

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

**USANA HEALTH SCIENCES INC**

CIK: **896264** | IRS No.: **870500306** | State of Incorporation: **UT** | Fiscal Year End: **1228**  
Type: **8-K** | Act: **34** | File No.: **001-35024** | Film No.: **241570248**  
SIC: **2833** Medicinal chemicals & botanical products

Mailing Address	Business Address
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, D.C. 20549**

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**FORM 8-K**

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**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of  
the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported):  
December 23, 2024

**USANA HEALTH SCIENCES, INC.**  
(Exact name of registrant as specified in its charter)

Utah  
(State or other jurisdiction of incorporation)

001-35024  
(Commission File No.)

87-0500306  
(IRS Employer  
Identification No.)

3838 West Parkway Boulevard  
Salt Lake City, Utah 84120  
(Address of principal executive offices, Zip Code)  
Registrant's telephone number, including area code: (801) 954-7100

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	USNA	New York Stock Exchange

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

Emerging growth company

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

### Item 1.01. Entry into a Material Definitive Agreement.

#### *Agreement and Plan of Merger*

On December 23, 2024, USANA Health Sciences, Inc., a Utah corporation (“**USANA**” or the “**Company**”), entered into and consummated an Agreement and Plan of Merger (the “**Merger Agreement**”) by and among USANA, Karate Merger Sub, LLC, a Delaware limited liability company and a wholly-owned subsidiary of USANA (“**Merger Sub**”), Hiya Health Products, LLC, a Delaware limited liability company (“**Hiya**”), and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as the representative of the unitholders of Hiya, to acquire a controlling interest in Hiya. Pursuant to the Merger Agreement, Merger Sub merged with and into Hiya (the “**Merger**”), with Hiya continuing as the surviving company (the “**Surviving Company**”). Hiya is a direct-to-consumer online retail business in the children’s vitamin, mineral, and supplement industry.

Pursuant to the transactions contemplated by the Merger Agreement, at the effective time of the Merger (the “**Effective Time**”), upon the terms and subject to the conditions set forth in the Merger Agreement (a) USANA was issued Class A units of the Surviving Company (“**Class A Units**”) equal to 78.85% of the Surviving Company’s membership interests, (b) the membership interests in Hiya that were held by persons and entities that are accredited investors (as such term is defined in Rule 501(a) under the Securities Act of 1933, as amended) (the “**Qualified Holders**”), were cancelled and converted automatically into the right to receive cash consideration net of applicable tax withholding and deductions and Class B units of the Surviving Company (“**Class B Units**”) equal to an aggregate of 21.15% of the Surviving Company’s membership interests, and (c) all membership interests in Hiya that were held by persons and entities that were not Qualified Holders were cancelled and converted automatically into the right to receive cash consideration net of applicable tax withholding and deductions. Also at the Effective Time, options to acquire membership interests in Hiya were cancelled and terminated and the holders thereof received cash consideration, net of applicable tax withholding and deductions, in connection with the execution and delivery of an option termination agreement by such holders.

The total consideration paid by USANA for its 78.85% membership interest in the Surviving Company consisted of \$205 million in cash, subject to customary closing and post-closing purchase price adjustments in accordance with and subject to the terms and conditions of the Merger Agreement, sourced from \$200 million cash on hand and the balance from borrowings under USANA’s existing credit facility. At the closing of the Merger, USANA deposited a portion of such consideration in escrow to secure certain indemnification obligations of the sellers and any post-closing adjustments to such consideration, in each case under the terms and conditions of the Merger Agreement.

The Merger Agreement contains representations and warranties of the parties that are customary for a transaction of this type. The Merger Agreement also contains customary covenants and agreements, including, among others, certain publicity, confidentiality, information access, insurance and tax matters, certain cooperation commitments between the parties, and certain other matters.

#### *Amended and Restated Limited Liability Company Agreement*

Effective as of the Effective Time, USANA and the Qualified Holders entered into an amended and restated limited liability company agreement of the Surviving Company (the “**LLC Agreement**”). Pursuant to the LLC Agreement, the Surviving Company will be managed by managers (initially four), acting through majority approval, with one manager designated by the holders of Class B Units and the remaining managers designated by the holders of Class A Units, except that certain actions require the consent of the holders of Class A Units including (i) issuing additional Class A Units or Class B Units, (ii) changing the Surviving Company’s legal form, (iii) consummating a change of control, (iv) amending the certificate of formation of the Surviving Company, or (v) taking any other action that requires the consent of the holders of Class A Units. In addition, the LLC Agreement may not be amended, altered, or repealed in a manner that materially and adversely affects the powers, preferences, obligations or rights of the Class B Units in a manner disproportionate to the effect on the other then-outstanding classes and series of units without the consent of the holders of Class B Units.

The LLC Agreement contains certain restrictions on transfers and provides for customary drag-along and tag-along rights, in each case, with respect to Class B Units. In addition, the holders of Class A Units have repurchase rights with respect to Class B Units on certain withdrawal events that include transfers of Class B Units in violation of the LLC Agreement, a

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breach of the LLC Agreement or any confidentiality, invention assignment, non-competition or non-solicitation agreement by a holder of Class B Units, and the occurrence of certain other prohibited actions taken by or with respect to holders of Class B Units.

The LLC Agreement also grants (i) the Surviving Company the right to buy (the “**Call Right**”), and (ii) the holders of Class B Units the right, exercisable by holders of a majority of Class B Units, to cause the Surviving Company to purchase (the “**Put Right**”), half of the Class B Units beginning on April 30, 2028 and ending on the applicable Final Determination Date (as defined in the LLC Agreement) for the calendar year in which such right is exercised and any remaining Class B Units beginning on April 30, 2030 and ending on the applicable Final Determination Date for the calendar year in which such right is exercised. In addition on a Parent Change of Control (as defined in the LLC Agreement) the Surviving Company has a Call Right beginning on the date (the “**CoC Agreement Date**”) USANA enters into a definitive written agreement providing for a Parent Change of Control (as defined in the LLC Agreement) and ending on the date that is thirty days after the later of (i) the CoC Agreement Date and (ii) the applicable Final Determination Date for the calendar year in which such right is exercised. The purchase price for Class B Units pursuant to the Call Right, the Put Right, and any other repurchase rights under the LLC Agreement, is based on the Surviving Company’s Adjusted EBITDA (as defined in the LLC Agreement) for the calendar year immediately prior to the year in which such right is exercised, multiplied by the Company Value Reference Amount (as defined in the LLC Agreement).

The foregoing descriptions of the Merger Agreement and the LLC Agreement contained in this Item 1.01 do not purport to be complete and are subject to, and qualified in their entirety by, the full text of such agreements. A copy of each of the Merger Agreement and the LLC Agreement is filed as Exhibit 2.1 and Exhibit 10.1, respectively, to this Current Report on Form 8-K, each of which is incorporated herein by reference.

**Item 2.01. Completion of Acquisition or Disposition of Assets.**

To the extent required, the information set forth above in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference in its entirety.

**Item 7.01. Regulation FD Disclosure.**

On December 23, 2024, USANA issued a press release announcing the Merger. A copy of the press release is attached hereto as Exhibit 99.1 to this Current Report on Form 8-K and incorporated into this Item 7.01 by reference.

Also on December 23, 2024, USANA released an updated corporate presentation to the investor section of the Company’s website. A copy of the presentation is attached hereto as Exhibit 99.2 to this Current Report on Form 8-K and incorporated into this Item 7.01 by reference.

The information furnished pursuant to Item 7.01 (including Exhibit 99.1 and Exhibit 99.2) on this Form 8-K, shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference into any other filing under the Securities Act of 1933, as amended, or the Exchange Act, except as expressly set forth by specific reference in such a filing.

**Item 9.01. Financial Statements and Exhibits.**

(a) Financial statements of business acquired

The financial statements of Hiya required by this Item 9.01(a) is not included in this Current Report on Form 8-K. The Company intends to file such financial statements by amendment to this Current Report on Form 8-K not later than 71 calendar days after the date this Current Report on Form 8-K is required to be filed.

(b) Pro forma financial information

The pro forma financial information required by this Item 9.01(b) is not included in this Current Report on Form 8-K. The Company intends to file such pro forma financial information by amendment to this Current Report on Form 8-K not later than 71 calendar days after the date this Current Report on Form 8-K is required to be filed.

<b>Exhibit No.</b>	<b>Description</b>
2.1*	<a href="#"><u>Agreement and Plan of Merger dated December 23, 2024 by and among USANA Health Sciences, Inc., MERGER SUBJ, Hiya Health Products, LLC, and Shareholder Representative Services LLC.</u></a>
10.1*	<a href="#"><u>Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC dated December 23, 2024.</u></a>
99.1	<a href="#"><u>Press Release of USANA Health Sciences, Inc. dated December 23, 2024.</u></a>
99.2	<a href="#"><u>Corporate Presentation of USANA Health Sciences, Inc. dated December 23, 2024.</u></a>

\*Exhibits and/or schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The registrant hereby undertakes to furnish supplementally copies of any of the omitted exhibits and schedules upon request by the SEC;

provided, however, that the registrant may request confidential treatment pursuant to Rule 24b-2 under the Exchange Act for any exhibits or schedules so furnished.

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## SIGNATURES

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

**USANA HEALTH SCIENCES, INC.**

**By:** /s/ G. Douglas Hekking

G. Douglas Hekking, Chief Financial Officer

Date: December 23, 2024

**AGREEMENT AND PLAN OF MERGER**

**DATED AS OF DECEMBER 23, 2024**

**BY AND AMONG**

**HIYA HEALTH PRODUCTS, LLC,**

**USANA HEALTH SCIENCES, INC.,**

**KARATE MERGER SUB, LLC**

**AND**

**SHAREHOLDER REPRESENTATIVE SERVICES LLC,  
AS THE SELLERS' REPRESENTATIVE**

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### **Exhibits**

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Exhibit C	Form of Investor Questionnaire
Exhibit D	Escrow Agreement
Exhibit E	Certificate of Merger
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Exhibit H	Letter of Transmittal



## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this “*Agreement*”), dated as of December 23, 2024, is made by and among USANA Health Sciences, Inc., a Utah corporation (“*Buyer*”), Karate Merger Sub, LLC, a Delaware limited liability company and a wholly-owned subsidiary of Buyer (“*Merger Sub*”), Hiya Health Products, LLC, a Delaware limited liability company (the “*Company*”) and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as the representative of the Company Unitholders under this Agreement (the “*Sellers’ Representative*”). Buyer, Merger Sub, the Company, and the Sellers’ Representative are sometimes referred to herein collectively as the “*Parties*” and, each individually, as a “*Party*.”

### RECITALS

- A. The Company is a direct-to-consumer online retail business in the children’s vitamin, mineral, and supplement industry (the business and operations of the Company, the “*Business*”).
- B. Buyer, Merger Sub and the Company intend to effect a business combination through the merger of Merger Sub with and into the Company (the “*Merger*”), with the Company continuing as the surviving company in the Merger upon the terms and subject to the conditions set forth in this Agreement and in accordance with Delaware Law (the Company, as the surviving company of the Merger, is sometimes referred to herein as the “*Surviving Company*”).
- C. Upon the consummation of the Merger, Merger Sub will cease to exist as a separate entity, the limited liability company agreement of the Surviving Company shall be amended and restated to be in the form attached hereto as **Exhibit A** (the “*A&R LLC Agreement*”) and the Buyer and the Company Unitholders as of immediately prior to the Effective Time will own all of the membership interests in the Surviving Company outstanding as of immediately following the consummation of the Merger (with Buyer owning a number of Surviving Company Class A Units equal to the Total Class A Unit Amount and the Company Unitholders as of immediately prior to the Effective Time owning Surviving Company Class B Units equal to the Total Class B Unit Amount, on and subject to the terms set forth in the A&R LLC Agreement).
- D. The manager of the Company and the sole member of Merger Sub have approved on the terms and subject to the conditions set forth in this Agreement, the other transactions contemplated by this Agreement and the Ancillary Agreements to which their respective entities are a party.
- E. Concurrently with the execution and delivery of this Agreement, and as a condition and inducement to Buyer’s willingness to enter into this Agreement, each Company Unitholder set forth on **Schedule 1.1(a)** (each, a “*Signing Support Unitholder*”) is executing and delivering to Buyer a Joinder Agreement in substantially the form attached hereto as **Exhibit B** (the “*Joinder Agreement*”) and an Investor Questionnaire in substantially the form attached hereto as **Exhibit C** (the “*Investor Questionnaire*”) certifying that such Signing Support Unitholder is an Accredited Investor.
- F. Concurrently with the execution and delivery of this Agreement, and as a condition and inducement to Buyer’s willingness to enter into this Agreement, each of Darren A. Litt and Adam Gillman (each, a “*Key Employee*”) is executing and delivering to Buyer an offer letter with Buyer and other customary employment related documents (collectively, the “*Key Employee Documents*”), at the Closing.

G. Concurrently with the execution and delivery of this Agreement, and as a condition and inducement to Buyer's willingness to enter into this Agreement, each of Adam Gillman and

Darren A. Litt (each, a “**Restricted Party**”) is executing and delivering to Buyer a customary non-competition and non-solicitation agreement (the “**Non-Competition and Non-Solicitation Agreements**”) to restrict the Restricted Parties from competing with the Company after Closing, each of which are to become effective at the Closing.

**NOW, THEREFORE**, in consideration of the mutual promises, representations, warranties, covenants, conditions and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

## **Article I CERTAIN DEFINITIONS**

As used in this Agreement the following terms shall have the following respective meanings:

“**A&R LLC Agreement**” shall have the meaning set forth in recitals.

“**Accredited Investor**” means an “accredited investor” as such term is defined in Rule 501(a) under the Securities Act and as set forth therein.

“**Accounting Firm**” shall have the meaning set forth in **Section 7.1(b)** hereof.

“**Accounting Principles**” shall mean the accounting principles, practices, procedures, policies and methods, classifications, conventions, categorizations, definitions, judgments, elections, assumptions, inclusions, exclusions, techniques and valuation and estimation methods used as set forth on **Schedule 2.10(a)**.

“**Action**” shall mean any action, litigation, suit, claim, complaint, investigation, inquiry, audit, demand, examination, hearing, charge, arbitration, mediation, administrative enforcement proceeding or other proceeding (whether civil, criminal, administrative, judicial, or investigative, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority.

“**Adjustment Escrow Amount**” shall have the meaning set forth in **Section 2.12(d)** hereof.

“**Adjustment Escrow Fund**” shall have the meaning set forth in **Section 2.12(d)** hereof.

“**Affiliate**” shall mean: (a) with respect to any Person who is an individual, (i) any other Person who is the spouse, sibling or a lineal ascendant or descendent of such Person up to the third degree; and (b) with respect to a Person who is not an individual, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Person. The term “**control**” (including the terms “**controlled by**” and “**under common control with**”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Aggregate Benchmark Deduction Amount**” means an aggregate amount equal to the sum of the Per Unit Effective Exercise Prices with respect to all Company Incentive Membership Units issued and outstanding as of immediately prior to the Effective Time (to the extent such Per Unit Effective Exercise Prices actually reduce the amounts payable pursuant to **Section 2.3(b)**).



“**Agreement**” shall have the meaning set forth in the preamble hereof.

“**Ancillary Agreements**” shall mean, collectively, any agreements, certificates, or other documents contemplated by this Agreement to be executed or delivered at or prior to the Closing in connection with the transactions contemplated by this Agreement, including the Non-Competition and Non-Solicitation Agreements, the Escrow Agreement, the Joinder Agreements, the Paying Agent Agreement, the A&R LLC Agreement and the Key Employee Documents.

“**Audited Balance Sheet**” shall have the meaning set forth in **Section 4.4(a)(i)** hereof.

“**Audited Financial Statements**” shall have the meaning set forth in **Section 4.4(a)(i)** hereof.

“**Bodman**” shall mean Bodman PLC, who is acting as counsel to the Company.

“**Books and Records**” shall have the meaning set forth in **Section 4.24(a)** hereof.

“**Business**” shall have the meaning set forth in the recitals.

“**Business Day**” shall mean each calendar day that is not a Saturday or a Sunday or other day on which commercial banks in the State of Delaware or the State of Michigan are authorized or obligated by Law or executive order to be closed.

“**Buyer**” shall have the meaning set forth in the preamble hereof.

“**Buyer Indemnified Parties**” shall have the meaning set forth in **Section 9.2** hereof.

“**Buyer R&W Insurance Policy**” shall have the meaning set forth in **Section 5.5** hereof.

“**Calculation Time**” shall mean as of immediately prior to the Closing.

“**Cancelled Units**” shall have the meaning set forth in **Section 2.2(b)** hereof.

“**CARES Act**” shall mean the Coronavirus Aid, Relief, and Economic Security Act, as amended.

“**Cash Amount**” shall mean, without duplication, all cash and cash equivalents of the Company (consisting solely of certificates of deposit, commercial paper, treasury bills, marketable securities, money market accounts and all such similar accounts or investments of the Company) reduced by: (a) all amounts needed to fund all checks, drafts or wire transfers or other electronic disbursements written or sent (as applicable) by the Company but which have not been paid (i.e., cashed and cleared in case of a check or draft and cleared in the case of a wire transfer or other electronic disbursements) as of the Calculation Time; (b) cash and cash equivalents in reserve accounts or cash escrow accounts, custodial cash, cash and cash equivalents that are not freely usable by the Company because they are subject to restrictions or limitations on use or distribution by Law, Contract or otherwise. security deposits, cash supporting obligations under letters of credit and cash otherwise subject to any legal or contractual restriction on the ability to freely transfer or use such cash for any lawful purpose; and (c) all obligations of the Company with respect to bank overdrafts.

“**Certificate of Merger**” shall have the meaning set forth in **Section 2.1** hereof.



“**Claim**” shall have the meaning set forth in **Section 9.4(a)** hereof.

“**Claim Notice**” shall have the meaning set forth in **Section 9.4(a)** hereof.

“**Closing**” shall have the meaning set forth in **Section 2.9** hereof.

“**Closing Cash Amount**” shall mean the Cash Amount as of the Calculation Time, as determined in accordance with the Accounting Principles.

“**Closing Date**” shall have the meaning set forth in **Section 2.9** hereof.

“**Closing Indebtedness**” shall mean the aggregate amount of all Indebtedness of the Company calculated as of the Calculation Time, as determined in accordance with the Accounting Principles, whether such amounts are due prior to, at or following the Closing and including, all amounts described in the definition of Indebtedness that would be payable in connection with the repayment, retirement and/or satisfaction of such Indebtedness (whether prior to, at or following the Closing).

“**Closing Net Working Capital**” shall mean the Net Working Capital as of the Calculation Time.

“**Closing Net Working Capital Adjustment**” shall mean (a) the amount by which the Closing Net Working Capital is greater than the Target Net Working Capital or (b) the product of (i) the amount (expressed, for purposes of this clause (i), as a positive number) by which the Closing Net Working Capital is less than the Target Net Working Capital *multiplied by* (ii) negative 1 (-1).

“**Closing Statement**” shall have the meaning set forth in **Section 2.10(b)** hereof.

“**Closing Transaction Expenses**” shall mean the aggregate amount (without duplication) of the Transaction Expenses that have not been paid as of the Calculation Time.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended.

“**Commercially Available Software**” shall mean commercially available Software or SaaS service that has not been materially modified or customized by a third party for the Company, purchased or licensed for less than a total cost of \$25,000 per annum.

“**Company**” shall have the meaning set forth in the preamble.

“**Closing Cash Merger Consideration**” means an amount in cash equal to:

- (a) \$205,000,000;
- (b) *plus* the Closing Net Working Capital Adjustment (which for the avoidance of doubt may be a negative (-) number);
- (c) *plus* the Closing Cash Amount;

- (d) *minus* the Closing Indebtedness;
- (e) *minus* the Closing Transaction Expenses;
- (f) *minus* the Unpaid Pre-Closing Taxes;

(g) *minus* the Sellers' Representative Expense Amount; and

(h) *minus* the Escrow Amounts.

“**Company Data**” shall mean all data and information Processed by or for the Company.

“**Company Disclosure Schedules**” shall have the meaning set forth in **Article IV** hereof.

