performed under this Agreement.

6.2. No Employee Benefits.

6.2.1. Consultant shall not be eligible to participate in any of the Company's employee benefit schemes, plans, insurance arrangements or similar programmes. Consultant shall be fully responsible for and shall indemnify the Company for and in respect of any liability arising from any employment-related claim or any claim based on worker status (including reasonable attorney's costs and expenses) brought by the Consultant or any Consultant personnel or suppliers against the Company arising out of or in connection with the provision of the Services.

6.2.2. The Company shall not provide compensation or unemployment compensation coverage or any other statutory or social benefit to Consultant. Consultant shall comply at Consultant's expense with all applicable laws with regard to itself and if Consultant is not a natural person, then also those required to be fulfilled by it as such. Consultant shall be fully responsible for and shall indemnify the Company for and in respect of any tax, and social security contributions and any other liability or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law.

**7. Indemnification.**

7.1. General Indemnity. Consultant will indemnify the Company, its officers, directors, representatives, agents and any Group Companies (the "Indemnified Parties"), and hold such harmless from and against any and all claims, liabilities, losses, penalties, damages and expenses, including reasonable lawyer's fees and costs of suit ("Losses"), arising out of or in connection with any breach of this Agreement or any other action or inaction by or for or on behalf of Consultant in connection with the Services, including any negligent or reckless act, omission or default in the provision of the Services

7.2. Infringement Indemnity. The Consultant hereby agrees to indemnify the Indemnified Parties and hold such harmless from and against all Losses, or for which the Indemnified Parties may become liable, with respect to any intellectual property infringement claim or other claim relating to the Inventions supplied by the Consultant to Company during the course of providing the Services.

7.3. Procedural Requirements. The Company shall provide Consultant reasonably prompt notice of any such claim or action. Consultant shall have primary control of the defence and the Company agrees to provide reasonable cooperation in the defence of such claim or action. The Company has the right to participate in the defence of any such claim at its expense.

7.4. Maximum Liability. In no event shall Consultant's liability to the Company for any Losses arising out of or related to Section 7 of this Agreement exceed the total of the amounts paid to Consultant pursuant to this Agreement in the one (1) year period preceding the date Consultant receives the notice set forth in Section 7.3 herein.

**8. Assignment.**

8.1. Nature of Services. This Agreement and the Services contemplated hereunder are



personal to Consultant.

8.2. Assignment. Consultant shall not have the right or ability to assign, transfer or subcontract any rights or obligations under this Agreement without the written consent of the Company. Any attempt to do so shall be void. The Company may fully assign, delegate and transfer this Agreement in whole or part.

## 9. Notice.

9.1. Procedure. All notices under this Agreement shall be in writing and shall be deemed given to the party to be notified when: (a) personally delivered to the part or (b) two Business Days following deposit with an internationally recognized overnight courier.

9.2. Business Day. A “**Business Day**” means any day which is not a Saturday, Sunday, or legal holiday in Boston.

9.3. Changes. Each party to this Agreement may change its location for notice under this Agreement by giving notice to the other party in accordance with the notice provisions contained in this clause.

## 10. Miscellaneous.

10.1. Injunctive Relief. Any breach of clause 2, 3 or 4 may cause irreparable harm to the Company for which damages may not be an adequate remedy. As a result, the Company shall be entitled to seek injunctive relief with respect thereto in addition to any other remedies.

10.2. Waiver. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. No changes or modifications or waivers to this Agreement will be effective unless in writing and signed by both parties.

10.3. Severable. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

10.4. Governing Law. This Agreement will be deemed to have been made in and shall be construed pursuant to the laws of the Commonwealth of Massachusetts. The parties irrevocably agree that the state or federal courts of the Commonwealth of Massachusetts USA shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). Notwithstanding the foregoing, this Agreement may be enforced by the Company in any court in the world.

10.5. Headings. Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

10.6. Rights of Third Parties (Contracts). Except with respect to any express designee of the Company, or with respect to any Group Company who shall be express beneficiaries of this Agreement, the parties to this Agreement intend that no term of this Agreement shall be enforceable by or inure to the benefit of a third party.

[rest of the page left intentionally blank; signatures to follow]

**factory 14**

**Mr. Alexandre H. Vitet**  
(Consultant)

By:

DocuSigned by:

*Alex Vitet*

E7D9AEDB499D4EA...