“**Company Exclusive IPR**” shall mean all Owned IPR and Company IPR exclusively licensed to the Company under Company IPR Agreements.

“**Company Incentive Membership Interest**” means each “Incentive Membership Interest” (as defined in the Company Pre-Merger LLC Agreement) issued by the Company and outstanding as of immediately prior to the Effective Time.

“**Company Incentive Membership Unit**” means a Company Unit that was issued by the Company prior to the Effective Time to represent an “Incentive Membership Interest,” as defined in the Company Pre-Merger LLC Agreement.

“**Company IPR**” shall mean all Owned IPR, together with the Intellectual Property Rights licensed to the Company under Company IPR Agreements (other than Commercially Available Software).

“**Company IPR Agreements**” shall mean all written licenses, sublicenses and other agreements under which other Persons grant the Company or the Company grants any other Persons any exclusive or non-exclusive rights or interests in or to any Intellectual Property Rights.

“**Company's Knowledge**” shall mean, with respect to any matter in question, the knowledge of any of Darren A. Litt, Adam Gillman, Joseph Barger, Corinne Crockett and Bonnie Hick after reasonable inquiry of each individual's direct reports who would reasonably be expected to have knowledge of a particular fact or circumstance.

“**Company Option**” means an option to acquire a Company Unit.

“**Company Optionholder**” means a holder of a Company Option.

“**Company Pre-Merger LLC Agreement**” shall mean the Company's Third Amended and Restated Limited Liability Company Agreement, dated January 2, 2024.

“**Company Products**” shall have the meaning set forth in **Section 4.11(i)** hereof.

“**Company Securities**” means the Company Units, the Company Options and any other Ownership Interest in the Company.

“**Company Security Number**” means a number equal to the sum (without duplication) of the following: (a) the aggregate number of Company Units (including Company Incentive Membership Units) issued and outstanding as of immediately prior to the Effective Time *plus* (b) the maximum aggregate number of Ownership Interests in the Company outstanding as of immediately prior to the Effective Time (calculated, if exercisable or convertible into Company Units, on an as converted and exercised basis, as applicable), excluding in each case, any Cancelled Units.



“**Company Securityholder**” means a holder of a Company Security.

“**Company Tax Representations**” shall mean the representations and warranties set forth in **Section 4.17** hereof.

“**Company Unit**” means a “Unit” in the Company, as is defined in the Company Pre-Merger LLC Agreement, including any Company Incentive Membership Unit.

“**Company Unitholder**” means a holder of a Company Unit (including any holder of a Company Incentive Membership Unit) as of immediately prior to the Effective Time.

“**Confidential Information**” shall mean: (a) any confidential information concerning the Business or the Company; (b) any confidential information concerning Buyer obtained from Buyer or its Representatives; and (c) this Agreement, the Ancillary Agreements and all terms and conditions hereof and thereof; *provided, however*, that Confidential Information shall not include information that: (i) is or becomes generally available to or known by the public from a source other than the receiving party; (ii) the receiving party knows at the time of disclosure, free of any obligation to keep it confidential; (iii) the receiving party independently developed without the use of or reference to any Confidential Information; or (iv) the receiving party rightfully obtains from any Person other than a Party to this Agreement or any Affiliate of a Party to this Agreement who has the right to transfer or disclose it.

“**Consideration Spreadsheet**” shall have the meaning set forth in **Section 2.10(c)** hereof.

“**Contested Claim**” shall have the meaning set forth in **Section 9.4(b)(ii)** hereof.

“**Contract**” shall mean any written or oral agreement, commitment, agreement in principle, lease, contract, sublease, subcontract, understanding, instrument, note, indenture, deed of trust, mortgage, loan agreement, bond, warranty, license, sublicense, the Realty Lease, or any other arrangement or legally binding commitment or undertaking and any amendments, modifications, supplements, exhibits, schedules, statements of work, purchase and sales orders thereto, to which a Person is party or by which such Person’s assets are bound.

“**COVID-19 Law**” shall mean the CARES Act, the Families First Coronavirus Response Act of 2020 or any other applicable Law intended to address the consequences of COVID-19.

“**Data Activities**” shall mean the Processing of Company Data.

“**Deficit**” shall have the meaning set forth in **Section 2.11(d)(ii)** hereof.

“**Delaware Law**” means the Delaware Limited Liability Company Act.

“**Dispute**” shall have the meaning set forth in **Section 10.10** hereof.

“**Dispute Notice**” shall have the meaning set forth in **Section 2.11(b)** hereof.

“**Effective Time**” shall have the meaning set forth in **Section 2.1** hereof.

“**Employee**” shall have the meaning set forth in **Section 4.12(a)** hereof.



“**Employee Benefit Plans**” shall have the meaning set forth in **Section 4.22(a)** hereof.

“**Employment Agreement**” shall mean any written or oral employment agreement, severance agreement, retention agreement, management service agreement, consulting agreement or any other written term sheet or similar document describing the terms or conditions of employment of any Employee of the Company.

“**Environment**” shall mean soil, surface water, groundwater, land, sediments, surface or subsurface strata, natural resources, flora and fauna, ambient air, indoor air or indoor air quality, including any material or substance used in the physical structure of any building or improvement.

“**Environmental Claim**” shall mean any civil, criminal or administrative action, suit, hearing, lien, demand, claim, investigation, notice of liability or potential liability, notice of violation, warning notice, infraction, directive, fine, penalty, injunctive relief, request for information, complaint, lawsuit or other legal proceeding by any Person alleging, or any obligation involving, liability (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from lease, operation or use of the business or assets of the Company or relating to any real property currently or formerly leased, operated or used by the Company, including the presence, Release of, or exposure to, any Hazardous Materials; or any actual or alleged non-compliance with, or liability or potential liability under, any Environmental Law or term or condition of any Environmental Permit.

“**Environmental Laws**” shall mean any applicable Law, any published directive or guidance issued by any Governmental Authority (to the extent such directive or guidance has been confirmed by judicial decisions or by final, non-appealable, agency actions, giving the directive or guidance the force of law) and any Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the Environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal, remediation of, response to, or investigation of actual or suspected, Hazardous Materials or property damage, natural resources damage or personal injury caused by any Hazardous Material. The term “**Environmental Law**” includes, but is not limited to, the following (including their implementing regulations and any state or local analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq. (“**CERCLA**”), the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq., the Federal Water Pollution Control Act of 1972, as amended, 33 U.S.C. §§ 1251, the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq., the Clean Air Act of 1966, as amended, 42 U.S.C. §§ 7401 et seq., the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq., the Hazardous Materials Transportation Act (49 U.S.C. §§ 5101 et seq.), and the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.).

“**Environmental Notice**” shall mean any directive, notice of violation, information request, infraction, notice, warning notice or a communication respecting any Environmental Claim, any Hazardous Material, compliance or non-compliance with, or liability or potential liability under, any Environmental Law or any term or condition of any Environmental Permit, including any notice relating



to potentially responsible party status at any CERCLA site or any site that appears on a state or local listing of contaminated property.

“**Environmental Permit**” shall mean any License or letter which is issued, granted, given or made pursuant to Environmental Law by a Governmental Authority.

“**Equity**” shall have the meaning set forth in the recitals.

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

“**ERISA Affiliate**” shall mean any Person that is considered or at the relevant time was considered a single employer with the Company under Section 414 of the Code or Section 4001(b) of ERISA.

“**Escrow Agent**” shall mean Acquiom Clearinghouse LLC.

“**Escrow Agreement**” shall mean that certain Escrow Agreement by and among the Escrow Agent, the Sellers’ Representative and Buyer, in substantially the form of **Exhibit D** hereof.

“**Escrow Amount**” shall have the meaning set forth in **Section 2.12(d)** hereof.

“**Escrow Funds**” shall have the meaning set forth in **Section 2.12(d)** hereof.

“**Estimated Closing Cash Merger Consideration**” shall have the meaning set forth in **Section 2.10(b)** hereof.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended.

“**Expiration Dates**” shall have the meaning set forth in **Section 9.1** hereof.

“**Final Closing Cash Merger Consideration**” shall have the meaning set forth in **Section 2.11(c)** hereof.

“**Financial Statements**” shall have the meaning set forth in **Section 4.4(a)** hereof.

“**Fraud**” shall mean common law fraud that includes the elements of scienter under applicable Law with respect to (including the matters covered or addressed in) any representation or warranty set forth in this Agreement.

“**Fundamental Representations**” shall mean the representations and warranties set forth **Section 4.1** (Company Organization; Authorization), **Section 4.2(e)** (No Conflicts with Company Organizational Documents), **Section 4.3** (Capitalization), **Section 4.9** (Subsidiaries), **Section 4.17** (Taxes), **Section 4.21** (Brokers, Finders, Etc.), **Section 4.23** (Affiliate Transactions) and the representations and warranties of the Support Unitholders in the Joinder Agreement.

“**GAAP**” shall mean United States generally accepted accounting principles as in effect as of the relevant date(s) of application thereof.



**“General Enforceability Exceptions”** shall mean bankruptcy, insolvency, moratorium and other similar Laws affecting creditors’ rights generally.

**“General Expiration Date”** shall have the meaning set forth in **Section 9.1** hereof.

**“Governmental Authority”** shall mean any United States federal, state, or local or foreign government, or any agency or instrumentality of such government or political subdivision or any other governmental authority or entity, or any self-regulated organization or other non-governmental regulatory authority or entity or government-owned or controlled entity (including state-owned or state-controlled businesses), royal family, or quasi-governmental authority or entity (including any governmental agency, branch, department, commission, or other entity and any court or other tribunal), or any arbitrator, court or tribunal of competent jurisdiction in the United States or any other country or foreign jurisdiction.

**“Governmental Official”** shall mean (a) any officer, agent or employee of a Governmental Authority or (b) member of a royal family, in each case, acting in an official capacity for or on behalf of a Governmental Authority.

**“Hazardous Materials”** shall mean any “hazardous substance” as that term is defined under CERCLA and its implementing regulations, 42 U.S.C. § 9601 et seq.; any “hazardous substance,” as that term is defined under the Occupational Safety and Health Act of 1970, as amended, and/or its implementing regulations, 29 U.S.C. § 651, et seq.; any “hazardous waste” as that term is defined under the Resource Conservation and Recovery Act, as amended, and its implementing regulations (“RCRA”), 42 U.S.C. § 9601, et seq.; any “solid waste” as that term is defined under RCRA and its implementing regulations; any “toxic substance” as that term is defined under the Toxic Substances Control Act of 1976, as amended, and its implementing regulations, 15 U.S.C. § 2601 et seq.; any “pollutant” as that term is defined under the Clean Water Act, as amended, and its implementing regulations, 33 U.S.C. § 1362 et seq.; and any other chemical, substance or material, whether solid, liquid, or gas, subject to regulation under Law because of its effect on worker safety, human health or the Environment, including oil, petroleum products, radon, radioactive materials or wastes, asbestos in any form, asbestos-containing materials, mold, lead or lead-containing materials, hazardous wastes, hazardous waste constituents, urea formaldehyde insulation and polychlorinated biphenyls.

**“Income Taxes”** or **“Income Tax”** shall mean any Taxes imposed on, or with reference to, net income or gross receipts.

**“Indebtedness”** shall mean, without duplication, with respect to any Person, an amount equal to the sum of the following: (a) any Liability of such Person (i) for borrowed money, whether current or funded, secured or unsecured, (ii) under any credit facility, (iii) evidenced by any note, bond, debenture or other debt security or similar instrument and all Liabilities in respect of mandatorily redeemable or purchasable share capital or securities convertible into share capital, (iv) under conditional sale or other title retention agreements relating to property purchased by such Person (v) Liability to pay the deferred purchase price of assets, property or services, including any “earn-out” payments, except trade payables incurred in the Ordinary Course of Business, (vi) under letter of credit or similar facilities, (vii) capital lease Liabilities of such Person required to be capitalized under GAAP (excluding the effects of ASC 842), (viii) under interest rate cap, swap, collar or similar transaction or currency hedging transactions, (ix) which would be required to be shown as indebtedness on a balance sheet of such Person prepared in accordance with the Accounting Principles, (x) any off-balance sheet arrangements or Liabilities of such Person, (xi) any Liabilities secured by a Lien (other than Permitted Liens arising by operation of law)

on



such Person's assets, (xii) any declared but unpaid dividend or distribution with respect to any Ownership Interests in such Person, (xiii) Liabilities owed to an Affiliate of such Person, (xiv) Liabilities under credit cards, (xv) any unfunded pension Liability, (xvi) Liabilities for deferred compensation, profit sharing distributions, paid-time-off or similar liabilities or instruments, and (xvii) that constitute deferred revenue calculated in accordance with GAAP; (b) any guarantees by such Person of any Indebtedness or Liabilities referred to in clauses (a) of any other Person or secured by any assets of such Person, whether or not such indebtedness or Liability has been assumed by such Person; and (c) the principal amount, plus any accrued and unpaid interest, fees (including termination payments), overdrafts, premiums or penalties (including with respect to any prepayment thereof) associated with any of the foregoing clauses (a) through (b) and (d) the aggregate amount of all prepayment premiums, penalties, breakage costs, "make whole amounts," balloon payments or fees, costs, expenses and other payment obligations (including any minimum return obligations) that would arise if any or all of the items described in clauses (a) through (c) above were paid, prepaid, extinguished, unwound or settled in full (including the repayment of any Indebtedness of the Company or any of its Subsidiaries in connection with, or following, the Closing and any payment obligations required to be paid in connection with the termination of any credit agreement, line of credit, credit facility, loan or similar Contract to which the Company is a party). Any and all accrued bonus amounts set forth on **Schedule 1.1(b)** that constitute a current liability pursuant to the definition of Closing Net Working Capital shall not be included in "Closing Indebtedness" to the extent such amounts are included as a current liability in the Closing Net Working Capital calculation set forth on the Consideration Spreadsheet.

**"Indemnity Escrow Amount"** shall have the meaning set forth in **Section 2.12(d)** hereof.

**"Indemnity Escrow Fund"** shall have the meaning set forth in **Section 2.12(d)** hereof.

**"Insurance Policies"** shall have the meaning set forth in **Section 4.19(a)** hereof.

**"Intellectual Property Rights"** shall mean all intellectual and industrial property and other similar proprietary rights of any kind or nature in any jurisdiction throughout the world, whether registered or unregistered, including all rights pertaining to or deriving from: (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof (collectively, "**Patents**"), (b) all trademarks, service marks, trade dress, logos, slogans, trade names, corporate names, Internet domain names, social media accounts and rights in telephone numbers, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith (collectively, "**Trademarks**"), (c) all copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith (collectively "**Copyrights**"), (d) all mask works and all applications, registrations, and renewals in connection therewith, (e) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals) (collectively "**Trade Secrets**"), (f) all computer software (including source code, executable code, data, databases, APIs, algorithms, and related documentation), (collectively, "**Software**"), (g) all other proprietary rights, (h) all copies and tangible embodiments of any of the foregoing (in whatever form or medium), (i) all goodwill associated with any of the foregoing, (j) all licenses and sublicenses granted and obtained with respect to any of the foregoing



and all rights thereunder, (k) all remedies against infringement of any of the foregoing, and (l) all rights to protection of interests in any of the foregoing.

“**IRS**” shall mean the United States Internal Revenue Service.

“**IT Assets**” shall mean all information technology hardware and Software owned or held for use by the Company and used in connection with the Business.

“**Key Employee**” shall have the meaning set forth in the recitals hereof.

“**Key Employee Documents**” shall have the meaning set forth in the recitals hereof.

“**Law**” shall mean any applicable federal, state or local statute, law, ordinance, regulation, rule, code, Order, constitution, treaty, common law, License, judgment, decree, injunction, executive order, policy or other requirement, or rule of law enacted, adopted, or applied by any Governmental Authority and all Governmental Authorities’ interpretations thereof (to the extent such interpretations have been confirmed by judicial decisions or by final, non-appealable, agency actions, giving the interpretation the force of law).

“**Leased Real Property**” shall have the meaning set forth in **Section 4.7(b)** hereof.

“**Letter of Transmittal**” shall have the meaning set forth in **Section 2.12(b)** hereof.

“**Liability**” shall mean any Indebtedness, liability or obligation of any nature (whether accrued or unaccrued, absolute or contingent, liquidated or unliquidated, due or to become due, or known or unknown), regardless of when asserted and regardless of whether such Indebtedness, duty, liability or obligation would be required to be disclosed on a balance sheet prepared in accordance with past practices.

“**Licenses**” shall mean all permits, licenses, franchises, registrations, certificates, approvals, accreditation, authorizations, clearances, waivers, consents, privileges, variances, exemptions, qualifications, filings, notices, and other rights issued, granted or given by any Governmental Authority, including, with respect to the Company, those listed on **Section 4.15** of the Company Disclosure Schedules.

“**Lien**” shall mean any lien, security interest, option, pledge (including any negative pledge), easement, restrictive covenant, mortgage, deed to secure debt, charge, deed of trust, purchase option, right of first refusal or first offer or similar restriction or other adverse claim of any kind in respect of such property or asset, conditional sales agreement, preemptive right, servitude, proxy, restriction (whether voting, transfer or otherwise), hypothecation, right-of-way, encumbrance or other right of third parties of any kind or nature whatsoever, including any Tax lien.

“**Lookback Date**” shall have the meaning set forth in **Section 4.6** hereof.

“**Losses**” shall mean any and all damages, fines, fees, penalties, deficiencies, liabilities, claims (including tort claims), losses, demands, judgments, settlements, actions, obligations, costs and expenses (including interest, court costs and fees and costs of attorneys, accountants and other experts or witnesses, or other expenses of any Action or of any default or assessment (including those arising or incurred in enforcing a Party’s rights under this Agreement)); provided, however, that Losses shall not include



punitive damages, except if such punitive damages are required to be paid to a third party (including any Governmental Authority) pursuant to a third-party claim.

**“Material Adverse Effect”** shall mean any event, effect, development, occurrence, fact, condition or change that is materially adverse to, or could reasonably be expected to be materially adverse to: (a) the financial condition, business, assets or liabilities (including contingent liabilities) or results of operations of the Company or the Business taken as a whole; or (b) the ability of any of the Company or any Company Unitholder to consummate timely the transactions contemplated hereby or to perform their respective obligations hereunder; provided that, for purposes of clause (a) of this definition, “Material Adverse Effect” shall not include effects resulting from: (1) general changes in the industry in which the Company operates or in economic conditions; (2) general changes in political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States; (3) changes in Law after the date of this Agreement; (4) general changes in financial, banking, or securities markets; (5) changes after the date of this Agreement in accounting rules (including GAAP); (6) the public announcement, pendency or completion of the transactions contemplated by this Agreement, but in each case only insofar as it relates to the identity of Buyer as opposed to any other Person; or (7) any natural or man-made disaster or acts of God, including arising out of or relating to the coronavirus or other pandemic or epidemic; provided, however, that with respect to the foregoing clauses (1) through (5) and (7) in the immediately preceding proviso, such effects may be taken into account to the extent they disproportionately impact the Company, the Ownership Interests in the Company, including the Company Units, or the Business, in each case, as compared to other Persons engaged in the Business.

**“Material Contract”** or **“Material Contracts”** shall have the meaning set forth in **Section 4.14(b)** hereof.

**“Merger”** shall have the meaning set forth in recitals.

**“Merger Consideration”** means all consideration payable to the Company Unitholders as of immediately prior to the Effective Time upon the terms set forth in **Section 2.3(b)** and throughout this Agreement.

**“Merger Sub”** shall have the meaning set forth in recitals.

**“Multiemployer Plan”** shall have the meaning set forth in **Section 4.22(e)** hereof.

**“Net Benchmark Amount”** means, with respect to each Company Incentive Membership Interest, an amount, calculated as of immediately prior to the Effective Time, equal to the “Benchmark” (as such term is defined in the Company Pre-Merger LLC Agreement) dollar amount set forth in the Incentive Membership Interest Award Agreement with respect to such Company Incentive Membership Interest, as such amount is reduced (but not below zero) pursuant to the adjustments thereto in the Company Pre-Merger LLC Agreement.

**“Net Working Capital,”** which may be a positive or negative number, means an amount equal to the current assets of the Company (other than the Closing Cash Amount) *minus* the current liabilities of the Company (other than Closing Indebtedness and Closing Transaction Expenses), in each case, as determined in accordance with the Accounting Principles. For the avoidance of doubt, calculation of Net



Working Capital shall exclude (a) the Closing Cash Amount, Closing Indebtedness and Closing Transaction Expenses, (b) any accounts receivable due to the Company from any Company Securityholder or any Affiliate thereof, and (c) current and deferred Tax assets and current and deferred Pre-Closing Taxes.

“*Neutral Auditors*” shall have the meaning set forth in **Section 2.11(c)** hereof.

“*Non-Competition and Non-Solicitation Agreements*” shall have the meaning set forth in Recitals.

“*Notice Schedule*” shall mean a schedule, to be delivered to the Sellers’ Representative by Buyer following the Closing, including the email address of each Seller Indemnifying Party as it may be updated from time to time. The Sellers’ Representative shall have no obligation to assist in the collection of the funds due to Buyer.

“*Objection Period*” shall have the meaning set forth in **Section 9.4(b)(i)** hereof.

“*Option Plan*” shall mean the Hiya Health Products, LLC Equity Option Plan, dated May 28, 2024.

“*Option Termination Agreement*” shall have the meaning set forth in **Section 2.3(c)(i)** hereof.

“*Order*” shall mean any order, judgment, ruling, injunction, assessment, award, decree or writ of any Governmental Authority.

“*Ordinary Course of Business*” shall mean an action taken by a Person that is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operation of such Person.

“*Organizational Documents*” shall mean, with respect to any non-natural Person, such Person’s: (a) articles of incorporation, bylaws; (b) operating agreement and/ or articles of organization or similar governing documents of a Person as in effect on the date hereof (including, with respect to the Company, the Company Pre-Merger LLC Agreement and any prior limited liability operating agreement of the Company).

“*Owed Amount*” shall have the meaning set forth in **Section 9.4(c)** hereof.

“*Owed IPR*” shall mean any and all Intellectual Property Rights owned or purported to be owned, in whole or part, by the Company.

“*Ownership Interest*” or “*Ownership Interests*” shall mean, with respect to any Person, (i) any share of, or right to acquire or be issued, capital stock of, membership interest, membership unit, equity interest or other ownership, membership, partnership, joint venture or equity interest in, such Person, (ii) any securities, options, warrants, call, subscription or other rights of, or granted by, such Person that are convertible into, or are exercisable or exchangeable for any share of capital stock or other ownership, partnership, joint venture or equity interest, in all cases, whether vested or unvested, (iii) any stock appreciation right, phantom stock, profits interests, profit participation, interest in the ownership or earnings, equity equivalent or equity-based award or right of or with respect to such Person, or (iv) any bonds, debentures, notes or other Indebtedness having the right to vote (or convertible into or



exchangeable for securities having the right to vote) on any matters on which any holder of securities of such Person may vote.

“**Party**” and “**Parties**” shall have the meaning set forth in the recitals.

“**Payee**” shall have the meaning set forth in **Section 2.12(b)** hereof.

“**Paying Agent**” shall have the meaning set forth in **Section 2.12(a)** hereof.

“**Paying Agent Agreement**” shall have the meaning set forth in **Section 2.12(a)** hereof.

“**Per Unit Effective Exercise Price**” means, with respect to each Company Incentive Membership Unit (a “**Reference Company Incentive Membership Unit**”) an amount equal to the quotient of (a) the sum of (i) the Net Benchmark Amount with respect to the Company Incentive Membership Interest related to such Reference Company Incentive Membership Unit (such amount, the “**Reference Benchmark Amount**”) plus (ii) an amount equal to, with respect to each Company Incentive Membership Unit with a related Net Benchmark Amount that is lower than the Reference Benchmark Amount (such lesser Net Benchmark Amount, the “**Lower Benchmark Amount**”), the Per Unit Effective Exercise Price with respect to such Company Incentive Membership Unit multiplied by the aggregate number of Company Incentive Membership Units that have the same related Lower Benchmark Amount divided by (b) the sum of (i) aggregate Company Units (excluding Company Incentive Membership Units) plus (ii) the number of Company Incentive Membership Units with respect to which the related Net Benchmark Amount is less than such Reference Benchmark Amount. For the avoidance of doubt, each Company Incentive Membership Unit at any given Net Benchmark Amount (together with any other Company Incentive Membership Unit that has the same Net Benchmark Amount), will have its own Per Unit Effective Exercise Price and the Per Unit Effective Exercise Price with respect to each Company Incentive Membership Unit will be calculated sequentially from lowest to greatest based on the Net Benchmark Amount. For the purposes of this analysis, and for the avoidance of doubt, the Per Unit Effective Exercise Price for any Company Incentive Membership Interest with a \$0.00 “Benchmark” (as such term is defined in the Company Pre-Merger LLC Agreement) is \$0.00.

“**Per Unit Class B Amount**” means a number of Surviving Company Class B Units equal to (a) the Total Class B Unit Amount divided by (b) the sum of the Total Class A Unit Amount and the Total Class B Unit Amount.

“**Per Unit Closing Cash Amount**” means an amount equal to the quotient of (a) the sum of the Estimated Closing Cash Merger Consideration plus the Aggregate Benchmark Deduction Amount divided by (b) the Company Security Number.

“**Permitted Liens**” shall mean: (a) liens for Taxes not yet due and payable for which adequate reserves have been established in accordance with GAAP; (b) statutory liens of carriers, warehousemen, mechanics, materialmen and other similar Persons imposed by Law which are incurred in the Ordinary Course of Business for sums not yet due and payable or, if due and payable, are being contested in good faith by appropriate proceedings and for which adequate accruals or reserves have been established or escrowed; (c) purchase money Liens and Liens securing rental payments under capital lease obligations, in each case, as set forth on **Section 4.14** of the Company Disclosure Schedules; and (d) zoning, municipal planning, building codes or other similar applicable Laws regulating the use, development or occupancy of the Leased Real Property, in each case to the extent the same are not violated by the current use or occupancy of such Leased Real Property in the Ordinary Course of Business and that, in the



aggregate do not materially adversely affect the value, use or marketability of the Leased Real Property subject thereto.

“**Person**” shall mean any individual, firm, corporation, partnership, limited liability company, joint venture, association, estate, trust, unincorporated organization, Governmental Authority or other entity.

“**Personal Information**” shall mean any information that, alone or in combination with other information, reasonably allows for the identification of an individual or otherwise relates to an identified or identifiable person, such as, name, street address, telephone number, e-mail address, photograph, social security number, driver’s license number, passport number or customer or account number. Personal Information may include, but is not limited to, such information of, or pertaining to, personnel, directors, officers, agents, suppliers, contractors, investors or customers and, as applicable, all “nonpublic personal information,” as defined under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801, et seq.), “protected health information” as defined under the Health and Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d), and “personal information”, “personal data”, “personal health information”, “personally identifiable information” or a similar term under applicable Privacy Law.

“**Pre-Closing Income Tax Return**” shall have the meaning set forth in **Section 7.1(b)** hereof.

“**Pre-Closing Tax Period**” shall mean any taxable reporting period ending on or before the Closing Date and, with respect to a Straddle Period, the portion of any Straddle Period deemed to end at the end of the Closing Date.

“**Pre-Closing Taxes**” shall mean (a) any Taxes of the Company relating to or attributable to any Pre-Closing Tax Period (including such Taxes that are not yet due and payable as of the date on which the Closing occurs), provided the amounts described in this definition shall be determined (i) as if the Company used the accrual method of Tax accounting throughout all Pre-Closing Tax Periods, (ii) by treating any advance payments, deferred revenues or other prepaid amounts received or arising in any Pre-Closing Tax Period as subject to Tax in such period regardless of when actually recognized for income Tax purposes, and (iii) by including any Taxes that would have been due or payable on or prior to the Closing Date but for any provision of the COVID-19 Tax Acts, but only to the extent such Taxes are or become due and payable following the Closing Date, (b) any other Taxes attributable to the transactions contemplated by this Agreement, including Transfer Taxes allocable to Company Unitholders pursuant to **Section 7.7**, (c) any liability for the payment of any Taxes as a result of the Company being a transferee of or successor to any Person pursuant to a transaction or event occurring or a relationship existing before the Closing or as a result of any Contract or other express or implied obligation to assume such Taxes or to indemnify any other Person, including by operation of Law, entered into by the Company before the Closing, and (d) any liability for any Taxes of any Company Securityholder or Company Optionholder.

“**Privacy Agreement**” shall mean the Company’s obligations regarding Data Activities, privacy, security, or data protection under any Contract (or any portion thereof) to which the Company is a party or otherwise is bound.

“**Privacy and Data Security Policies**” shall mean, collectively, written Company policies, notices, or representations relating to Data Activities, privacy, security, or data protection including, without limitation, a publicly posted website privacy policy.



“**Privacy Laws**” shall mean, collectively, all Laws in any jurisdiction pertaining to privacy, security, data protection, e-commerce, or direct marketing that are applicable to Data Activities by or for the Company.

“**Pro Rata Allocation Portions**” means, with respect to each Company Unitholder, an amount (expressed as a percentage) equal to the quotient of (a) the aggregate number of Company Units held by such Company Unitholder as of immediately prior to the Effective Time *divided by* (b) the aggregate number of Company Units held by all Company Unitholder as of immediately prior to the Effective Time. For purposes of clarity, the sum of all “Pro Rata Allocation Portions” of the Company Unitholder shall at all times equal one-hundred percent (100%).

“**Pro Rata Indemnity Portion**” means, with respect to each Seller Indemnifying Party, an amount (expressed as a percentage) equal to the quotient of (i) the aggregate portion of the Merger Consideration payable to such Seller Indemnifying Party pursuant to **Section 2.3(b)** with respect to all Company Units held by such Seller Indemnifying Party as of immediately prior to the Effective Time *divided by* (ii) the aggregate amount of the Merger Consideration payable to all Seller Indemnifying Parties pursuant to **Section 2.3(b)** with respect to all Company Units outstanding as of immediately prior to the Effective Time. For purposes of clarity, the sum of all “Pro Rata Indemnity Portions” of the Seller Indemnifying Parties shall at all times equal one-hundred percent (100%).

“**Processing**,” “**Process**,” or “**Processed**” shall mean, with respect to any data or set of data, any operation or set of operations performed thereon, whether or not by automated means, including access, adaptation, alignment, alteration, collection, combination, compilation, consultation, creation, derivation, destruction, disclosure, disposal, dissemination, erasure, interception, maintenance, making available, organization, recording, restriction, retention, retrieval, storage, structuring, transmission, and use, and security measures with respect thereto.

“**R&W Expenses**” shall mean the fees, costs and expenses of obtaining the Buyer R&W Insurance Policy, including the premium, underwriting fee, broker’s fee, Taxes and any other fees, costs or expenses incurred in connection therewith.

“**Realty Lease**” shall have the meaning set forth in **Section 4.7(b)(i)** hereof.

“**Realty Lessor**” shall have the meaning set forth in **Section 4.7(b)(i)** hereof.

“**Release**” shall mean any releasing, depositing, spilling, leaking, pumping, pouring, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping or disposing of a Hazardous Material into or through the Environment (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Materials) and any condition that results in the exposure of a Person to a Hazardous Material.

“**Representatives**” shall mean: (a) partners, employees, officers, directors, managers, members, equity owners and counsel of a Party hereto or any of its Affiliates; and (b) any consultant, attorney, accountant, advisor or agent retained by a Party hereto or the Persons listed in subsection (a) above.

“**Requisite Approval**” shall have the meaning set forth in **Section 4.1** hereof.

“**Resolution Period**” shall have the meaning set forth in **Section 2.11(b)** hereof.



“**Restricted Party**” shall have the meaning set forth in the recitals.

“**Returns**” shall mean all returns, reports, statements, schedules, notices, forms, elections, estimated Tax filings, claims for refund (including any attachments thereto and amendments thereof) or other documents or information filed with or submitted to, or required to be filed with or submitted to, any Taxing Authority relating to any Tax.

“**SaaS**” shall mean Software licensed under a model in which access to the Software is provided on a subscription basis, with the Software being located on servers owned by a third party which are not located on the customer’s premises.

“**Schedule 9.2(h) Escrow Amount**” shall have the meaning set forth in **Section 2.12(d)** hereof.

“**Schedule 9.2(h) Escrow Fund**” shall have the meaning set forth in **Section 2.12(d)** hereof.

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

“**Security Incident**” shall mean any actual or reasonably suspected: (i) breach, security incident, or ransomware, denial of access, or denial of service attack, hacking, or similar event with respect to any Company Data, System, or IT Asset or (ii) accidental, unlawful, or unauthorized access to, or other Processing of, Company Data. A Security Incident may include, but is not limited to, any one or more of the following: (i) one or more unwanted or unexpected events that adversely impact the security, availability, confidentiality, or integrity of any Company Data, System, or IT Asset; (ii) a vulnerability identified in one or more Systems or IT Assets that presents an actual or reasonably suspected material risk to any Company Data, System, or IT Asset; (iii) an event involving evidence of an actual or potential unauthorized or unlawful acquisition or Processing of Company Data; or (iv) an event involving the potential unauthorized or unlawful disruption, destruction, or loss of availability of any Company Data, System, or IT Asset.

“**Seller Indemnifying Parties**” shall have the meaning set forth in **Section 9.2** hereof.

“**Sellers’ Representative**” shall have the meaning set forth in the preamble.

“**Sellers’ Representative Expense Amount**” shall mean \$300,000 to be used by the Sellers’ Representative in his or her duties hereunder, including, without limitation, under **Section 10.16** hereof.

“**Sellers’ Representative Expenses**” shall have the meaning set forth in **Section 10.16(b)** hereof.

“**Stakeholder Claim**” shall mean any claim asserted or Action brought by (i) any current, former or purported holder of any Company Securities or other Ownership Interests in the Company or any other Person who has (or alleges) any right or claim with respect to ownership of any Company Securities or other Ownership Interests in the Company (whether against the Company, Buyer, any Affiliate of the Company or Buyer, or any officer, director, member, manager, employee, agent or representative of any of the foregoing) (A) relating to this Agreement, any other agreement entered into in connection with this Agreement or any of the transactions contemplated hereby or thereby, (B) alleging any ownership of or interest in any membership or Company Securities or any other Ownership Interests in the Company, (C) that is in any way inconsistent with, or that involves an allegation of facts inconsistent with, any of the representations and warranties in **Section 4.3** or any of the information set forth in the Closing Statement or the Consideration Spreadsheet, (D) relating to any rights of a holder of Company Securities or any



other Ownership Interests in the Company or any of its Subsidiaries, including any rights to Company Securities or other Ownership Interests in the Company, anti-dilution protection, preemptive rights, rights of first offer or first refusal, or rights to notice or to vote and any claim that any formulas, definitions or provisions related to the payment of the Closing Cash Merger Consideration, the Surviving Company Class B Units or any other amounts payable hereunder or application thereof are incorrect, (E) relating to any rights under the Organizational Documents of the Company, (F) that such Person's Company Securities or other Ownership Interests in the Company were wrongfully issued or repurchased by or on behalf of the Company or any Company Securityholder, or (G) relating to any actual or alleged breach of fiduciary duties; or (ii) any current or former officer, member, manager, director or employee arising out of or in connection with their employment with or service to the Company on or prior to the Closing, whether or not asserted prior to the Closing.

**“Straddle Period”** shall mean any Tax reporting period that includes, but does not end on, the Closing Date.

**“Subsidiary”** shall mean, with respect to any Person, any corporation, limited liability company, partnership, association, or other business entity of which the first Person: (a) owns, directly or indirectly, fifty percent (50%) or more of the Ownership Interests; (b) owns, directly or indirectly, Ownership Interests having the power to designate the managing member or managing director or elect a majority of the board of directors or other Persons performing similar functions; or (c) is a general partner or otherwise owns a controlling interest. The term **“Subsidiary”** shall include all direct and indirect Subsidiary of any Subsidiary.

**“Support Unitholder”** means each Signing Support Unitholder and each Company Unitholder that has duly executed and delivered a Joinder Agreement to the Company (and which the Company has delivered to Buyer) prior to the Closing.

**“Surviving Company”** shall have the meaning set forth in **Section 2.1** hereof.

**“Surviving Company Class A Unit”** means a “Class A Unit” in the Company, as defined in the A&R LLC Agreement.

**“Surviving Company Class B Unit”** mean a “Class B Unit” in the Company, as defined in the A&R LLC Agreement.

**“System”** shall mean any material system used by or for the Company to Process Company Data.

**“Target Net Working Capital”** shall mean \$6,100,000.

**“Tax”** or **“Taxes”** shall mean all United States federal, state, local and foreign net income, gross income, capital gains, alternative, minimum, accumulated earnings, personal holding company, franchise, capital stock, profits, windfall profits, net receipts, gross receipts, sales, use, value added, transfer, registration, stamp, premium, excise, customs duties, severance, environmental (including taxes under former Section 59A of the Code), real property, personal property, ad valorem, occupancy, license, occupation, employment, payroll, social security, disability, unemployment, workers' compensation, withholding, estimated, leasing, lease, natural resources, gaming, goods and services, escheat or unclaimed property, fuel, interest equalization, recording, turnover, or other similar tax, duty, fee, assessment or other governmental charges or deficiencies thereof (including all interest, penalties or



additions to tax resulting from, attributable to, or incurred in connection with any such taxes or any contest or dispute thereof).

“**Tax Matter**” shall mean any inquiry, claim, assessment, audit or similar event by a Taxing Authority with respect to any Tax attributable to a Pre-Closing Tax Period of the Company.

“**Tax Refund**” shall have the meaning set forth in **Section 7.4** hereof.

“**Taxing Authority**” shall mean any Governmental Authority having jurisdiction with respect to any Tax.

“**Third-Party Claim**” shall have the meaning set forth in **Section 9.5** hereof.

“**Threshold Amount**” shall have the meaning set forth in **Section 9.3(a)** hereof.

“**Top Customer**” shall have the meaning set forth in **Section 4.20(b)** hereof.

“**Top Supplier**” shall have the meaning set forth in **Section 4.20(a)** hereof.

“**Total Class A Unit Amount**” means 806,026 Surviving Company Class A Units.

“**Total Class B Unit Amount**” means 216,251 Surviving Company Class B Units.

“**Transaction Expenses**” shall mean, without duplication, the sum of the following: (a) any fees, costs and expenses incurred by or on behalf of the Company or any Company Securityholder on or prior to the Closing (or otherwise required to be paid or reimbursed by the Company pursuant to any agreement or arrangement entered into or approved by the Company or any Company Securityholder on or prior to the Closing) in connection with or related to (i) this Agreement, any Ancillary Agreement or the transactions contemplated by this Agreement or any Ancillary Agreement, including the execution of this Agreement or any Ancillary Agreement or the consummation of the transactions contemplated by this Agreement or any Ancillary Agreement, (ii) any sale of Ownership Interests, change in control transaction, business combination transaction or sale of assets by or on behalf of the Company or any Company Securityholder at or prior to the Closing or (iii) the negotiation or effectuation thereof (the matters referenced in clauses (i), (ii) and (iii), each, a “**Transaction Matter**”), including any legal, accounting, financial advisory, investment banking, brokers’, finders’ or other advisory or consulting or similar fees, costs or other expenses; and (b) the Option Payments and all amounts payable by the Company or any Company Securityholder to any current or former directors, officers, employees or other service providers of the Company, any Company Securityholder or any other Person under “change of control,” retention, transaction bonus, termination, compensation, severance or other similar arrangements to the extent arising from or triggered by any Transaction Matter (including any stay or retention bonuses or payments, sale bonuses or payments, change of control bonuses or payments, severance payments, retention bonuses or payments or similar bonuses or payments payable (including payments with either “single-trigger” or “double-trigger” provisions) or arising in connection with the transactions contemplated by this Agreement), including all bonuses and other payments set forth on Section 4.14(a)(xii), (c) any payment, cost, expense or Liabilities to any third-party arising as a result of or in connection with any Transaction Matter under any Contract or commitment entered into or approved by the Company or any Company Securityholder prior to the Closing (including any payment, cost, expense or Liability arising under or in relation to any consent, waiver, approval, amendment or termination of any Contract) whether required to be paid prior to, at or after the Closing, (d) 50% of the R&W Expenses,



(e) all fees, costs and expenses related to the D&O Tail, (f) all fees, costs and expenses of the Sellers' Representative and (g) the employer portion of any payroll, social security, disability, workers compensation, unemployment, employment or similar Taxes incurred in connection with any bonuses, option cash outs, conversions or other payments or distributions in connection with the cancellation of Company Options, Company Units, other Company Securities or other compensatory payments in connection with the consummation of the Merger or the other transactions contemplated in this Agreement or any Ancillary Agreement, including those arising from or related to any Transaction Expenses, any Option Payments or the payment of any of the portion of the Merger Consideration to any Company Securityholder or the payment of any amounts or distributions of any property hereunder or under any other Contract as a result of, or in connection with, the consummation of the Merger and the other transactions contemplated in this Agreement or any Ancillary Agreement, including any such Taxes related to the payment (if any) of the Surplus, any distribution from any Escrow Funds or any portion of the Sellers' Representative Expense Amount to any Company Securityholders (the amounts described in this clause (g), the "**Transaction Payroll Taxes**").