**Factory 14**  
(Company)

By:

DocuSigned by:

*Guilherme Steinbruch*

33B7D41C27E0413

Name:

Guilherme Steinbruch

Title:

Manager

By:

DocuSigned by:

*Marcos Ramirez*

E995A9A8D65043B

Name:

Marcos Ramirez

Title:

Manager



## EXHIBIT A

### A. SERVICES.

- Work expected to be carried out include but are not limited to:
  - Fulfilling the role typically designated to a Chief Design Officer, to include product design, packaging design and other design initiatives and overseeing Tribe WOD's creative direction.
- The location where the services are to be performed may be remote.
- Consultant will maintain adequate communication with the Company and adhere to any reasonable management reporting procedures implemented.

### B. TERM AND EXPECTATION OF HOURS.

1. From the Effective Date until this Agreement is terminated as set forth herein ("**Term**"), unless prevented by ill health or accident, Consultant will devote sufficient time to performing the Services in a manner consistent with timing expectations as may be mutually agreed upon by Consultant and the Company. The parties anticipate Consultant will devote an average of forty (40) hours per week to the Services, provided that Consultant will not be expected to provide Services on US holidays. Consultant and Company agree that there may be certain periods during the Term (not to exceed a total of six (6) weeks in a given year during the Term) during which Consultant will not be actively providing Services, provided that, during such time periods, Consultant shall make arrangements to respond to any requests as to Services within a reasonable time.

- C. FEES AND EXPENSES.** For the first 6 months of the Term, in full consideration for the Services and other matters under this Agreement, the Company will pay the Consultant a fee of **\$12,500** per month exclusive of VAT, if applicable. Thereafter, for the remainder of the Term, the Company will pay the Consultant a fee of **\$13,750** per month exclusive of VAT, if applicable.

## **EXHIBIT 3**



## CONSULTING AGREEMENT

This Consulting Agreement ("**Agreement**") sets forth terms under which **Mr. Jared Bane**, an individual, having his residential address at 23 Hawthorn Road, Marblehead, Massachusetts, USA 01945 ("**Consultant**") will perform the services set forth below for **Factory 14 Acquisitions S.à r.l.**, a private limited liability company (*société à responsabilité limitée*) formed under the laws of Luxembourg, with its registered office located at 121, Avenue de la Faïencerie L – 1511, Luxembourg, registered with the Luxembourg Register of Commerce and Companies under number B253395 (the "**Company**"). This Agreement is effective as of 1<sup>st</sup> September 2021 ("**Effective Date**"). Consultant and the Company agree as follows:

### 1. Services; Payment; No Violation of Rights or Obligations.

1.1. Services. During the Term (as defined in **Exhibit A**), Consultant agrees to undertake and complete the Services (as defined in **Exhibit A**) in accordance with and on the schedule specified in **Exhibit A**, and to provide the Services with all due care, skill and ability.

1.2. Payment. In full consideration for the Services and other matters under this Agreement (unless and except as expressly noted), the Company will pay Consultant the fee as set forth in **Exhibit A**. Consultant will assume full responsibility for the payment of all federal, state, and local taxes or contributions imposed or required under employment insurance, social security, workers' compensation, and income tax laws arising by reason of the performance of the Services.

1.3. No Violation of Rights or Obligations. Consultant will not (and will not permit others to) knowingly violate any agreement with or rights of any third party in connection with the Services or any activities with or for the Company. In addition, except as expressly authorised by the Company in writing hereafter, Consultant shall not use or disclose at any time a third party's confidential information or intellectual property in connection with the Services without known consent to do so and Company's approval and acceptance of such.

1.4. No Right to Assign/Subcontract. Unless and except to the extent, if any, otherwise specifically agreed upon by the Company in writing (and notwithstanding any other provision of this Agreement), all activity relating to Services will be performed by and only by Consultant.

1.5. Other Activities. During the Term, the Consultant shall devote sufficient time and attention as needed to perform the Services. Consultant may engage in any other business, trade, profession, or other activity which does not place Consultant in a conflict of interest with the Company; provided, that, during the Term, Consultant shall not engage in any business activities that competes with the business of the Company.

1.6. Group Companies. At any time during or after the term of this Agreement, Company may share, grant or assign any of its rights, interests or obligations under and related to this Agreement to any Group Company (as defined), especially with respect to its rights and interests in and to any Inventions or Proprietary Information, each as defined below. For purposes of this Agreement, a "**Group Company**" means any undertaking which is a parent undertaking of the Company or a subsidiary undertaking of the Company or of any such parent undertaking.