"**Transfer Taxes**" shall have the meaning set forth in **Section 7.7** hereof.

"**Unitholder's Allocation Notice**" shall have the meaning set forth in **Section 7.9(b)** hereof.

"**Unitholder's Tax Matter**" shall have the meaning set forth in **Section 7.3** hereof.

"**Unpaid Pre-Closing Taxes**" shall mean an aggregate amount equal to (a) all Pre-Closing Taxes (other than Transfer Taxes) that have not been paid by the Company as of the Calculation Time and (b) Transfer Taxes allocated to the Company Unitholders pursuant to **Section 7.7**, which (x) shall be determined in accordance with the principles of this Agreement and applicable Law, and (y) shall not be less than zero for any type of Tax for any jurisdiction.

"**WARN Act**" shall mean the Worker Adjustment and Retraining Notification Act of 1988.

## **Article II**

### **THE MERGER; CLOSING**

#### **Section 2.1 The Merger.**

(a) **The Merger.** At the Effective Time, on the terms and subject to the conditions set forth in this Agreement, the Certificate of Merger and the applicable provisions of Delaware Law, Merger Sub shall merge with and into the Company in the Merger, whereupon the separate existence of Merger Sub shall cease and the Company shall continue as the surviving company of the Merger. Buyer and the Company shall cause the Merger to be consummated and become effective under Delaware Law by filing a certificate of merger, in substantially the form attached hereto as **Exhibit E** (the "**Certificate of Merger**"), with the Secretary of State of the State of Delaware in accordance with the relevant provisions of Delaware Law, and the Merger shall become effective upon the filing in the office of the Secretary of State of the State of Delaware of such Certificate of Merger or such later time as may be agreed to by Buyer and the Company in writing (and set forth in the Certificate of Merger). The date and time when the Merger shall become effective is referred to herein as the "**Effective Time**."

(b) **General Effects of the Merger.** At the Effective Time, the effects of the Merger shall be as provided in the applicable provisions of Delaware Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, except as otherwise agreed to pursuant to the terms of this Agreement, all of the property, rights, privileges, powers, and franchises of each of the Company and Merger Sub shall vest in the Surviving Company, and all debts, liabilities and duties of each of the

Company and Merger Sub shall attach to and become the debts, liabilities and duties of the Surviving Company.

Section 2.2 **Organizational Documents of the Surviving Company; Managers and Officers.**

(a) At the Effective Time, the certificate of formation of the Company shall be amended and restated effective as of the Effective Time to be in the form attached to the Certificate of Merger as Exhibit A as the certificate of formation of the Surviving Company following the Effective Time.

(b) The limited liability company agreement of the Surviving Company shall be amended and restated effective as of the Effective Time to be in the form of the A&R LLC Agreement, until thereafter amended in accordance with Delaware Law and the A&R LLC Agreement.

(c) At the Effective Time, until such later time as the members of the Surviving Company may elect otherwise in accordance with the provisions of Delaware Law and the certificate of formation and the limited liability company agreement of the Surviving Company then in effect, each manager (within the meaning of Delaware Law) of the Company shall automatically be removed and the managers of the Surviving Company shall be as set forth in the A&R LLC Agreement.

(d) The individuals set forth on **Schedule 2.2(d)** shall be the officers of the Surviving Company at the Effective Time, each to hold office in accordance with the provisions of Delaware Law, the certificate of formation and the limited liability company agreement of the Surviving Company then in effect.

Section 2.3 **Effect of the Merger on Securities of Merging Companies.**

(a) Merger Sub Units. At the Effective Time, by virtue of the Merger and without any action on the part of any Party, Company Unitholder or any other Person, each limited liability membership interest of Merger Sub issued and outstanding as of immediately prior to the Effective Time shall be cancelled and converted, and thereafter evidence by, a number of Surviving Company Class A Units equal to the Total Class A Unit Amount.

(b) Company Units.

(i) Allocation of Consideration. At the Effective Time, by virtue of the Merger and without any action on the part of any Party, any Company Unitholder or any other Person, each Company Unit (excluding Cancelled Units, which shall be treated in the manner set forth in **Section 2.3(b)(ii)**) that is issued and outstanding as of immediately prior to the Effective Time shall be cancelled and converted into the right to receive, upon the terms and subject to the conditions set forth in this Agreement (including the delivery of the Exchange Documents in the manner provided in **Section 2.12**, the establishment and funding of the Indemnity Escrow Fund, the Adjustment Escrow Fund and the Schedule 9.2(h) Escrow Fund in accordance with **Section 2.12**, the establishment and funding of the Sellers' Representative Expense Amount in accordance with **Section 10.16**, and the indemnification provisions set forth in **Article IX**), (A) a number of Surviving Company Class B Units equal to the Per Unit Class B Amount and (B) an amount of cash, without interest, equal to the Per Unit Closing Cash Amount *minus* the Per Unit Effective Exercise Price, if any, with respect to such Company Unit.

(ii) Cancelled Units. At the Effective Time, by virtue of the Merger and without any action on the part of any Party, any Company Unitholder or any other Person, each Company Unit that is issued and outstanding and

held by the Company as of immediately prior to the Effective Time (the “*Cancelled Units*”) shall be cancelled and cease to exist and no payment shall be made with respect thereto.

(iii) Company Incentive Membership Units. The amount of cash payable pursuant to **Section 2.3(b)** with respect to Company Incentive Membership Units shall be net of applicable Tax withholding and deductions.

(iv) Surviving Company Class B Units. The Surviving Company Class B Units issuable pursuant to this Agreement are intended to be issued pursuant to one or more exemptions from registration under the Securities Act, including those under Regulation D of the Securities Act, and the exemption from qualification under applicable state securities Law. Each Surviving Company Class B Unit (or any other securities issued in respect of such shares upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event) issued or issuable to or held by the Company Unitholders pursuant to the terms of this Agreement hereof shall be issued a book-entry position in the books and records of the Surviving Company and shall be subject to the limitations on transfer and other terms provided in the A&R LLC Agreement.

(c) **Effect of Merger on Company Options.**

(i) Company Options. On the terms and subject to the conditions of this Agreement, at the Effective Time, each Company Option (whether vested or unvested) shall be cancelled and terminated. Prior to the Closing, the Company shall enter into an Option Termination Agreement, in substantially the form attached hereto as **Exhibit F** (an “*Option Termination Agreement*”) with each Company Optionholder, which will provide for the payment to such Company Optionholder of the amount set forth opposite such Company Optionholder’s name on the tab “Options” of the Consideration Spreadsheet (the aggregate amount of such payments, the “*Option Payments*”). The amount of cash each Company Optionholder is entitled to receive shall be net of applicable Tax withholding and deductions and, as a condition of payment, be subject to the execution and delivery of an Option Termination Agreement by such holder.

(ii) Required Actions & Notices. Prior to the Closing, and subject to the reasonable review and approval of Buyer, the Company shall take all actions reasonably necessary to effect the transactions contemplated by this **Section 2.3(c)** under the Option Plan, all Company Option agreements, any other plan or arrangement of the Company (whether written or oral, formal or informal), and any applicable Law, including adopting all resolutions, giving all notices, obtaining consents from each holder of such Company Options and taking any other actions that are reasonably necessary to effectuate this **Section 2.3(c)**.

Section 2.4 No Appraisal Rights. No Company Unitholder shall have any appraisal, dissenters’ or similar rights under this Agreement with respect to any Company Securities in connection with the Merger.

Section 2.5 Rights Not Transferable. The rights of the Company Unitholders hereunder are personal in nature and, except with the written consent of Buyer, are non-transferable and non-assignable, except that each such Person shall be entitled to assign such Person’s rights by will, by the laws of intestacy or by other similar operation of law. Any attempted transfer of such right by any holder thereof (otherwise than as permitted by the immediately preceding sentence) shall be null and void.

Section 2.6 Calculations. Notwithstanding anything herein to the contrary the aggregate, (i) the amount of cash to be paid, payable, or distributed at any particular time to any Company Unitholder in accordance with this Agreement shall be rounded down to the nearest whole cent, (ii) the aggregate amount of cash to be allocated to the Company Unitholders pursuant to **Section 2.3(b)** will in no event exceed the Estimated Closing Cash Merger Consideration, (iii) the number of Surviving Company Class B Units to be issued at any particular time to any Company Unitholder in accordance with this

Agreement shall be rounded down to the nearest whole Surviving Company Class B Unit and (iv) the aggregate number of Surviving Company Class B Units issuable pursuant to **Section 2.3(b)** (after giving effect to the rounding contemplated in clause (i) of this sentence) will in no event exceed the Total Class B Unit

Amount. No Company Unitholder shall receive any consideration in respect of such rounding contemplated by the foregoing sentence.

Section 2.7 **Taking of Necessary Action; Further Action.** If at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Company with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company and Merger Sub, the officers, directors and managers of the Company, Buyer, and their Affiliates are fully authorized in the name of their respective companies or otherwise to take, and will take, all such lawful and necessary action.

Section 2.8 **Closing.** As soon as reasonably practicable following the execution and delivery of this Agreement and on the date hereof, Buyer, Merger Sub and the Company shall consummate the Merger at a closing (the “***Closing***”) through the remote exchange of documents, unless another time, place, or method is mutually agreed upon by Buyer and the Company. The date upon which the Closing occurs hereunder shall be referred to herein as the “***Closing Date.***”

Section 2.9 **Closing Deliverables.**

(a) At the Closing, the Company shall deliver to Buyer or cause to be delivered to Buyer the items identified in **Sections 6.1(f)** and **6.1(g)**, and Buyer shall deliver to the Company the items identified in **Section 6.2(b)**.

(b) At the Closing, or if the Closing occurs after 1:00PM Pacific Time on the Closing Date, on the first Business Day following the Closing Date, Buyer shall pay, or cause to be paid, the following:

(i) To the Paying Agent by wire transfer of immediately available funds (in accordance with the applicable wire instructions provided by the Paying Agent and set forth in the Consideration Spreadsheet), the portion of the Estimated Closing Cash Merger Consideration payable to Company Unitholders with respect to their Company Units (other than the applicable portion thereof that is subject to withholding as wages or compensation) pursuant to the Consideration Spreadsheet, for further distribution, as provided in **Section 2.12**, by the Paying Agent to such Company Unitholders

(ii) To the Company by wire transfer of immediately available funds (in accordance with the applicable wire instructions set forth in the Consideration Spreadsheet) (i) the portion of the Estimated Closing Cash Merger Consideration payable to the Company Unitholders that is subject to withholding as wages or compensation, (ii) the Option Payments to be payable to the Company Optionholders pursuant to the Consideration Spreadsheet and (iii) the portion of the Closing Transaction Expenses payable to any employee of the Company pursuant to the Consideration Spreadsheet, in each case, for further distribution, subject to **Section 2.12** with respect to holders of Company Incentive Membership Units, by the Company to such payee through the Company’s payroll system and net of any applicable withholding Taxes payable with respect thereto;

(iii) to the Paying Agent, the Adjustment Escrow Amount, the Indemnity Escrow Amount and the Schedule 9.2(h) Escrow Amount, for further payment by the Paying Agent to the Escrow Agent for deposit in the Indemnity Escrow Fund, Adjustment Escrow Fund and Schedule 9.2(h) Escrow Fund respectively, pursuant to the wire instructions set forth on the Consideration Spreadsheet;

(iv) to the Paying Agent, the portion of the Closing Transaction Expenses payable to the payees identified on the Consideration Spreadsheet (other than any payees that are employees of the Company), for further payment

by the Paying Agent to such payee by wire transfer of immediately available funds (in accordance with the applicable wire instructions and payment amounts set forth in the Consideration Spreadsheet);

(v) to the Paying Agent, the Sellers' Representative Expense Amount, for further payment by the Paying Agent to the Sellers' Representative by wire transfer of immediately

available funds (in accordance with the applicable wire instructions and payment amounts set forth in the Consideration Spreadsheet);

(vi) to the Paying Agent, the Closing Indebtedness payable pursuant to the payees thereof that have delivered Payoff Letters, for further payment by the Paying Agent to such payee by wire transfer of immediately available funds (in accordance with the applicable wire instructions and payment amounts set forth in the Consideration Spreadsheet);

Section 2.10 **Consideration Spreadsheet; Estimated Closing Statement.**

(a) **Schedule 2.10(a)** sets forth the definition of Accounting Principles.

(b) Attached hereto as **Schedule 2.10(b)** is (a) an estimated unaudited consolidated balance sheet of the Company as of immediately prior to the Closing, prepared by the Company in good faith and in a manner consistent with the Accounting Principles and (b) a statement of the Company (the “**Closing Statement**”) setting forth Company’s good faith estimates of (i) the Closing Net Working Capital and the Closing Net Working Capital Adjustment, (ii) Closing Indebtedness, (iii) Closing Cash Amount, (iv) Closing Transaction Expenses, (v) the Unpaid Pre-Closing Taxes, and (vi) based on such estimated amounts, the Company’s calculation of the Closing Cash Merger Consideration (the “**Estimated Closing Cash Merger Consideration**”).

(c) The Company has prepared and delivered to Buyer a spreadsheet (the “**Consideration Spreadsheet**”) attached hereto as **Schedule 2.10(b)**, which sets forth, as of the Closing Date, the following:

(i) the amount of the Estimated Closing Cash Merger Consideration, the Company Security Number, the Per Unit Closing Cash Amount, the Per Unit Class B Amount and the Aggregate Benchmark Deduction Amount;

(ii) with respect to each Company Unitholder as of immediately prior to the Effective Time, (A) the name, address of record and email address of such Company Unitholder and whether such holder is a current or former employee of the Company, (B) the number and type of Company Units (including, if applicable, certificate number thereof) held by such Company Unitholder as of immediately prior to the Effective Time, (C) with respect to Company Incentive Membership Units held by such Company Unitholder, the Net Benchmark Amount and Per Unit Effective Exercise Price with respect to such Company Incentive Membership Units, (C) the number of Surviving Company Class B Units issuable to such Company Unitholder pursuant to **Section 2.3(b)**, (D) the portion of the Estimated Closing Cash Merger Consideration payable to such Company Unitholder pursuant to **Section 2.3(b)**, (E) the applicable portion of the Merger Consideration payable to such Company Unitholder that is subject to withholding as wages or compensation and the amount of Transaction Payroll Taxes arising from or related to such payment, (F) the portion of the Escrow Amounts and the Sellers’ Representative Expense Amount allocable to such Company Unitholder, (G) the Pro Rata Allocation Portion of such Company Unitholder and (H) the amount of Taxes are required to be withheld from the consideration that such Company Unitholder is entitled to receive pursuant to this Agreement in respect of the Company Securities held by such Company Unitholder;

(iii) with respect to each Company Optionholders, the amount payable to such Company Optionholder pursuant to the Option Termination Agreement entered into with such Company Optionholder and the amount

of any Transaction Payroll Taxes arising from or related to the Option Payments payable or issuable to such Company Optionholder;

(iv) with respect to any Closing Indebtedness for which a Payoff Letter has been delivered to Buyer and with respect to any Closing Transaction Expenses, the payee with respect thereto, whether such payment is subject to tax withholding and the amount of any Transaction Payroll Taxes with respect thereto; and

(v) the wire transfer instructions (if applicable) for all Persons to be paid under **Sections 2.10(c)(iii) – (iv)** together with the amount payable to such Person.

Section 2.11 **Purchase Price Adjustment.**

(a) Within ninety (90) days after the Closing Date, Buyer shall prepare and deliver to Sellers' Representative, Buyer's good faith calculation of the Closing Cash Merger Consideration and each of the components thereof (collectively, the "**Buyer Closing Statement**").

(b) After receipt of the Buyer Closing Statement, the Sellers' Representative shall have until 11:59PM Eastern Time on the thirtieth (30<sup>th</sup>) day after the Sellers' Representative's receipt of the Buyer Closing Statement (the "**Review Period**") to review the Buyer Closing Statement. During such period, the Sellers' Representative and its Representatives shall have reasonable access during normal business hours and upon reasonable advance notice to all relevant books and records of the Company to the extent reasonably required to complete their review of the Buyer Closing Statement. The Sellers' Representative shall deliver written notice to Buyer on or prior to the end of the Review Period specifying in reasonable detail the amount, nature and basis of all disputed items and the Sellers' Representative proposed adjustment amounts (the "**Dispute Notice**"). To the extent not set forth in the Dispute Notice, the Sellers' Representative shall be deemed to have agreed with Buyer's calculation of all other items and amounts contained in the Buyer Closing Statement and in Buyer's calculation of the Closing Net Working Capital, the Closing Net Working Capital Adjustment, Closing Cash Amount, Closing Indebtedness, Closing Transaction Expenses, the Unpaid Pre-Closing Taxes and Closing Cash Merger Consideration and such amounts shall be final and binding for purposes of this **Section 2.11**. In the event the Sellers' Representative does not provide a Dispute Notice prior to the end of the Review Period, the Sellers' Representative shall be deemed to have accepted the Buyer Closing Statement and Buyer's calculation of the Closing Net Working Capital, the Closing Net Working Capital Adjustment, Closing Cash Amount, Closing Indebtedness, Closing Transaction Expenses, the Unpaid Pre-Closing Taxes and Closing Cash Merger Consideration and such amounts shall be final, binding, nonappealable and conclusive for all purposes of this **Section 2.11**. If the Sellers' Representative submits a Dispute Notice prior to the end of the Review Period, Buyer and the Sellers' Representative shall, within thirty (30) days (or such longer period as the Parties may agree in writing) following such notice (the "**Resolution Period**"), attempt in good faith to resolve their differences and any resolution by them as to any disputed amounts shall be final, binding and conclusive.

(c) If, at the conclusion of the Resolution Period, there are any amounts set forth in the Dispute Notice remaining in dispute, then such amounts remaining in dispute shall be submitted for resolution to a nationally recognized independent accounting firm (the "**Neutral Auditors**"). Upon the request of Buyer or the Sellers' Representative, Buyer and the Sellers' Representative shall cooperate in good faith to appoint a nationally recognized independent accounting firm mutually agreeable to Buyer and the Sellers' Representative to act as the Neutral Auditor, in which event the "Neutral Auditor" shall mean such firm. Each of Buyer and the Sellers' Representative agrees to execute, if requested by the Neutral Auditors, a customary and reasonable engagement letter, including customary indemnities. The Neutral Auditors shall act as an expert and not an arbitrator to determine, based solely on the provisions of **Section 2.11** and the presentations by the Sellers' Representative and Buyer, and not by independent review, only those issues still in dispute. The Neutral Auditors' determination shall be made within thirty (30) days of their selection, shall be set forth in a written statement delivered to the Sellers' Representative and Buyer and shall be deemed a final, binding and conclusive arbitration award for purposes of this **Section 2.11**. The Buyer, Sellers' Representative, and the Neutral Auditor shall not engage in ex parte communications. The determinations of the Neutral Auditors shall be final and binding on the Parties hereto for purposes of this **Section 2.11**, absent fraud, bad faith or manifest error; provided, however, that no such determination with respect to any Dispute Notice

shall be any more favorable to Buyer than is set forth in the Buyer Closing Statement or any more favorable to Sellers' Representative than is proposed in the Dispute Notice. The terms "***Final Closing Cash Merger Consideration***" shall mean the definitive final Closing Cash Merger Consideration, as agreed to (or deemed to be agreed to) by Buyer and the Sellers' Representative in accordance with **Section 2.11(b)** hereof or resulting from the determinations made by the Neutral Auditors in accordance with this **Section 2.11(c)** (in addition to those items theretofore agreed to by the Sellers' Representative and Buyer pursuant to **Section 2.11(b)**). The

costs and expenses of the Neutral Auditors shall be allocated between the Company Unitholders, on the one hand, and Buyer, on the other hand, based upon the percentage that the portion of the contested aggregate amount not awarded to the Company Unitholders or Buyer bears to the aggregate amount actually contested by the Sellers' Representative or Buyer, respectively and the Sellers' Representative shall pay the portion allocated to the Company Unitholders. For example, if the Sellers' Representative claims that the appropriate adjustments in the aggregate are \$1,000 more than the amount determined by Buyer and if the Neutral Auditors ultimately resolve the dispute by awarding to the Company Unitholders \$800 of the \$1,000 contested amount, then the costs and expenses of the Neutral Auditors will be allocated 20% (i.e.,  $200 \div 1,000$ ) to the Company Unitholders, jointly and severally, and 80% (i.e.,  $800 \div 1,000$ ) to Buyer.

(d) Within five (5) Business Days after the Final Closing Cash Merger Consideration has been finally determined pursuant to this **Section 2.11**:

(i) If the Final Closing Cash Merger Consideration exceeds the Estimated Closing Cash Merger Consideration (such excess, the "**Surplus**"), then (x) within five (5) Business Days of the later of such determination and the delivery to Buyer of the True-Up Payment Spreadsheet, Buyer shall pay, as an adjustment to the Closing Cash Merger Consideration, an aggregate amount of cash equal to the Surplus to the Paying Agent (for further distribution to the Company Unitholders in accordance with their Pro Rata Allocation Portions as set forth in the True-Up Payment Spreadsheet, by wire transfer of immediately available funds pursuant to instructions set forth in the True-Up Payment Spreadsheet) and (y) Buyer and the Sellers' Representative shall deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to release the Adjustment Escrow Fund to the Paying Agent (for further distribution of such amount, minus the amount of any Transaction Payroll Taxes with respect to the payments contemplated in this **Section 2.11(d)(i)** (the "**Surplus and Adjustment Escrow Transaction Payroll Taxes**"), to the Company Unitholders in accordance with their Pro Rata Allocation Portions as set forth in the True-Up Payment Spreadsheet, by wire transfer of immediately available funds pursuant to instructions set forth in the True-Up Payment Spreadsheet); *provided, however*, the Paying Agent (i) shall pay the Surplus and Adjustment Escrow Transaction Payroll Taxes to the Company (or an Affiliate designated by Buyer) and (ii) shall pay any portion of the Surplus or Adjustment Escrow Fund payable with respect to Company Incentive Membership Units that is subject to withholding as wages or compensation to the Company (or an Affiliate of the Company designated by Buyer) for further payment to the payee through the Company's (or such Affiliate's) payroll system and net of any applicable withholding Taxes payable with respect thereto; and

(ii) if the Estimated Closing Cash Merger Consideration exceeds the Final Closing Cash Merger Consideration (such excess, the "**Deficit**"), then Buyer and Sellers' Representative shall promptly deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to release (x) the amount of the Deficit from the Adjustment Escrow Fund to Buyer and (y) if the Deficit is less than the amounts then held in the Adjustment Escrow Fund, the remaining amount of the Adjustment Escrow Fund to the Paying Agent (for further distribution of such amount, minus the amount of any Transaction Payroll Taxes with respect to the payments contemplated in this **Section 2.11(d)(ii)** (the "**Adjustment Escrow Transaction Payroll Taxes**"), to the Company Unitholders in accordance with their Pro Rata Allocation Portions as set forth in the True-Up Payment Spreadsheet, by wire transfer of immediately available funds pursuant to instructions set forth in the True-Up Payment Spreadsheet); *provided, however*, the Paying Agent (i) shall pay the Adjustment Escrow Transaction Payroll Taxes to the Company (or an Affiliate designated by Buyer) and (ii) shall pay any portion of the Adjustment Escrow Fund payable with respect to Company Incentive Membership Units that is subject to withholding as wages or compensation to the Company (or an Affiliate of the Company designated by Buyer) for further payment to the payee through the Company's (or such Affiliate's) payroll system and net of any applicable withholding Taxes payable with respect thereto. Should the amounts then-held in the Adjustment Escrow Fund, if any, be insufficient to satisfy the full amount

of the Deficit, then Buyer shall be entitled, at Buyer's election, to recover such unsatisfied amount (the "**Remaining Deficit**") from either (or a combination of) (i) the Indemnity Escrow Fund, in which case, Buyer and Representative shall promptly (but in any event within five (5) Business Days of the final determination thereof) deliver a joint written instruction to the Escrow Agent instructing the Escrow Agent to release such amount to Buyer from the Indemnity Escrow Fund and (ii) to recover the amount of the Remaining Deficit that has not

been satisfied by from the Indemnity Escrow Fund directly from the Company Unitholders, in which case, the Company Unitholders, jointly and severally, shall pay to Buyer, within five (5) Business Days of the determination of the Remaining Deficit not satisfied from the Indemnity Escrow Fund, an amount of cash equal to the amount of the Deficit by wire transfer of immediately available funds to such account designated in writing by Buyer to the Sellers' Representative.

(iii) If any payments are to be made to the Company Unitholders pursuant to this **Section 2.11(d)**, promptly following the determination of the Final Closing Cash Merger Consideration pursuant to this **Section 2.11**, the Sellers' Representative shall deliver to Buyer an updated Consideration Spreadsheet in a form and substance reasonably acceptable to Buyer reflecting the allocation of the of such payments among the Company Unitholders in accordance with their Pro Rata Allocation Portions (the "**True-Up Payments Spreadsheet**"). Any amounts payable by the Paying Agent to the Company Unitholders shall be paid pursuant to the wire instructions for such Company Unitholder as set forth in such Company Unitholder's Letter of Transmittal.

#### Section 2.12 **Paying Agent.**

(a) Prior to the Closing, the Sellers' Representative and Buyer shall designate Acquiom Financial LLC, a Colorado limited liability company, in its capacity as payments administrator, or such other bank or trust company reasonably acceptable to Buyer and Sellers' Representative, to act as paying agent in connection with the contemplated transactions (the "**Paying Agent**"). Buyer shall deliver to the Paying Agent the amounts contemplated in **Section 2.9(b)**, at the time indicated therein. Payments with respect to the Company Securities will be without interest. The funds so deposited with the Paying Agent shall be held pursuant to the terms of the Payments Administration Agreement between Buyer, the Sellers' Representative and the Paying Agent, substantially in the form attached hereto as **Exhibit G** (the "**Paying Agent Agreement**") and Buyer and the Sellers' Representative shall instruct the Paying Agent to pay such amounts as provided in the applicable provisions of **Section 2.9**, **Section 2.12** and the Consideration Spreadsheet.

(b) Promptly following the Closing Date, Buyer and the Sellers' Representative shall cause the Paying Agent to mail or email to each Company Unitholder that is entitled to payment pursuant to the terms of **Section 2.3(b)** as set forth on the Consideration Spreadsheet (each, a "**Payee**"): (i) a letter of transmittal in substantially the form attached hereto as **Exhibit H** (the "**Letter of Transmittal**"), and (ii) instructions for obtaining each Payee's portion of such Payee's payment pursuant to **Section 2.3(b)** as specified in the Consideration Spreadsheet; *provided, however*, that such delivery shall not be required with respect to any Payee that has received the Letter of Transmittal as of or prior to the Closing Date. Subject to **Section 2.14**, upon receipt by the Paying Agent from a Payee of a duly completed and executed Letter of Transmittal and any other required documents set forth in the Letter of Transmittal (the "**Exchange Documents**"), Buyer and the Sellers' Representative shall (i) with respect to amounts payable pursuant to **Section 2.3(b)** with respect to Company Units (other than such amounts that are subject to withholding as wages or compensation), instruct the Paying Agent to make such payments as set forth on the Consideration Spreadsheet as soon as practicable thereafter in accordance with the Paying Agent Agreement and (ii) with respect to amounts payable pursuant to **Section 2.3(b)** with respect to Company Incentive Membership Units that are subject to withholding as wages or compensation, instruct the Company to pay such amounts through the Company's payroll system net of applicable withholding Taxes payable with respect thereto.

(c) Notwithstanding anything to the contrary contained herein, none of Buyer, the Company, the Sellers' Representative or the Paying Agent shall be liable to any Company Unitholder for any portion of the Closing Cash Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(d) At the Closing, Buyer shall deposit, or shall cause to be deposited, with the Paying Agent for further delivery to the Escrow Agent pursuant to the wire instructions set forth on the Consideration Spreadsheet (i) an amount in cash equal to \$600,000 (the “**Indemnity Escrow Amount**”), to be held in escrow as a segregated escrow fund (such amount on deposit with the Escrow Agent, together with any interest thereon (as such amounts may be reduced from time to time), the “**Indemnity Escrow**”

*Fund*”), which amount shall not become payable as of the Closing Date but shall instead be paid in accordance with, and subject to the provisions of, **Article IX** and pursuant to the terms of the Escrow Agreement, (ii) an amount in cash equal to \$1,500,000 (the “*Adjustment Escrow Amount*”), to be held in escrow as a segregated escrow fund (such amount on deposit with the Escrow Agent, together with any interest thereon (as such amounts may be reduced from time to time), the “*Adjustment Escrow Fund*”), which amount shall not become payable as of the Closing Date, but shall instead be paid in accordance with **Section 2.11** and pursuant to the terms of the Escrow Agreement and (iii) an amount in cash equal to \$2,000,000 (the “*Schedule 9.2(h) Escrow Amount*” and together with the Indemnity Escrow Amount and the Adjustment Escrow Amount, the “*Escrow Amount*”), to be held in escrow as a segregated escrow fund (such amount on deposit with the Escrow Agent, together with any interest thereon (as such amounts may be reduced from time to time), the “*Schedule 9.2(h) Escrow Fund*” and together with the Indemnity Escrow Fund and the Adjustment Escrow Fund, the “*Escrow Funds*”), which amount shall not become payable as of the Closing Date but shall instead be paid in accordance with, and subject to the provisions of, **Article IX** and pursuant to the terms of the Escrow Agreement. The Escrow Funds shall be held as partial security for any Losses for which any of the Buyer Indemnified Parties are entitled to recovery under this Agreement, including pursuant to **Article IX** and for the payment of any Taxes pursuant to **Article VII**, and for any amount for which Buyer is entitled to recover pursuant to **Section 2.11**. The Adjustment Escrow Fund shall be held as partial security for any amount for which Buyer is entitled to recovery pursuant **Section 2.11**. Each of the Indemnity Escrow Amount, the Adjustment Escrow Amount and the Schedule 9.2(h) Escrow Amount shall be withheld from the amounts payable to the Company Unitholders pursuant to this **Article II** and the amount of the Indemnity Escrow Amount, the amount of the Adjustment Escrow Amount and the amount of the Schedule 9.2(h) Escrow Amount so withheld from each Company Unitholder shall be deemed to have been contributed to the Indemnity Escrow Fund, the Adjustment Escrow Fund, and the Schedule 9.2(h) Escrow Fund, respectively, with respect to such Company Unitholder. Any payments to be made out of the Indemnity Escrow Fund or the Schedule 9.2(h) Escrow Fund for the benefit of the Company Unitholders shall be made in accordance with **Article IX**, and any payment made out of the Adjustment Escrow Fund for the benefit of the Company Unitholders shall be made in accordance with **Section 2.11**.

(e) Each Company Unitholder’s right, if any, to receive cash from the Indemnity Escrow Fund, the Adjustment Escrow Fund, the Schedule 9.2(h) Escrow Fund or the Sellers’ Representative Expense Amount, as applicable, is non-transferable and non-assignable, except that each Company Unitholder shall be entitled to assign such Company Unitholder’s rights to such amounts by will, by the Laws of intestacy or by other similar operation of law, provided that any such assignee shall be subject to the terms of this Agreement and the Escrow Agreement applicable to the Company Unitholder.

(f) Notwithstanding anything to the contrary in this Agreement or any investigation or examination conducted, or any knowledge possessed or acquired, by or on behalf of Buyer or any of its Affiliates or its or their Representatives, or any disclosure made by or on behalf of the Company, the Company Unitholders or the Sellers’ Representative, (i) it is expressly acknowledged and agreed that Buyer and its Affiliates and all Representatives shall be entitled to rely on the Consideration Spreadsheet, the True-Up Payments Spreadsheet, the Indemnity Escrow Payment Spreadsheet and the Closing Statement without any obligation to investigate or verify the accuracy or correctness thereof, and to make payments in accordance therewith, (ii) in no event shall Buyer, the Company or any of their Affiliates or Representatives (excluding, for the avoidance of doubt, the Company Unitholders and the Seller Indemnifying Parties) have any liability to any Person (including any liability to the Sellers’ Representative or any Company Unitholder or any Seller Indemnifying Party) for any actual or alleged inaccuracy or miscalculations in, or otherwise relating to, the preparation of the Consideration Spreadsheet, the True-Up Payments Spreadsheet, the Indemnity Escrow Payment Spreadsheet or the Closing

Statement and the allocations set forth therein, or payments made by any Person in accordance with the Consideration Spreadsheet, the True-Up Payments Spreadsheet, the Indemnity Escrow Payment Spreadsheet or the Closing Statement.

Section 2.13 **Maximum Merger Consideration**. Notwithstanding anything to the contrary contained in this Agreement, in no event shall the aggregate cash consideration payable by Buyer hereunder with respect to the Company Units exceed the Estimated Closing Cash Merger Consideration

and the amounts deposited in the Escrow Funds that become payable to the Company Unitholders pursuant to Section 2.11 and Article IX, if any.

Section 2.14 **Withholding Rights**. Notwithstanding anything herein to the contrary, each Party, the Paying Agent, and each of their respective agents or representatives shall be entitled to deduct and withhold from the amounts otherwise payable to any Person pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under applicable Law. Any amounts so deducted and withheld shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

### **Article III BUYER AND MERGER SUB'S REPRESENTATIONS AND WARRANTIES**

Buyer and Merger Sub hereby represent and warrant to the Company as follows:

Section 3.1 **Incorporation; Authorization; Etc.** Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Utah. Merger Sub is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Each of Buyer and Merger Sub has full corporate or similar organizational power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by each of Buyer and Merger Sub of this Agreement and any Ancillary Agreement to which it is a party and the consummation by each of Buyer and Merger Sub of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate or similar organizational action on the part of each of Buyer and Merger Sub, and no other corporate proceedings on the part of by each of Buyer and Merger Sub are necessary to authorize this Agreement or the Ancillary Agreements to which by each of Buyer and Merger Sub is a party, or to consummate the transactions contemplated hereby and thereby. This Agreement (and each of the Ancillary Agreements to which by each of Buyer and Merger Sub is a party) has been duly executed and delivered by each of Buyer and Merger Sub and this Agreement (and each such Ancillary Agreement) (assuming that this Agreement and such Ancillary Agreement constitutes the legal, valid and binding obligation of the other Parties hereto and thereto) constitutes the valid and binding obligations of by each of Buyer and Merger Sub, enforceable in accordance with their respective terms, subject to the General Enforceability Exceptions.

Section 3.2 **No Conflict**. The execution, delivery and performance of this Agreement and the Ancillary Agreements to which Buyer and Merger Sub are a party and the consummation of the transactions contemplated hereby and thereby do not and will not: (i) require the consent of or notice to, or action by, any Person under, conflict with, or result in a violation or breach of or constitute a default (or an event which, with or without notice or lapse of time or both, would constitute a default) under, or give rise to any right of termination, modification or cancellation of, or the loss of a benefit under or accelerate the performance required by, or result in a right of termination, modification, cancellation or acceleration under the terms of any Contract to which Buyer or Merger Sub is a party or by which Buyer's or Merger Sub's property may be bound or affected, except where such conflict, breach, default, modification, cancellation, right of termination or acceleration would not, individually or in the aggregate, materially delay or hinder, or could not be reasonably expected to materially delay or hinder, Buyer's or Merger Sub's ability to consummate the transactions contemplated hereby; (ii) assuming the accuracy of the representations and warranties set forth in **Section 4.1(e)**, violate or conflict with any Law to which Buyer or any of its property is subject, except where such violation or conflict would not, individually or in the aggregate, materially delay or hinder, or could not be reasonably expected to materially delay or hinder, Buyer's or Merger

Sub's ability to consummate the transactions contemplated hereby; (iii) assuming the accuracy of the representations and warranties set forth in **Section 4.1(e)**, require any License or Order of, or notice to, or filing, registration or qualification with, any Governmental Authority;

or (iv) conflict with or result in any breach of any of the provisions of the Organizational Documents of Buyer or Merger Sub.

Section 3.3 **Brokers, Finders, Etc.** Neither Buyer nor Merger Sub has incurred any Liability for a brokerage fee, commission or finder's fee in connection with the transactions contemplated by this Agreement for which the Company or any Company Unitholder would be liable.

Section 3.4 **Investment.** Neither Buyer nor Merger Sub is acquiring the Surviving Company Class A Units with a view to or for sale in connection with any distribution thereof within the meaning of the Securities Act.

Section 3.5 **Litigation.** There is no Action or Order pending or affecting, or threatened against, Buyer or Merger Sub seeking to prevent or delay the consummation of the transactions contemplated by this Agreement.

Section 3.6 **Funding.** Buyer will have on the Closing Date access to sufficient unrestricted cash and cash equivalents to purchase the Company Units and pay the Estimated Closing Cash Merger Consideration as set forth herein.

Section 3.7 **NO OTHER REPRESENTATIONS.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES MADE BY THE COMPANY IN THIS AGREEMENT OR IN ANY ANCILLARY AGREEMENT, THE REPRESENTATIONS AND WARRANTIES MADE BY THE COMPANY UNITHOLDERS IN THE JOINDER AGREEMENT AND THE LETTER OF TRANSMITTAL AND THE REPRESENTATIONS AND WARRANTIES MADE BY THE OPTIONHOLDERS IN THE OPTION TERMINATION AGREEMENTS, NONE OF THE COMPANY, NOR ANY AFFILIATE OF THE COMPANY NOR ANY OTHER PERSON HAS MADE OR IS MAKING ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO COMPANY, THE BUSINESS OF THE COMPANY OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OF THE ANCILLARY AGREEMENTS AND BUYER ACKNOWLEDGES THAT THE COMPANY HEREBY EXPRESSLY DISCLAIMS ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES, WHETHER IMPLIED OR MADE BY THE COMPANY OR ANY OF ITS OFFICERS, MANAGERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS OR REPRESENTATIVES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES MADE BY THE COMPANY IN THIS AGREEMENT OR IN ANY ANCILLARY AGREEMENT, THE REPRESENTATIONS AND WARRANTIES MADE BY THE COMPANY UNITHOLDERS IN THE JOINDER AGREEMENT AND THE LETTER OF TRANSMITTAL AND THE REPRESENTATIONS AND WARRANTIES MADE BY THE OPTIONHOLDERS IN THE OPTION TERMINATION AGREEMENTS, (I) BUYER ACKNOWLEDGES THAT THE COMPANY HEREBY EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO ANY PROJECTION, FORECAST OR INFORMATION MADE AVAILABLE, COMMUNICATED OR FURNISHED (ORALLY OR IN WRITING) TO BUYER OR ANY AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO THE BUYER OR ANY AFFILIATES OR REPRESENTATIVES BY ANY MANAGER, OFFICER, DIRECTOR, SHAREHOLDER, MEMBER, PARTNER, EMPLOYEE, AGENT, CONSULTANT OR REPRESENTATIVE OF THE COMPANY OR ANY OF ITS AFFILIATES), AND (II) THE COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES TO BUYER REGARDING THE PROBABLE SUCCESS OR PROFITABILITY OF THE BUSINESS OF THE COMPANY IN THE FUTURE. NOTWITHSTANDING ANYTHING TO THE CONTRARY



CONTAINED HEREIN, THE FOREGOING SHALL NOT LIMIT THE RIGHT OF ANY PARTY TO SEEK ANY AVAILABLE REMEDY FOR FRAUD.