### 2. Ownership Rights; Proprietary Information; Intellectual Property Warranties; Publicity.



2.1. Ownership Rights. The Company shall own all right, title and interest (including all intellectual property rights of any sort throughout the world) relating to any and all inventions, works of authorship, designs, logos, know-how, trade secrets, trade names, trademarks, copyrights, patents, ideas, information and other intellectual property made or conceived or reduced to practice, in whole or in part which directly relate to the performance of the Services by Consultant during the Term of this Agreement (collectively, "**Inventions**"). Consultant shall take any and all further actions, if any, to make any and all further assignments necessary to accomplish the foregoing assignment of ownership.

2.2. Inventions. Consultant shall notify Company in writing with full details of any Inventions promptly on their creation and to keep confidential details of all such Inventions. Whenever requested to do so by the Company, and in any event on the termination of this Agreement or completion of Services under Exhibit A, whichever is earlier, Consultant shall promptly deliver to Company all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Inventions and the process of their creation which are in Consultant's possession, custody or power.

2.3. Execution of Documents; Assistance. Consultant shall assist the Company, at the Company's expense, to further evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce and defend any rights assigned.

2.4. Power of Attorney. Consultant hereby irrevocably designates and appoints the Company as its agent with a power of attorney, coupled with an interest, at the Company' sole cost and expense, to act for and on Consultant's behalf to execute and file any document and to do all other lawfully permitted acts to accomplish the assignments set forth herein with the same legal force and effect as if executed by Consultant, however, for clarity's sake, solely as it pertains to Company obtaining or enforcing its rights in or to any Inventions, if any.

2.5. Proprietary Information. Consultant hereby agrees that all Inventions and all other business, technical and financial information (including, without limitation, the identity of and information relating to customers or employees) or other intellectual property developed, learned or obtained by or for or on behalf of Consultant during the period that Consultant is providing the Services that relate to the Company or the business of the Company is "**Proprietary Information.**"

2.6. Intellectual Property Registration. Consultant shall not register nor attempt to register any of the intellectual property rights in the Inventions unless requested to do so by the Company and then in such a case, only in accordance with the Company's express written instructions.

2.7. Intellectual Property Warranty. Consultant warrants to the Company that:

2.7.1. All work under this Agreement shall be Consultant's original work and none of the Services or Inventions nor any development, use, production, distribution or exploitation thereof will infringe, misappropriate or violate any intellectual property or other right of any person or entity (including, without limitation, Consultant);

2.7.2. Consultant has not given and will not give permission to any third party to use any of the Inventions, nor any of the intellectual property rights in or related to the Inventions; and

2.7.3. Consultant is unaware of any use by any third party of any of the Inventions or intellectual property rights in or related to the Inventions.



2.7.4. License Rights. Consultant will not use any third party intellectual property or technology (which is not owned or licensed by the Company) in performance of the Services or incorporate such into any Invention, without Company's prior consent. If any third party intellectual property or technology is used by Consultant to perform the Services or incorporated into any Inventions which cannot be assigned to Company as required above, Consultant hereby grants the Company and its successors a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, sublicensable right and license to exploit such technology and exercise all such intellectual property rights ("Use") in support of the Company's exercise or exploitation of the Services, Inventions, other work or information performed or provided hereunder, or any assigned rights (including any modifications, improvements and derivatives of any of them). If Consultant does not have the right to grant such a license, Consultant shall procure such a license for the Company or its designee.

2.8. Confidentiality. Consultant shall hold in strict confidence and not disclose or, except in performing the Services, use any Proprietary Information. This restriction does not apply to information where Consultant can reasonably demonstrate (a) that such use or disclosure of the information is authorised by the Company or required by law to be disclosed (of which Consultant notified Company prior to such disclosure); (b) that such information is already in, or comes into, the public domain otherwise than through Consultant's unauthorised disclosure (c) that such information which is or was developed outside the scope of this Agreement which is not based on or does not reference in any manner the Proprietary Information.

2.9. Copies. Upon termination or as otherwise requested by the Company, Consultant will promptly provide to the Company all items and copies containing or embodying Proprietary Information (and immediately and permanently destroy any copies Consultant has of such information), provided that Consultant may keep its personal copies of its compensation records and this Agreement.