**Article IV**  
**REPRESENTATIONS AND WARRANTIES OF**  
**THE COMPANY**

Except as set forth in the specific section, subsection or sub-clause of the Company disclosure schedule delivered by the Company to Buyer concurrently with the execution of this Agreement and dated as of the date hereof (the “**Company Disclosure Schedules**”) that correspond to the section, subsection or subclause of each representation and warranty set forth in this **Article IV** (and except as set forth in another section of the **Article IV** sections of the Company Disclosure Schedules hereto, to the extent that it is reasonably apparent on the face of such disclosure, without reference to the underlying information or documents, that such disclosure is applicable to such other section of this **Article IV**), the Company hereby represents and warrants to Buyer and Merger Sub as follows:

Section 4.1     **Company Organization; Authorization.**

(a)     The Company is a limited liability company duly formed, organized, validly existing and in good standing under the Laws of the State of Delaware. The Company has the requisite limited liability company power and authority to own or lease and operate its properties and assets and to carry on their respective businesses as presently conducted. The Company is qualified to do business as a foreign entity and is in good standing in each jurisdiction listed on **Section 4.1(a)** of the Company Disclosure Schedules, which jurisdictions constitute all of the jurisdictions in which the ownership, lease or operation of properties and the conduct of the Business requires such qualification, except where the failure to be so qualified has not had and would not reasonably be expected to be, individually or in the aggregate, material to the Company. The Company has made available to Buyer true and complete copies of the Company’s Organizational Documents reflecting all amendments made thereto at any time prior to the date of this Agreement. The Organizational Documents of the Company are in full force and effect and the Company has not, nor has ever been, in violation of the provisions of any current or past Organizational Documents of the Company.

(b)     The Company has full power and authority to enter into, deliver and perform its obligations under this Agreement and the Ancillary Agreements to which it is a party and to consummate the Merger and the other transactions contemplated hereby and thereby. The execution, delivery and performance by the Company of this Agreement and each Ancillary Agreements to which it is a party and the consummation of the Merger and the other transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of the Company (including the unanimous approval of the managers of the Company) and no further limited liability company or other action is required on the part of the Company to authorize this Agreement or any Ancillary Agreements to which the Company is a party or to consummate the Merger or any other transactions contemplated hereby and thereby. This Agreement (and each of the Ancillary Agreements to which the Company is a party) has been duly executed and delivery by the Company and this Agreement (and each of the Ancillary Agreements to which the Company is a party) (assuming that this Agreement and any such Ancillary Agreement constitutes the legal, valid and binding obligation of Buyer) constitutes the valid and binding obligations of the Company, enforceable in accordance with their respective terms, subject to the General Enforceability Exceptions. The adoption of this Agreement, the approval of the Merger and the amendment of the Company’s limited liability company agreement as reflected in the A&R LLC Agreement by the Manager is the only vote or approval required under Law, the Organizational Documents of the Company or any Contract to which the Company or any Company

Unitholder is a party or pursuant to which any of their assets or properties are bound, in each case, to legally adopt this Agreement, approve the Merger, amend the Company's limited liability company agreement to reflect the A&R LLC Agreement and the other transactions contemplated hereby ("*Requisite Approval*"), which has been obtained.

(c) The Company has provided written notice to the Company Unitholders with respect to the transactions contemplated hereby and the Ancillary Agreements containing all information and disclosures required to be included therein in accordance with all applicable Laws and the Company's Organizational Documents. The communications, information and materials submitted or delivered by or on behalf of the Company to the Company Unitholders in connection with this Agreement or the transactions contemplated hereby did not (and do no) contain any untrue statement of a material fact, and did not (and do not) omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which made, not misleading.

(d) No "fair price," "moratorium," "interested stockholder," "control share acquisition," "business combination" or any other anti-takeover Law or similar Law enacted under state or federal Law or any anti-takeover provision in the Organizational Documents of the Company is applicable to the Company, any Company Securities, this Agreement, or the Merger or the other transactions contemplated hereby.

(e) **Section 4.1(e)** of the Company Disclosure Schedules sets forth the directors, limited liability company managers and officers (or equivalent) of the Company.

(f) The "annual net sales" (as such term is defined in 16 C.F.R. 801.11) of the "ultimate parent entity" (as such term is defined in 16 C.F.R. 801.1(a)(3)) of the Company are below \$239 million. The "ultimate parent entity" (as such term is defined in 16 C.F.R. 801.1(a)(3)) of the Company is not "engaged in manufacturing" (as such term is defined in 16 C.F.R. 801.1(j)). The "total assets" (as such term is defined in 16 C.F.R. 801.11) of the "ultimate parent entity" (as such term is defined in 16 C.F.R. 801.1(a)(3)) of the Company are below \$23.9 million.

Section 4.2 **No Conflicts; Consents.** The execution, delivery and performance of this Agreement and the Ancillary Agreements to which the Company is a party and the consummation of the Merger or any of the other the transactions contemplated hereby and thereby (including, for the avoidance of doubt, the purchase of the Surviving Company Class B Units as contemplated in the A&R LLC Agreement) will not: (a) except as set forth on **Section 4.2(a)** of the Company Disclosure Schedules, with or without notice or lapse of time or both, conflict with, result in a breach of any provision of, constitute a default under, result in the modification or cancellation of, give rise to any right of termination, or acceleration of any right in respect of, or result in a loss of benefit to which the Company is entitled, in each case, under any Contract to which the Company is a party or by which the Company or its assets or properties are bound, except as would not, individually or in the aggregate, be material to the Company; (b) result in the creation or imposition of any Lien upon any of the property or assets (whether tangible or intangible) of the Company; (c) violate or conflict with any Law, ordinance, code, rule, regulation, decree, Order or ruling of any court, arbitral body or Governmental Authority, to which the Company or any of its properties is subject; (d) and the filing of the Certificate of Merger, require any authorization, consent, waiver, order, permit or approval or authorization of, or notice to, or filing, registration or qualification with, any Governmental Authority; or (e) conflict with, violate or result in a breach of any of the provisions of the Organizational Documents of the Company.

Section 4.3 **Capitalization.**

(a) The authorized Company Units, and the quantity and the record and beneficial holder of all Company Units (including each Company Incentive Membership Unit) issued and outstanding are set forth on **Section 4.3(a)** of the Company Disclosure Schedules. For each such Company Unit, **Section 4.3(a)** of the Company Disclosure Schedules identifies whether such Company Unit is a Company Incentive Membership Unit and if so, includes the "Benchmark" and "Threshold Amount" (as such terms are defined in the Company Pre-Merger LLC Agreement) for each Company Incentive

Membership Units. The Company Incentive Membership Units will be fully vested as of immediately prior to the Effective Time. All issued and outstanding Company Units (i) have been duly authorized, validly issued, fully paid and non-assessable, (ii) have been issued in compliance with applicable Law and not in violation of any preemptive rights, purchase option, call option, subscription rights, rights of first refusal or similar rights, and (iii) are owned, beneficially (free and clear of any Liens, except for restrictions under the Securities Act and state securities Laws) and of record as set forth on

**Section 4.3(a)** of the Company Disclosure Schedules. Each of the Company Unitholders is an Accredited Investor and the Company has delivered to Buyer true, correct and complete Investor Questionnaires duly completed and executed by each Company Unitholder.

(b) Other than the Company Securities set forth on **Section 4.3(b)** and **Section 4.3(c)** of the Company Disclosure Schedules: (i) there are no authorized, promised, issued or outstanding Ownership Interests in the Company; (ii) there are no outstanding or authorized options, warrants, convertible securities, purchase rights, subscription rights, conversion rights, exchange rights, or other Contracts or commitments that could require the Company to issue, sell, or otherwise cause to become outstanding any of its respective Ownership Interests in the Company; (iii) there are no outstanding obligations (contingent or otherwise) of the Company to repurchase, redeem or otherwise acquire, directly or indirectly, any Ownership Interests in the Company; (iv) there are no outstanding or authorized Company Securities or stock appreciation rights, phantom equity, profit participation, or similar rights with respect to the Company; (v) there are no agreements, registration rights agreements, voting agreements, voting trusts, proxies or other Contracts, arrangements or understandings relating to any Company Securities or Ownership Interests in the Company or that otherwise affect voting, registration or transfer of or other rights relating to any Company Securities or Ownership Interests in the Company and (vi) no Person has any right of first refusal, preemptive right, subscription right or similar right with respect to any Company Securities or Ownership Interests in the Company. The Company is not obligated to redeem or otherwise acquire any Company Securities or Ownership Interests in the Company. There are no, and the Company has no Liabilities for any, unpaid dividends or distributions and no obligations to declare any dividends or distributions that have accrued or been declared but are unpaid on any of the Equity and the Company will have no Liability to make any dividend or distribution with respect to, arising out of or related to any period that occurs (in whole or in part) prior to the Closing Date.

(c) The Company has reserved 3,000 Company Units for issuance pursuant to the Option Plan. As of the date of this Agreement, 3,000 Company Units are subject to outstanding Company Options, all of which shall automatically be cancelled and be terminated as of the Effective Time. All outstanding Company Options were granted under the Option Plan. True and complete copies of each award agreement, pursuant to which each outstanding Company Option was granted, have been made available to Buyer. All outstanding Company Options have been duly authorized and validly issued and granted in compliance with applicable Law. The cancellation and extinguishment of the Company Options as contemplated by this Agreement complies with, and does not violate applicable Law, the Option Plan, the terms of the Company Options, or any Contract to which the Company is a party or by which it is bound. **Section 4.3(c)** of the Company Disclosure Schedules sets forth with respect to each Company Option, the name of the holder thereof, the Company Units covered thereby, the exercise price per share (if any), and to the extent applicable, the vesting schedule, number of vested shares as of the most recent month-end preceding the date of this Agreement, and any acceleration terms implicated by this Agreement. Except as set forth on **Section 4.3(c)** of the Company Disclosure Schedules, there are no additional options, warrants, puts, calls, rights, convertible or exchangeable securities, “phantom” equity rights, stock appreciation rights, stock-based performance units, commitments, Contracts, arrangements or undertakings of any kind to which the Company is a party or by which it is bound (i) obligating the Company to issue, deliver, transfer or sell, or cause to be issued, delivered, transferred or sold, additional shares of capital stock or any other security of (including any security convertible into or exercisable for or exchangeable into any capital stock or other security of) the Company (whether or not such security has voting rights), (ii) obligating the Company to issue, grant, extend or enter into any such option, warrant, put, call, right, security, commitment, Contract, arrangement or undertaking, or (iii) entitling any Person to any economic benefit based, directly or indirectly, on the value or price of any of the foregoing.

(d) The treatment of the Company Units and Company Options contemplated in this Agreement, including the allocation of Merger Consideration set forth herein, in each case, comply with and do not conflict with or violate the Organizational Documents of the Company, any Law or order applicable to the Company or any Contract pursuant to which the Company or any Company Securityholder is a party or otherwise bound.

(e) As a result of the consummation of the transactions contemplated hereby, Buyer will own all right, title and interest, and will be the sole record and beneficial owner of, a number of

Surviving Company Class A Units equal to the Total Class A Unit Amount, which will represent all issued or outstanding Surviving Company Class A Units. Other than the Surviving Company Class A Units and the Surviving Company Class B Units issued to the Company Unitholders pursuant to **Section 2.3(b)** (in an aggregate amount equal to the Total Class B Unit Amount), the Company will not have any issued and outstanding Ownership Interests in the Company as of immediately following the Effective Time.

Section 4.4 **Financial Statements.**

(a) **Section 4.4(a)** of the Company Disclosure Schedules contains copies of the following financial statements (such financial statements, including the related notes and schedules therein, collectively, the “*Financial Statements*”):

(i) the audited consolidated balance sheet of the Company as of December 31, 2023 and as of September 30, 2024 (such September 30, 2024 balance sheet, the “*Audited Balance Sheet*”) and the related audited statements of operations, cash flows and member’s equity of the Company for the twelve (12) month period ended December 31, 2023 and for the nine (9) month period ended September 30, 2024 (collectively, the “*Audited Financial Statements*”).

(b) Each of the balance sheets included in the Financial Statements fairly presents in all material respects the financial position and condition of the Company, as of its date. Except as set forth on **Section 4.4(b)** of the Company Disclosure Schedules, the Financial Statements: (i) have been prepared in accordance with GAAP, applied on a consistent basis throughout the periods covered thereby; and (ii) have been prepared from, and are in accordance with, the books and records of the Company; and (iii) fairly present, in all material respects, the financial position, condition, results of operations and cash flows of the Company as of the dates and for the periods indicated therein.

(c) The Company has established and maintains, adheres to, and enforces a system of internal accounting controls which are effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements (including the Financial Statements), in accordance with GAAP. None of the Company or, to the Company’s Knowledge, any of its representatives, has received or otherwise obtained any written, or to the Company’s Knowledge, oral, complaint, allegation, assertion or claim regarding the accounting or auditing practices, procedures, methodologies or methods of the Company or its internal accounting controls, including any complaint, allegation, assertion or claim that the Company has engaged in questionable accounting or auditing practices. There has been no Fraud, whether or not material, involving any officer of the Company or any employee of the Company who has a significant role in the Company’s internal control over financial reporting.

Section 4.5 **Undisclosed Liabilities.**

(a) Except as disclosed and adequately reserved for in the Audited Balance Sheet or as set forth on **Section 4.5(a)** of the Company Disclosure Schedules, the Company has no Liabilities, except for (i) trade Liabilities that have arisen after the date of the Audited Balance Sheet in the Ordinary Course of Business which could not, individually or in the aggregate, reasonably be expected to be material to the Company or the Business and (ii) Transaction Expenses that will be paid prior to the Calculation Time or included in the Closing Transaction Expense set forth on the Consideration Spreadsheet.

(b) Except as described on **Section 4.5(b)** of the Company Disclosure Schedules, the Company does not have any Indebtedness. **Section 4.5(b)** of the Company Disclosure Schedules sets forth a complete and correct list of each item of Indebtedness of the Company as of the date of this Agreement (including any guarantees of Indebtedness), identifying the name and address of the creditor thereto, the amount of such Indebtedness as of the close of business on the date of this Agreement, and any restriction or penalty upon the prepayment of any such Indebtedness. With respect to any Indebtedness, the Company is not nor has it ever been in default under such Indebtedness and no payments thereunder are past due.

(c) Except as set forth on **Section 4.5(c)** of the Company Disclosure Schedules, there are no Closing Transaction Expenses.

Section 4.6 **Absence of Certain Changes**. Except as disclosed on **Section 4.6** of the Company Disclosure Schedules, since January 1, 2024 (the “*Lookback Date*”), the Company has conducted its business in the Ordinary Course of Business, there has not been any Material Adverse Effect nor any event, occurrence, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect, including the loss of any customer representing more than five percent (5%) of sales, and none of the Company nor any Company Securityholders has:

- (a) disposed of any of the Ownership Interests in the Company, including the Equity;
- (b) changed any salaries, sales commissions or other compensation of, or paid any bonuses or extraordinary compensation to, any current or former director, manager, officer, employee, sales representative, consultant or member of the Company with annual base compensation of at least \$100,000, or entered into any employment, severance or similar agreement with any current or former director, manager, officer, employee, sales representative, consultant or member of the Company;
- (c) adopted or entered into new Employee Benefit Plans or increased any benefits under any profit sharing, bonus, deferred compensation, savings, insurance, pension, retirement or other Employee Benefit Plan for or with any employees of the Company;
- (d) entered into any transaction, Contract or commitment outside of the Ordinary Course of Business, or canceled or waived any claim or right outside the Ordinary Course of Business;
- (e) modified or amended in any material respect or terminated any Material Contract;
- (f) entered into, terminated, or received notice of termination of any Contract or transaction involving a total remaining commitment by the Company of at least \$50,000;
- (g) (i) changed the Company’s accounting or Tax methods, elections, policies, practices, or principles, (ii) changed the Company’s reserve or accrual amounts or policies, (iii) changed the Company’s depreciation or amortization policies or previously adopted rates, (iv) written-off as uncollectible any material accounts receivables, (v) entered into any transactions giving rise to deferred revenue, income, gains, deductions or losses outside of the Ordinary Course of Business, (vi) made or requested any Tax ruling or voluntary disclosure, entered into any closing agreement related to Taxes, settled any claim or assessment in respect of Taxes or amended any Return, in each case that could reasonably be expected to have any impact on Buyer or any of its Subsidiaries or Affiliates (including the Company after the Closing), or (vii) consented to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes (other than any such extension that arises solely from permitted and routine extensions of the due date of a Return), which limitation period has not yet closed;
- (h) changed any working capital practice of the Company outside of the Ordinary Course of Business;
- (i) sold, leased, pledged, licensed or otherwise disposed or encumbered any tangible or intangible asset or property of the Company, including the Company IPR, outside the Ordinary Course of Business;

(j) failed to maintain and replenish the Company's inventory, supplies, equipment, and computers in the Ordinary Course of Business;

(k) (A) issued any Ownership Interests in the Company or issued or granted any option, warrant, registration right, convertible security or other right to acquire or sell any Ownership

Interests in the Company, (B) retired, redeemed, purchased, withdrawn or otherwise acquired for value any of the Ownership Interests in the Company (including the purchase of warrants, rights, or other options to acquire such interests), or (C) declared or paid any non-cash dividends or made any distributions or other cash payments with respect to any of the Ownership Interests in the Company;

(l) created, incurred, assumed or otherwise became liable for any Indebtedness, except for Indebtedness that is disclosed in the Financial Statements or on **Section 4.5(b)** of the Company Disclosure Schedules;

(m) granted or suffered to exist any Lien on any of the Ownership Interests in the Company or the tangible or intangible assets or properties of the Company, other than a Permitted Lien;

(n) settled, released or forgiven any claim or litigation or waived any right thereto that relates to any of the Ownership Interests in the Company, or the tangible or intangible assets or properties of the Company;

(o) taken any action that decreased, removed, sold, otherwise disposed of, pledged or granted any security interest in or licensed any non-cash tangible or intangible, asset or property;

(p) not sold, assigned, transferred, or permitted to lapse any Intellectual Property Right, or disclosed or permitted disclosure (except in the Ordinary Course of Business) to any Person other than representatives of the Company or any Company Securityholder, any Trade Secret, Confidential Information or other proprietary information;

(q) agreed, whether verbally or in writing, to do any of the foregoing.

#### Section 4.7 **Real Property.**

(a) The Company does not own and has never owned any real property or any option or other right or obligation to purchase any real property or any interest therein.

(b) **Section 4.7(b)** of the Company Disclosure Schedules sets forth a complete and correct list of all real property that is leased or subleased to the Company used in the operation of the Business, the address of such premises, and all Realty Leases pursuant to which such real property is leased or subleased (such real property, together with all buildings, improvements and fixtures thereon, the “**Leased Real Property**”). The Leased Real Property constitutes all interests in real property currently used, occupied or held for use in connection with the Business and which are necessary for the conduct of the Business as presently conducted and as historically conducted during the twenty-four (24) month period immediately preceding the Closing Date. With respect to the Leased Real Property:

(i) each lease or sublease of Leased Real Property and any and all related amendments, modifications, extensions, renewals, guaranties and assignments thereof pursuant to which the Company is a party (each, a “**Realty Lease**” and collectively, the “**Realty Leases**”) is in full force and effect and is a valid and binding obligation of the Company and, to the Company’s Knowledge, the landlord or lessor thereunder (each, a “**Realty Lessor**”), enforceable against the Company and, to the Company’s Knowledge, the applicable Realty Lessor, in accordance with its terms (except as enforceability may be limited by the General Enforceability Exceptions), and accurate and complete copies of the Realty Leases have been provided to Buyer prior to the date hereof;

(ii) the Company is a tenant or possessor, as applicable, in good standing under the Leased Real Property (with a right of quiet enjoyment therein), and all rents due with respect to the Leased Real Property have been paid. The Company is not in default under any Realty Lease, and there exists no event that, with the passage of time, the giving of notice, or both, would constitute a default by the Company or, to the Company's Knowledge, any Realty Lessor under any Realty Lease. No event has occurred which, with the delivery of notice, the passage of time or both, would: (1) constitute a default by the Company or, to the Company's Knowledge, any Realty Lessor under any Realty Lease; or

(2) permit the termination or modification of any Realty Lease. The Company has not subordinated its leasehold estate or subleasehold estate under the Realty Leases to any mortgage, deed of trust or other encumbrance encumbering the Leased Real Property and there are no such mortgages, deeds of trust or other encumbrances encumbering the Leased Real Property;

(iii) except pursuant to Permitted Liens: (A) the Company is the owner and holder of a valid leasehold or subleasehold interest created by the respective Realty Lease and the Company has not subleased, licensed, assigned or otherwise granted any Person the right to use or occupy its respective Leased Real Property or any portion thereof; and (B) the Company has not mortgaged or otherwise encumbered or created any Lien against its leasehold or subleasehold estate in the Leased Real Property;

(iv) none of the Company has received any written notice from any Realty Lessor repudiating any provision of any Realty Lease or giving notice of its intent to revoke or not renew any Realty Lease and, to the Company's Knowledge, no such revocation, repudiation or intention not to renew is contemplated;

(v) the Company has obtained all certificates of occupancy or required permits with respect to the use and occupancy by the Company of the Leased Real Property;

(vi) the Leased Real Property is in good operating condition and repair, normal wear and tear excepted. Neither the operation of the Company on the Leased Real Property nor, to the Company's Knowledge, such Leased Real Property, violate any Law relating to such property or operations thereon. The Company could not reasonably be expected to be required to expend more than \$10,000 in causing any Leased Real Property to comply with the surrender conditions set forth in the applicable Realty Lease. The Company is not party to any agreement or subject to any claim that may require the payment of any real estate brokerage commissions, and no such commission is owed with respect to any of the Leased Real Property. The Company expects to be able to continue to have the right to occupy the Leased Real Property through the remainder of the term of the applicable Realty Lease.

#### Section 4.8 **Title to Assets; Tangible Assets.**

(a) Except as set forth on **Section 4.8** of the Company Disclosure Schedules, the Company is the sole and exclusive owner of and has valid and marketable title to, or a valid leasehold interest in or license to, all of the properties and assets (whether real or personal, tangible or intangible) owned or purported to be owned, or used or held for use by the Company, including all such properties and assets located on the Company's premises, shown on the Audited Financial Statements or acquired after the date thereof, free and clear of all Liens other than Permitted Liens, except for such properties and assets (which are not individually or in the aggregate) disposed of in the Ordinary Course of Business since the date of the Audited Financial Statements, and the Company is exclusively entitled to possess and dispose of such properties and assets pursuant to binding Contracts. There are no outstanding agreements or options to sell which grant any Person other than Buyer the right to purchase or otherwise acquire any of the properties or other assets (whether real or personal, tangible or intangible) of the Company. Except as set forth on **Section 4.8(a)** of the Company Disclosure Schedules, no Person owns or has an interest, directly or indirectly, in any equipment, supplies, properties and other assets (whether real or personal, tangible or intangible) used in or related to the Business.

(b) The Company owns or leases all buildings, equipment, and other tangible assets and properties reasonably necessary for the conduct of the Business as presently conducted and proposed to be conducted. All registration dues or fees required to be paid by the Company with respect to any of its assets or properties have been paid.

(c) The buildings, machinery, equipment, and other tangible assets and properties that the Company owns or leases have been maintained in accordance with the Company's maintenance and capital expenditure practices and, are in good operating condition and satisfactory repair, normal wear and tear excepted, and are sufficient for the continued operation of the Business of the Company following the Closing.

Section 4.9 **Subsidiaries.** The Company does not have, and has never had, any direct or indirect Subsidiaries and none of the business or operations of the Company have been conducted through any entity other than the Company. The Company does not own, or have any interest in any shares or hold any Ownership Interest in any other Person.

Section 4.10 **Litigation; Orders.** Except as disclosed on **Section 4.10** of the Company Disclosure Schedules, (a) the Company is not subject to any outstanding injunction, judgment, Order, decree, ruling, or charge relating to the Business, (b) there are no, and for the last three (3) years there have been no, Actions, pending, or to the Company's Knowledge, threatened against or by the Company, or affecting any of its assets, properties or business relating to the Business, and (c) to Company's Knowledge, there are no facts or circumstances which could reasonably be expected to result in or lead to the instigation of, any Action against or by the Company, or affecting any of its assets, properties or business relating to the Business.

Section 4.11 **Intellectual Property.**

(a) **Section 4.11(a)** of the Company Disclosure Schedules sets forth a complete and correct list or description, as applicable, of all Company Exclusive IPR, including (i) Patents, (ii) registered Trademarks, applications for Trademark registrations, and unregistered Trademarks and tradenames, (iii) registered Copyrights and applications for Copyright registrations, (iv) domain names and social media accounts, (v) Software, and (vi) any and all other material IPR embodied in or otherwise related to the Company Products, including, without limitation, all material formulas, specifications and recipes for the Company Products.

(b) **Section 4.11(b)** of the Company Disclosure Schedules lists all Company IPR Agreements, other than those for Commercially Available Software. The Company has made available or delivered to Buyer true and complete copies of all Company IPR Agreements (as amended to date, including all supplements and modifications thereto).

(c) The Company IPR constitutes all of the Intellectual Property Rights reasonably necessary for the operation of the Business as presently conducted and proposed to be conducted. All Company IPR necessary for the operation of the Business immediately prior to the Closing will be owned (in the case of Owned IPR) or available for use (in the case of Intellectual Property Rights licensed to the Company under any Company IPR Agreements) by Buyer on substantially the same terms and conditions immediately subsequent to the Closing.

(d) The Company (i) has not encumbered or placed limitations on any Company IPR or the Company's use thereof, except for Permitted Liens and (ii) owns and possess all right, title and interest in and to, free and clear of all Liens, except for Permitted Liens, or has the valid and enforceable right to use, pursuant to a binding and enforceable written Contract, all Company IPR.

(e) The Company Exclusive IPR is valid, enforceable and subsisting, and will remain the same immediately following the Closing. The Company has taken all commercially reasonable steps to maintain and protect each item of Company Exclusive IPR, and Confidential Information. No such Confidential Information of the Company has been disclosed or authorized to be disclosed to any Person other than pursuant to a written Contract restricting the disclosure and use of such Confidential Information. The Company has, and enforces, a policy requiring each of its employees and independent contractors to execute an enforceable and written proprietary information, assignment of inventions and confidentiality Contract effectively and validly assigning to the Company all rights in any Intellectual Property Rights authored, invented, created, conceived or otherwise developed in the scope of his or her, or its engagement by the Company,

copies of forms of which have been made available to Buyer, and all current and former employees and all current and former independent contractors of the Company, have executed such a Contract. The Company has recorded all assignments of any registered Intellectual Property Rights assigned to the Company with the relevant Governmental Authority in accordance with applicable Laws and regulations in each jurisdiction in which such assignment is required to be recorded. No employee or independent contractor of the Company is obligated under any Contract or subject to any

judgment, decree or order of any court or administrative agency, that interferes with such employee's or independent contractor's duties to the Company, or that conflicts with the conduct of the Business.

(f) All necessary fees and filings with respect to any Company Exclusive IPR have been timely submitted to the relevant Governmental Authorities and domain name registrars to maintain such Company Exclusive IPR in full force and effect. There are no renewals, annuities, payments, fees, responses to office actions or other filings with respect to any Company Exclusive IPR required to be made and having a due date within one hundred-twenty (120) days after the Closing Date. No issuance or registration obtained and no application filed for any Intellectual Property Rights has been cancelled, abandoned, allowed to lapse or not renewed. None of the Company Exclusive IPR has been or is subject to any interference, derivation, reexamination (including ex parte reexamination, inter partes reexamination, inter partes review, post grant review or covered business method (CBM) review), cancellation, or opposition proceeding.

(g) Neither this Agreement nor the transactions contemplated by this Agreement, including the assignment to Buyer by operation of Law or otherwise of any Company IPR Agreement, will result in: (i) Buyer, the Company or any of their respective Affiliates granting to any third Person any right to or with respect to any Intellectual Property Rights owned by or licensed to any of them (other than rights granted by the Company on or prior to the Closing Date under Intellectual Property Rights held by the Company as of the Closing Date) or being required to provide any source code to any third Person, (ii) Buyer, the Company or any of their respective Affiliates being bound by, or subject to, any non-compete or other restriction on its freedom to engage in, participate in, operate or compete in any line of business, or (iii) Buyer, the Company or any of their respective Affiliates being obligated to pay any royalties or other license fees with respect to Intellectual Property Rights of any third Person in excess of those payable by the Company in the absence of this Agreement or the transactions contemplated by this Agreement.

(h) The Company is not under any obligation to license any Intellectual Property Rights to any Governmental Authority or research institution as a result of any funding received by the Company from any such Governmental Authority or research institution.

(i) The products or services of the Company ("**Company Products**") do not incorporate, include, or are distributed together with, or are compiled with, or linked (dynamically or statically) with any open source materials, and, there are no current or future plans to so incorporate, include, distribute together with, compile with, or link with any additional open source material. The Company has not, by license, transfer, escrow or otherwise, permitted any other Person the right to reverse engineer, disassemble or decompile any of the Company Products to create such source code, except as may be required by law. Each copy of the Company Products distributed or made available by the Company was at that time the subject of a valid, existing and enforceable Contract. No Company Product is subject to any Liens, other than Permitted Liens, or obligation by Company to an escrow agreement which provides for any release to any other Person of any Software, in source code or binary form, of the Company Products and the Company has not entered into any escrow agreement, obligation to enter into an escrow agreement or other obligation which provides for the release of any Software code of the Company Product under any circumstances, such as, but not limited to, bankruptcy or breach by the Company of a customer Contract. The Company has reduced to writing all material IPR related to the Company Products, including, without limitation, all material formulas, specifications and recipes for the Company Products. Accurate and complete copies of all such material IPR, including material formulas, specifications and recipes, have been provided to Buyer prior to the date hereof.

(j) The Company has not (directly or indirectly) written or developed any Software, including such Software which comprise the Company Products.

(k) Except as set forth on **Section 4.11(h)** of the Company Disclosure Schedules:

(i) no third party has or is currently infringing on, misappropriating or otherwise violating any Company Exclusive IPR;

(ii) the Company is not and has not been party to any Action involving a claim, and has not received any written, or to the Company's Knowledge, any other communication claiming, that any Company IPR is invalid or unenforceable or otherwise challenging the Company's ownership or use of any Company IPR;

(iii) the Company is not party to any Action involving a claim that a third party infringed, misappropriated, diluted, or otherwise violated the Company IPR;

(iv) The Company is not party to any Action involving a claim, and has not received any written, or to the Company's Knowledge, any other communication claiming, that the Company has infringed, misappropriated, diluted, or otherwise violated, or that the Company is infringing, misappropriating, diluting, or otherwise violating the Intellectual Property Rights of any third party and the Company, its products and services, including the Company Products, and the operation of the Business have not infringed, misappropriated, diluted, or otherwise violated, and do not infringe, misappropriate, dilute, or otherwise violate the Intellectual Property Rights of any third party.

#### Section 4.12 **Employment and Labor Matters.**

(a) **Section 4.12(a)** of the Company Disclosure Schedules sets forth a true and complete list of all individuals who are full-time, part-time, or temporary employees or individuals engaged on contract to provide services to the Company (including all independent contractors and consultants) (the "**Employees**"), specifying the date of hire or engagement and length of service (if different), employment status (part-time, full-time or temporary employee, or other type of contractual relationship), title, work location, employer's name, salary, hourly rate of pay, consulting fees, or alternate compensation arrangement, commissions, bonus or other incentive pay, vacation entitlement and accrued but unused vacation, and current employee status (as active or inactive, and where inactive, the type of leave or layoff and the expected date of return to work if known and whether the employee is in receipt of disability benefits or workers' compensation benefits) for each such Employee. To the Company's Knowledge, no Employee listed in **Section 4.12(a)** of the Company Disclosure Schedules intends to terminate his or her employment or engagement for any reason, other than in accordance with any employment arrangements as may be provided for in this Agreement. No Employee or other service provider of the Company works outside of the United States. Except as specifically identified on **Section 4.12(a)** of the Company Disclosure Schedules, there are no employment agreements with any Employee of the Company.

(b) Except as set forth on **Section 4.12(b)** of the Company Disclosure Schedules, the Company has not ever been a party to or subject to any collective bargaining agreement or other agreement with a labor union, and no employee of the Company has ever been represented by a labor union or other collective bargaining representative with respect to his or her employment with the Company. There are no labor unions presently representing or engaged in any organizing activity with respect to any employee of the Company, and no union organization campaign or organizational effort is in progress with respect to any Company employee.

(c) The Company is in compliance and has, during the past three (3) years, complied with all Laws respecting employment, employment practices, and terms and conditions of employment, including without limitation, wages and hours, labor relations, employment discrimination, harassment, retaliation, disability rights or benefits, equal opportunity, plant closure and mass layoff (including the WARN Act and any similar foreign, state and local Laws), affirmative action, leaves of absence, occupational health and safety, workers compensation, and unemployment insurance. Each independent contractor has been properly classified by the Company as an independent contractor, and the Company has not received any notice (written or otherwise) from any Person or Governmental Authority disputing the classification of

an independent contractor providing services to the Company. The Company has correctly classified and paid employees as exempt employees and nonexempt employees under the Fair Labor Standards Act and other similar Laws.

(d) The Company has paid in full to each current or former Employee all wages, salaries, overtime pay, commissions, bonuses, benefits and other compensation due to, or on behalf of,

such Employees, and there is no Action with respect to payment of wages, salary, overtime pay, commissions, bonuses, benefits or for other compensation due to or on behalf of such Employees that has been asserted, or is now pending or, to the Company's Knowledge, threatened before any Governmental Authority with respect to any current or former Employee. The Company does not have any Liabilities relating to workers' compensation benefits that are not fully insured against by a bona fide third-party insurance carrier. The Company has withheld all amounts required by applicable Laws or by Contract to be withheld from the wages, salaries, and other payments to Employees; and is not liable for any arrears of wages, compensation, Taxes, penalties or other sums for failure to comply with any of the foregoing. The Company is not liable for any payment to any trust or other fund or to any Governmental Authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for Employees (other than routine payments to be made in the normal course of business and consistent with past practice).

(e) There is not presently pending or existing, and, to the Company's Knowledge, there is not threatened, any strike, work stoppage, or other labor controversy in effect or threatened by Employees of the Company, and within the last five (5) years prior to the Closing Date, the Company has not had or been threatened with any labor strike, work stoppage or other labor controversy. There is no unfair labor practice charge or unfair labor practice complaint pending or threatened against the Company. The Company has not engaged in any plant closing or Employee layoff activities that would violate or give rise to an obligation to provide any notice required under the WARN Act or any similar foreign, state and local Laws and it has no plans to undertake any actions that would require the providing of any such notice.

(f) The Company is and has been in material compliance with all material written guidance and recommendations promulgated by any Governmental Authority applicable to the Company, including the Occupational Safety and Health Administration, in connection with COVID-19, including implementing any workplace safety recommendations and protections.

(g) The Company has properly completed Forms I-9 to verify the identity and work authorization status of each of its employees in material compliance with the Immigration and Nationality Act, as amended, the Immigration Reform and Control Act of 1986, as amended, and related promulgating regulations, and the Company's independent contractors are authorized to work in the United States. No employee or independent contractor of the Company presented any temporary work authorization document at the time of hire that is presently or at any future date will be subject to I-9 re-verification. The Company has retained a Form I-9 for each applicable employee and former employee and all other records, documents, or other papers that are required by Law to be retained with Form I-9 by the Company, including any E-Verify reports. Since formation, the Company has not been warned, fined, or otherwise penalized by reason of its failure to comply with immigration or work authorization laws nor is any such proceeding pending or threatened.

#### Section 4.13 **Compliance with Laws.**

(a) Except as set forth on **Section 4.13(a)** of the Company Disclosure Schedules, the Company is, and has been since formation, in compliance in all material respects with all applicable Laws and every Governmental Authority having jurisdiction, as applicable, other than as would not be material to the Company. No written or, to the Company's Knowledge, oral, notice has been received by the Company alleging a violation of, or Liability or potential responsibility under, any such Law, which is pending or remains unresolved. No fact or condition exists that, with notice or lapse of time or both, would constitute a default by or on behalf of the Company under any Order.

(b) Except as disclosed on **Section 4.13(b)** of the Company Disclosure Schedules, the Company has not received any investigation, untitled letter, warning letter, “It Has Come to Our Attention Letters”, enforcement action, inquiry, request for information, or any other adverse action from the U.S. Food and Drug Administration (“*FDA*”), the Federal Trade Commission (“*FTC*”), Consumer Product Safety Commission (“*CPSC*”), or any other similar foreign, federal, state, or local Governmental Authority and the Company has not received any notice or other communication from any third party alleging the foregoing.

(c) Except as set forth on **Section 4.13(c)** of the Company Disclosure Schedules, none of the Company's products (i) are or have been adulterated or misbranded pursuant to or within the meaning of the Federal Food, Drug, and Cosmetic Act, Federal Trade Commission Act, or any implementing regulations or rules thereunder, or equivalent provisions of federal, state, or local Laws that are applicable to the Company, or any of its products or current business, or (ii) have been the subject of any ban, suspension, recall, withdrawal, discontinuation, removals, seizures, detentions, safety alert, cease and desist demands, or other notice relating to an alleged lack of safety, quality, or regulatory compliance, whether voluntarily or as required by any Person, including, but not limited to, the FDA, FTC, CPSC, or any other Governmental Authority, or (iii) have been subject to any notice from any party alleging or threatening any of the foregoing. All contract manufacturers of the products have manufactured said products in compliance with all applicable Laws, including being manufactured pursuant to all applicable current good manufacturing practices and food safety Laws. No report of any problems, malfunctions, serious adverse events, or defects involving any products or related to the Company's business has been filed that was or, to the Company's Knowledge, is required to be filed with any Governmental Authority, including any new dietary ingredient notifications. There are no pending, and within the last three (3) years prior to the date of this Agreement there have not been any, Actions or claims or threats thereof related to product liability involving any product developed, marketed, or commercialized by the Company, and no such actions, claims or threats have been settled, adjudicated or otherwise disposed of.

(d) The operation of the Company, including any manufacture, import, export, testing, development, processing, packaging, labeling, storage, marketing, certification, registration, listing, advertising, reporting, record keeping, sale and distribution of the products, and to the Company's Knowledge, all such activities or processes relating to the business of the Company that are outsourced to third parties, is and has been in compliance in all material respects with all applicable Laws in all markets in which the business is conducted.

(e) The Company has since April 24, 2019 conducted all export, import, and related transactions in accordance with (i) all applicable U.S. export, re-export, import, anti-boycott, and economic sanctions Laws and regulations, including but not limited to the Export Administration Regulations ("EAR"), the International Traffic in Arms Regulations ("ITAR"), and trade and economic sanctions administered by the Office of Foreign Assets Control ("OFAC"), and (ii) all other applicable import and export control Laws and regulations in the other countries in which the Company conducts business ("*Trade Control Laws*").

(f) The Company has obtained, and are in compliance with, all export licenses and other required consents, authorizations, waivers, approvals, and orders, and have made or filed any and all necessary notices, registrations, declarations, and filings with any Governmental Authority, and has (a) met the requirements of any license exceptions or exemptions, as required in connection with (i) the import, export, and re-export of products, services, Software, or other technology, and (ii) releases of technical data, Software, or other technology to foreign nationals located in the United States and abroad ("Trade Approvals"), and (b) is in compliance with the terms of all applicable Trade Approvals.