2.10. No Expectation of Privacy. Consultant also recognizes and agrees that Consultant has no expectation of privacy with respect to the Company's telecommunications, networking or information processing systems (including, without limitation, stored computer files, email messages and voice messages) and that Consultant's activity, and any files or messages, on or using any of those systems may be monitored at any time without notice in compliance with applicable law.

2.11. Publicity Rights. Subject to receiving Consultant's express prior written permission, the Company may use Consultant's name in connection with promotion of its business, products or services.

### 3. Data Protection.

3.1. Data Protection. The Consultant consents to the Company holding and processing data relating to it for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined under Regulation (EU) 2016/679 (GDPR) and/or such legislation as may give effect to its terms in Luxembourg) relating to the Consultant including, as appropriate:

- 3.1.1. information about the Consultant's physical or mental health or condition solely for purposes of monitoring sickness absence;
- 3.1.2. the Consultant's racial or ethnic origin or religious or similar beliefs solely for purposes of monitoring compliance with equal opportunities legislation; and



3.1.3. information relating to any criminal proceedings in which the Consultant has been involved, for insurance purposes and in order to comply with legal requirements and obligations to third parties.

3.2. Disclosure of Data. The Consultant consents to the Company making such information available to any Group Company and those who provide products or services to the Company such as advisers, regulatory authorities, governmental or quasi-governmental organisations and potential purchasers of the Company or any part of its business, provided that (i) the Company shall require any party receiving such information to maintain the confidentiality of such information, and (ii) the Company shall be responsible for any unauthorized disclosure of such information by any any Group Company and those who provide products or services to the Company.

3.3. Transfer of Consultant's Data. The Consultant consents to the transfer of such information to the Company's business contacts outside the European Economic Area in order to further their business interest.

3.4. Compliance with Data Protection Act. The Consultant shall comply with the Company's data protection policies and relevant obligations under applicable US law and associated codes of practice when processing personal data relating to any employee, worker, customer, client, supplier or agent of the Company.

#### **4. Warranties and Covenants**

4.1. Performance Standards. Consultant covenants and warrants that the Services will be performed in a professional and workmanlike manner and that none of such Services nor any part of this Agreement is or will be inconsistent with any obligation Consultant may have to others.

4.2. Due Authority. Consultant covenants and warrants that he has the full right to allow him to provide the Company with the assignments and rights provided for herein (and has written enforceable agreements with all persons necessary to give him the rights to do the foregoing and otherwise fully perform this Agreement).

4.3. Compliance with Laws. Consultant covenants and warrants that he shall comply with all applicable laws and the Company safety rules in the course of performing the Services;

4.4. Rights. Consultant covenants and warrants that if his work requires a license or other permission, Consultant has obtained that license or permission and the license or permission is in full force and effect as at the Effective Date of this Agreement and at any time when Services are being performed.

#### **5. Term and Termination.**

5.1. Term. This Agreement will commence on the Effective Date and continue for the Term (as defined in **Exhibit A**), unless as otherwise terminated or set forth under this Agreement. This Agreement will terminate on the last day of the Term.

5.2. Without Cause by Either Party. Company may terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice. The Consultant may terminate this Agreement upon sixty (60) days' written notice. In the event termination by Company is without cause, Company shall upon such termination pay Consultant all unpaid, undisputed amounts due for the Services completed through the date of such termination.



5.3. For Cause. If either party breaches a material provision of this Agreement, the other party may terminate this Agreement upon ten (10) days' written notice, unless the breach is cured within the notice period, provided that, if such breach cannot reasonably be cured during such ten (10) day period, but the breaching party has commenced the cure within such ten (10) day period and thereafter is diligently pursuing such cure to completion, then the total aggregate cure period shall extend to thirty (30) days. Notwithstanding the foregoing, this Agreement may be terminated with immediate effect, with no liability to make any further payment to the Consultant, by the Company upon the Company notifying Consultant of such termination if at any time the Consultant:

- 5.3.1. commits any intentional misconduct or gross negligence affecting the business of the Company;
- 5.3.2. commits any material breach or non-observance of any of the provisions of this Agreement beyond any applicable cure period;
- 5.3.3. is convicted of any criminal offence which brings or is likely to bring the Company into disrepute;
- 5.3.4. is incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of thirty (30) days in any 10 -week consecutive period; or
- 5.3.5. commits any material breach of the Company's policies and procedures.

5.4. Effect of Termination. Upon termination of this Agreement, Consultant shall:

- 5.4.1. immediately deliver to the Company all Company property, including any Proprietary Information as required under clause 2.10, in its possession or under its control and irretrievably delete any information relating to the Company stored on any magnetic or optical disk or memory and all matter derived from such sources which is in Consultant's possession or under its control outside the premises of the Company; and
- 5.4.2. if requested, provide a signed statement that Consultant has complied fully with its obligations under this clause.

5.5. Survival. Clauses 1.5, 2-5, 6.2, 7 through 10 of this Agreement and any remedies for breach of this Agreement shall survive any termination or expiration. The Company may communicate the obligations contained in this Agreement to any other (or potential) client or employer of Consultant.

## **6. Relationship of the Parties and Related Matters.**

6.1. Independent Consultant.

- 6.1.1. Notwithstanding any provision hereof, Consultant is an independent contractor and is not an employee, agent, partner or joint venturer of the Company and Consultant shall not bind nor attempt to bind the Company to any contract or commit it to any obligation (including with regard to incurring any expenditures in the name of or for the account of Company) or hold itself out as having the right to do so.
- 6.1.2. Consultant shall accept any directions issued by the Company pertaining to the goals to be attained and the results to be achieved by Consultant, but Consultant



shall be solely responsible for the manner, location and hours in which the Services are performed under this Agreement.

6.2. No Employee Benefits.

6.2.1. Consultant shall not be eligible to participate in any of the Company's employee benefit schemes, plans, insurance arrangements or similar programmes. Consultant shall be fully responsible for and shall indemnify the Company for and in respect of any liability arising from any employment-related claim or any claim based on worker status (including reasonable attorney's costs and expenses) brought by the Consultant or any Consultant personnel or suppliers against the Company arising out of or in connection with the provision of the Services.

6.2.2. The Company shall not provide compensation or unemployment compensation coverage or any other statutory or social benefit to Consultant. Consultant shall comply at Consultant's expense with all applicable laws with regard to itself and if Consultant is not a natural person, then also those required to be fulfilled by it as such. Consultant shall be fully responsible for and shall indemnify the Company for and in respect of any tax, and social security contributions and any other liability or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law.

**7. Indemnification.**

7.1. General Indemnity. Consultant will indemnify the Company, its officers, directors, representatives, agents and any Group Companies (the "Indemnified Parties"), and hold such harmless from and against any and all claims, liabilities, losses, penalties, damages and expenses, including reasonable lawyer's fees and costs of suit ("Losses"), arising out of or in connection with any breach of this Agreement or any other action or inaction by or for or on behalf of Consultant in connection with the Services, including any negligent or reckless act, omission or default in the provision of the Services

7.2. Infringement Indemnity. The Consultant hereby agrees to indemnify the Indemnified Parties and hold such harmless from and against all Losses, or for which the Indemnified Parties may become liable, with respect to any intellectual property infringement claim or other claim relating to the Inventions supplied by the Consultant to Company during the course of providing the Services.

7.3. Procedural Requirements. The Company shall provide Consultant reasonably prompt notice of any such claim or action. Consultant shall have primary control of the defence and the Company agrees to provide reasonable cooperation in the defence of such claim or action. The Company has the right to participate in the defence of any such claim at its expense.

7.4. Maximum Liability. In no event shall Consultant's liability to the Company for any Losses arising out of or related to Section 7 of this Agreement exceed the total of the amounts paid to Consultant pursuant to this Agreement in the one (1) year period preceding the date Consultant receives the notice set forth in Section 7.3 herein.

**8. Assignment.**

8.1. Nature of Services. This Agreement and the Services contemplated hereunder are



personal to Consultant.

8.2. Assignment. Consultant shall not have the right or ability to assign, transfer or subcontract any rights or obligations under this Agreement without the written consent of the Company. Any attempt to do so shall be void. The Company may fully assign, delegate and transfer this Agreement in whole or part.

## 9. Notice.

9.1. Procedure. All notices under this Agreement shall be in writing and shall be deemed given to the party to be notified when: (a) personally delivered to the part or (b) two Business Days following deposit with an internationally recognized overnight courier.

9.2. Business Day. A “**Business Day**” means any day which is not a Saturday, Sunday, or legal holiday in Boston.

9.3. Changes. Each party to this Agreement may change its location for notice under this Agreement by giving notice to the other party in accordance with the notice provisions contained in this clause.

## 10. Miscellaneous.

10.1. Injunctive Relief. Any breach of clause 2, 3 or 4 may cause irreparable harm to the Company for which damages may not be an adequate remedy. As a result, the Company shall be entitled to seek injunctive relief with respect thereto in addition to any other remedies.

10.2. Waiver. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. No changes or modifications or waivers to this Agreement will be effective unless in writing and signed by both parties.

10.3. Severable. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

10.4. Governing Law. This Agreement will be deemed to have been made in and shall be construed pursuant to the laws of the Commonwealth of Massachusetts. The parties irrevocably agree that the state or federal courts of the Commonwealth of Massachusetts USA shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). Notwithstanding the foregoing, this Agreement may be enforced by the Company in any court in the world.

10.5. Headings. Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

10.6. Rights of Third Parties (Contracts). Except with respect to any express designee of the Company, or with respect to any Group Company who shall be express beneficiaries of this Agreement, the parties to this Agreement intend that no term of this Agreement shall be enforceable by or inure to the benefit of a third party.

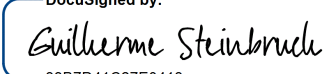
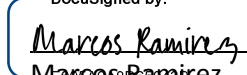
[rest of the page left intentionally blank; signatures to follow]

**factory 14**

**Mr. Jared Bane**  
(Consultant)

By:   
E960C6D1492F495...

**Factory 14**  
(Company)

By:   
33B7D41C27E0413...  
Name: Guilherme Steinbruch  
Title: Manager  
By:   
Name: Marcos Ramirez  
Title: Manager

## EXHIBIT A

### A. SERVICES.

- Work expected to be carried out include but are not limited to:
  - Fulfilling the role typically designated to a Chief Operating Officer, to include general supervision of day-to-day operations of Tribe WOD.
- The location where the services are to be performed may be remote.
- Consultant will maintain adequate communication with the Company and adhere to any reasonable management reporting procedures implemented.

### B. TERM AND EXPECTATION OF HOURS.

1. From the Effective Date until this Agreement is terminated as set forth herein ("**Term**"), unless prevented by ill health or accident, Consultant will devote sufficient time to performing the Services in a manner consistent with timing expectations as may be mutually agreed upon by Consultant and the Company. The parties anticipate Consultant will devote an average of forty (40) hours per week to the Services, provided that Consultant will not be expected to provide Services on US holidays. Consultant and Company agree that there may be certain periods during the Term (not to exceed a total of six (6) weeks in a given year during the Term) during which Consultant will not be actively providing Services, provided that, during such time periods, Consultant shall make arrangements to respond to any requests as to Services within a reasonable time.

- C. FEES AND EXPENSES.** For the first 6 months of the Term, in full consideration for the Services and other matters under this Agreement, the Company will pay the Consultant a fee of **\$12,500** per month exclusive of VAT, if applicable. Thereafter, for the remainder of the Term, the Company will pay the Consultant a fee of **\$13,750** per month exclusive of VAT, if applicable.

## **EXHIBIT 4**



Home of  
Entrepreneurs

**Razor Group GmbH**  
Prinzessinnenstr. 20  
10969 Berlin  
Germany / Deutschland

Razor Group GmbH • Prinzessinnenstr. 20 • 10969 Berlin

Mr. Alexandre H. Vitet,

Mr. Jared Bane

5/20/2022

### **Razor's acquisition of Factory14**

Dear Mr. Alexandre H. Vitet, dear Mr. Jared Bane

This letter is to inform you that factory14 was purchased by Razor Group in May 2022. All existing contractual relationships, unless explicitly communicated otherwise, will be taken over within this acquisition. For the avoidance of doubt, this includes the ASSET PURCHASE AGREEMENT BY AND AMONG TRIBE WOD LLC AND MR. ALEXANDRE H. VITET, MR. JARED BANE AND Factory 14 UK Acquisition IV Ltd DATED AS OF September 1st, 2021.

Razor Group welcomes you as sellers to the HOME OF ENTREPRENEURS and looks forward to the future cooperation.

Best regards,

A handwritten signature in blue ink, appearing to read "Maximilian Meyer".

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Maximilian Meyer, Head of Investments Europe