(g) There are no pending or, to the Company's Knowledge, threatened inquiries, investigations, enforcement actions, voluntary disclosures, or other claims against the Company with respect to Trade Control Laws or Trade Approvals.

(h) **Section 4.13(h)** of the Company Disclosure Schedules sets forth the true, complete and correct Export Control Classification Numbers applicable to the offerings and technology of the Company.

(i) Company has not exported or re-exported to any countries subject to U.S. embargo or trade sanctions or to Persons identified on any U.S. governmental export exclusion lists, including but not limited to the Denied Persons List, Entity List, Unverified List, Specially Designated Nationals List, and any other applicable lists maintained by the U.S. Departments of Treasury, State, or Commerce.

(j) The Company and its officers, directors, employees, Affiliates, and, agents or other Person acting on its behalf, have not, directly or indirectly, provided, offered, authorized, or promised to provide anything of value to any Person including but not limited to any Governmental Official, or made, or promised to make any contribution, bribe, rebate, gift, payoff, influence payment, kickback or other similar unlawful payment or other advantage, or taken any other action which would cause them to be in violation of the United States Foreign Corrupt Practices Act or any laws of any other jurisdiction (national, state or local) where the Company operates concerning or relating to public sector or private sector bribery or corruption (“Anti-Corruption Laws”). There are no pending or, to the Company’s Knowledge, threatened claims, charges, investigations, violations, settlements, civil or criminal enforcement actions, lawsuits, or other court actions against the Company or its controlled Affiliates with respect to any Anti-Corruption Laws, nor is there any known basis therefor. The Company has established and maintains compliance programs and reasonable internal controls and procedures to ensure the Company and its controlled Affiliates (including any of their officers, directors, employees, agents or other Person acting on their behalf) do not violate the Anti-Corruption Laws. The Company and its controlled Affiliates keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company and its controlled Affiliates.

Section 4.14 **Material Contracts.**

(a) **Section 4.14** of the Company Disclosure Schedules hereof contains a list of the following Contracts to which the Company is a party or by which any of the Company’s assets or properties is bound:

(i) each Contract under which the Company has received distributions or payments in excess of \$100,000 during the fiscal year ended December 31, 2023 during the ten month period ended October 31, 2024 or otherwise provides for aggregate payments to the Company in excess of \$100,000;

(ii) each Contract with a Top Supplier and with a Top Customer;

(iii) each Contract requiring expenditures by the Company in the aggregate amount of at least \$100,000 per annum;

(iv) each Contract relating to the licensing of or granting of any rights or covenants with respect to Intellectual Property Rights by the Company to a third party or by a third party to the Company (excluding Contracts for Commercially Available Software, and generally commercially available off-the-shelf software not incorporated into any products or services of the Company and costing less than \$25,000 in the aggregate);

(v) each Contract relating to Indebtedness of the Company and each Contract which mortgages, pledges, licenses or otherwise places a Lien on any tangible or intangible of the assets or properties of the Company;

(vi) each Contract relating to the Leased Real Property including the Realty Leases;

(vii) each Contract pursuant to which the Company is a lessor or a lessee of any personal property, or holds or operates any tangible personal property owned by another Person, except for any leases of personal property under which the aggregate annual rent or lease payments do not exceed \$25,000;

(viii) (A) any Contract containing covenants (1) restricting or limiting in any respect the ability of the Company to compete or engage in any line of business, by freely setting prices or otherwise, or with any Person or

in any geographic area or during any period of time (including any Contract containing a non-competition, no-hire, or non-solicitation provision) or to own, operate, sell, transfer, pledge or otherwise dispose of any tangible or intangible assets or properties of the Company or

to sell, license, manufacture or otherwise distribute any of its technology or products, or from providing services, to customers or potential customers or any class of customers, in any geographic area, during any period of time, or in any segment of the market, (2) restricting any Person from competing with the Company or soliciting employees, customers, vendors from the Company; and (B) any Contract providing for exclusivity, preferred treatment, most favored nation status or any similar requirement, or requires any Person to purchase or sell a stated portion of its requirements or output from or to another Person;

(ix) each Contract with a Governmental Authority or any university, college other educational institution or research center;

(x) each distributor, commercial agent, sales, broker, dealer, franchise, license, manufacturer's representative, agency, sales promotion, sales representative, agency, market research, marketing, advertising or similar Contract;

(xi) each Employment Agreement;

(xii) each Contract under which the Company may become obligated to make any payment or any payment otherwise becomes due as a result of or in connection with the consummation of the transactions contemplated hereby (including all transaction bonuses, retention payments, change of control payments, "stay" bonuses, "phantom" equity and similar payments), in whole or in part;

(xiii) each joint venture, strategic alliance, revenue sharing, referral agreement, partnership, franchise, joint research and development and joint marketing agreement or any other similar Contract (including a sharing of profits, Losses, costs or Liabilities by the Company with any other Person);

(xiv) each Contract that involves or relates to the acquisition or disposition of a business or any amount of tangible or intangible assets, properties or securities of another Person (whether by merger, sale of Ownership Interests, sale of assets, lease, license or otherwise);

(xv) each Contract that grants to any Person an option or a right of first refusal, first offer or similar preferential right to provide services to, or to purchase or acquire any tangible or intangible assets or properties of, the Company, or pursuant to which any third party has rights to own or use any tangible or intangible assets or properties of the Company;

(xvi) each Contract granting a power of attorney to any Person;

(xvii) any warranty, guaranty, pledge, performance or completion bond or other similar undertaking with respect to any contractual performance (or the Company's standard forms of any of the foregoing) or Contract to indemnify any Person;

(xviii) each Contract relating to capitalized lease obligations or the deferred purchase price of property or operating leases;

(xix) each Contract providing for any royalty, milestone, commission or similar payments by or to the Company; and

(xx) each Contract not otherwise listed above that is material to the Company or, the Business, operation, financial condition, tangible or intangible properties or assets.

(b) For purpose of this Agreement, “**Material Contract**” means any Contract required to be set forth on the Company Disclosure Schedules (whether or not so set forth) in order to make the representations and warranties in this **Article IV** true and correct. The Company has made available to Buyer, prior to the date hereof, a true, correct and complete copies of each Material Contract,

including all modifications, amendments, and supplements thereto. Except as set forth on **Section 4.14** of the Company Disclosure Schedules, to the Company's Knowledge, the Material Contracts are in full force and effect in the form provided and are valid and enforceable in accordance with their terms, subject to the limitations as to enforceability which might result from bankruptcy, insolvency, moratorium and other similar Laws affecting creditors' rights generally and subject to the limitations on the availability of equitable remedies. The Company has performed, is performing, and will continue performing all obligations under its respective Material Contracts and, to the Company's Knowledge, each other Person that is party to a Material Contract has performed, is performing, and will continue performing all obligations under such Material Contract. The Company is not in receipt of any written, or to the Company's Knowledge, any other notice of breach or default under any of their Material Contracts. Each Material Contract was entered into in the Ordinary Course of Business. No event has occurred that (with or without notice or lapse of time, or both) would reasonably be expected to or would constitute a breach or default thereunder by any party to each Material Contract.

Section 4.15 **Licenses, Approvals, Other Authorizations.** Except as set forth on **Section 4.15** of the Company Disclosure Schedules, the Company possesses all Licenses that are required for the conduct of the Business as currently conducted and currently contemplated to be conducted. All such Licenses have been validly issued or assigned and duly obtained, and are presently held, by the Company and are in full force and effect and are listed on **Section 4.15** of the Company Disclosure Schedules. The Company has operated its businesses in material compliance with such Licenses and is not in default under or breach of, and no condition exists that with notice or lapse of time or both could constitute a default or could give rise to a right of termination, cancellation, or acceleration under, any such License. The execution, delivery, and performance under this Agreement, the other agreements contemplated hereby, and the consummation of the transactions contemplated hereby and thereby will not result in the revocation, suspension, limitation or adverse modification of any such Licenses.

Section 4.16 **Environmental Matters.**

(a) No Environmental Claim is pending. The Company has not received any Environmental Notice that has not been fully and finally resolved.

(b) The Company is and has been operating in material compliance with all applicable Environmental Laws in all material respects, which compliance includes obtaining, maintaining, and complying with all Environmental Permits required for the occupancy and use of the Realty Lease and for the operation of the Business as currently conducted, and no Action is pending or, to the Company's Knowledge, threatened, the effect of which would be to terminate, suspend, not renew, or materially modify any such required permit.

(c) The Company has not manufactured, distributed, disposed of, arranged for the disposal of, transported, released, or exposed any Person to, any Hazardous Material or product containing any Hazardous Material, and no real property is contaminated with any such Hazardous Material, in each case in a manner that would result in Liability to the Company pursuant to Environmental Law.

(d) The Company has not retained or assumed, either contractually or by operation of law, any Liabilities or obligations of any other Person arising under Environmental Law or relating to Hazardous Materials.

(e) Except as disclosed in **Section 4.16(e)** of the Company Disclosure Schedules, to the Company's Knowledge, there are no underground or aboveground storage tanks or Releases of Hazardous Materials located at, on, or

under any Leased Real Property. The Company has made available to Buyer all environmental, health, or safety assessments, audits, investigations, and sampling or similar reports, in the Company's custody or control relating to actual or potential conditions of contamination or Releases of Hazardous Materials or noncompliance with Environmental Laws on any current property used in the Business.

Section 4.17 **Taxes**. Except as disclosed on **Section 4.17** of the Company Disclosure Schedules:

(a) All Income Tax, sales and use Tax and other material Returns that are required to be filed by the Company has been duly and timely filed, taking into account all permitted and routine extensions. All such Returns are true and correct in all material respects. All Taxes of the Company have been timely paid, and all Taxes of the Company not yet due and payable have been adequately accrued, prepaid or reserved for on the applicable Financial Statements.

(b) The Company has complied with in all material respects all applicable Laws relating to the withholding, collection and remittance of Taxes in connection with amounts paid or owing to any employee, independent contractor, creditor, member, customer or other Person and has complied in all material respects with all Tax information reporting provisions of all applicable Laws.

(c) The Company does not have in force any waiver of any statute of limitations in respect of Taxes or any extension of time with respect to a Tax assessment or deficiency or the filing of any Return (except with regard to any permitted and routine extensions with respect to the filing of a Return that are granted automatically).

(d) There is no Action or proceeding or unresolved claim pending or, to the Company's Knowledge, threatened in writing by the United States or any other Taxing Authority for assessment or collection from the Company of any Taxes of any nature.

(e) No issue has been raised by any Taxing Authority in connection with an audit or examination of any Return of the Company, which if raised with regard to any other Return not so audited or examined, would reasonably be expected to result in a proposed deficiency with respect to the period covered by such other Return.

(f) The Company has not received any written reports or other written assertions by agents of any Taxing Authority of any deficiencies or other Liabilities for Taxes.

(g) There are no Liens for unpaid Taxes on any assets of the Company, except for Permitted Liens.

(h) The Company is not a party to any Tax allocation, sharing, reimbursement or similar agreement.

(i) None of the Company, Buyer or any their respective Affiliates will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (A) change in a method of accounting for a taxable period ending on or prior to the Closing Date (whether pursuant to Section 481 of the Code or any similar provision of state, local or foreign Law, or otherwise); (B) use of an improper method of accounting for a taxable period ending on or prior to the Closing Date; (C) Tax ruling or agreement entered with a Governmental Authority, including a "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local, or non-U.S. income Tax Law) executed on or prior to the Closing Date; (D) intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of the Code or state, local, or non-U.S. Law) for any transaction entered into on or prior to the Closing Date; (E) installment sale or open transaction disposition made on or prior to the Closing Date; (F) prepaid amount or deferred revenue paid or received on or prior to the Closing Date; (G) use of a method of accounting other than the cash method; or (H) interest held in a "controlled foreign corporation" (as defined in Section 957 of the Code), "passive foreign investment company" (as defined in Section 1297 of the Code) or any other entity that is treated as a pass-through entity for applicable Tax purposes on or before the Closing Date.



(j) The Company has not made any payments, or is or will become obligated under any Contract entered into on or before the Closing Date to make any payments, that will be non-deductible under Section 280G of the Code or subject to the excise Tax under Section 4999 of the Code or that would give rise to any obligation to indemnify any Person for any excise Tax payable pursuant to Section 4999 of the Code.

(k) The Company has not engaged in a “reportable transaction” within the meaning of Treasury Regulations Section 1.6011-4(b) or any similar provision of state, local or foreign Law. The Company has disclosed on its federal income Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Section 6662 of the Code.

(l) The Company is not subject to Tax in any jurisdiction outside of the United States, nor does the Company have a permanent establishment (within the meaning of an applicable Tax treaty or convention between the United States and such foreign country) or fixed place of business or other taxable presence in any foreign jurisdiction. The Company is not engaged in, nor has it ever engaged in, a trade or business through a “permanent establishment” or through an office or a fixed place of business or otherwise in any country other than the United States. No claim has been made in writing by any Governmental Authority in a jurisdiction where the Company does not file Returns for a particular type of Tax that it is or may be required to file any Return for such type of Tax in that jurisdiction.

(m) To the extent applicable, all transactions entered into by the Company with any related Person have been carried out at arm’s length terms and the Company has complied with all applicable transfer pricing rules under U.S. and non-U.S. Laws, including all relevant documentation requirements.

(n) The Company has not (i) deferred any amount of the employer’s share of any “applicable employment taxes” under Section 2302 of the CARES Act or any other COVID-19 Law, including any executive order, (ii) claimed any Tax credits under Sections 7001 through 7005 of the Families First Coronavirus Response Act or Section 2301 of the CARES Act or any other COVID-19 Law, (iii) otherwise deferred any Taxes (including the employee portion of any payroll Taxes) or changed any material Tax practice or filed an amended Return under, or in response to, any COVID-19 Law, or (iv) applied for or received (nor has any of its Affiliates applied for or received) any loan or similar assistance pursuant to any COVID-19 Law, including a covered loan under paragraph (36) of Section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by Section 1102 of the CARES Act.

(o) **Section 4.17(o)** of the Company Disclosure Schedules sets forth a list of each jurisdiction in which the Company files a Return and the type of Return filed.

(p) The Company is not and has not been a party to any joint venture, partnership or other entity, arrangement or contract that is treated as a partnership for federal income Tax purposes.

(q) The Company is and always has been taxed as a partnership for U.S. federal income Tax purposes.

(r) The Company is not, nor has it ever been, the beneficiary of any Tax exemption (except as referenced below in **Section 4.17(s)(ii)**), Tax holiday or other special Tax regime.

(s) The Company has (i) collected all sales, use, value-added, goods and services, harmonized sales and other similar indirect Taxes required to be collected and has timely remitted such amounts to the appropriate Governmental

Authority in compliance with all applicable Law or (ii) been furnished properly completed exemption certificates and has maintained all such records and supporting documents in compliance with all applicable Law.

(t) References to the Company in this **Section 4.17** (other than **Section 4.17(q)**) include any current or former Subsidiaries of the Company.

Section 4.18 **Accounts Receivable; Trade Accounts Payable.** Except to the extent, if any, reserved for in the Audited Balance Sheet, all accounts receivable reflected in the Financial Statements and all accounts receivable which have arisen since the Audited Balance Sheet represent valid and enforceable obligations arising from sales actually made or services actually performed in the Ordinary Course of Business.

Section 4.19 **Insurance.**

(a) **Section 4.19(a)(i)** of the Company Disclosure Schedules sets forth a true and complete list of all insurance policies and bonds and self-insurance arrangements currently in force that are maintained by, or at the expense or for the benefit of, the Company, or cover or purport to cover risks or losses to or associated with the Business, operations, premises, properties, assets, employees, agents, officers, directors or managers of the Company (collectively, the “***Insurance Policies***”). To the Company’s Knowledge, all of the Insurance Policies are legal, valid, binding and enforceable and in full force and effect. **Section 4.19(a)(ii)** of the Company Disclosure Schedules identifies all claims currently outstanding under any of the Insurance Policies. The Company has not received any oral or written notice that any issuer of any insurance policy has filed for protection under applicable bankruptcy laws or is otherwise in the process of liquidating or has been liquidated, or any oral or written notice that such Insurance Policies are no longer in full force or effect or that the issuer of any such policy is no longer willing or able to perform its obligations thereunder, With respect to each Insurance Policy, there is no liability of the Company in the nature of a retroactive rate adjustment, loss sharing arrangement, or other actual or contingent liability, nor would there be any such liability is such Insurance Policy was terminated at or after Closing. Except as set forth in **Section 4.19(a)(iii)** of the Company Disclosure Schedules, there are no written requirements or recommendations of any insurer of the assets of the Company with respect to any repair or modification to or any improvements of any material portion of the Company’s assets.

(b) **Section 4.19(b)** of the Company Disclosure Schedules identifies, by year, for the current policy year and each of the preceding three (3) years:

- (i) a summary of the loss experience under each Insurance Policy; and
- (ii) a statement describing each claim under an Insurance Policy for an amount in excess of \$10,000, which sets forth the name of the claimant, a description of the policy by insurer, type of insurance and period of coverage, and the amount and a brief description of the claim.

Section 4.20 **Suppliers and Customers.**

(a) **Section 4.20(a)** of the Company Disclosure Schedules lists all of the suppliers, vendors, and providers (i) from whom the Company has purchased in excess of \$200,000 in equipment, services, products or other goods or materials (including any manufacturer) in calendar year ended December 31, 2023 or in the nine month period ended September 30, 2024 or (ii) that is material to the Business as presently conducted and proposed to be conducted (each a “***Top Supplier***”), and sets forth opposite the name of each such Top Supplier the dollar amount of purchases and payments attributable to such supplier, vendor or provider in each such period. Except as disclosed on **Section 4.20(a)** of the Company Disclosure Schedules, no Top Supplier of the Company (including any manufacturer) has at any time stopped or decreased the rate of supplying equipment, services, products or other goods or materials to the Company, altered the means of access to data products, or otherwise altered its relationship with the Company, nor has any such Top Supplier indicated in writing, or to the Company’s Knowledge, orally or otherwise, to the Company, and the Company has no reason to believe, that such

Top Supplier will do any of the foregoing at any time or propose to amend the terms or conditions in a manner substantially different to those used in its current sales to the Company, in each case.

(b) **Section 4.20(b)** of the Company Disclosure Schedules lists all of the customers of the Business who have made aggregate purchases in excess of \$5,000 in products and/or services from the Company in calendar year ended December 31, 2023 or in the nine month period ended September 30, 2024 (each a “*Top Customer*”) and sets forth opposite the name of each such customer the dollar

amount of purchases attributable to such customer. Except as disclosed on **Section 4.20(b)** of the Company Disclosure Schedules, no Top Customer of the Company has at any time stopped or materially decreased the rate of, purchasing products or services from the Company or otherwise altered its relationship with the Company, nor has any such Top Customer indicated in writing, or to the Company's Knowledge, orally, to the Company, and the Company has no reason to believe, that such Top Customer will do so at any time after Closing on terms and conditions substantially different to those used in its current purchases from the Company, subject only to general and customary price increases.

Section 4.21 **Brokers, Finders, Etc.** Other than William Hood & Company, LLC pursuant to the contract set forth on **Section 4.21** of the Company Disclosure Schedules (whose fees and expenses as of the Closing with respect to the transactions contemplated by this Agreement shall constitute part of the Transaction Expenses), the Company has not employed any broker, finder, financial advisor, investment banker or similar advisor, or incurred any Liability for a brokerage fee, finder's fee, financial advisor's fee, investment banker's fee or commission or similar payment in connection with the transactions contemplated by this Agreement or any Ancillary Agreement (including, for the avoidance of doubt, the purchase of the Surviving Company Class B Units as contemplated in the A&R LLC Agreement). The purchase of the Surviving Company Class B Units as contemplated in the A&R LLC Agreement shall not give rise to, or result in, any amounts that would constitute a Transaction Expense. The Company is not a party to any Contracts with the Sellers' Representative other than this Agreement.

Section 4.22 **Employee Benefits.**

(a) **Section 4.22** of the Company Disclosure Schedules hereof lists all material Employee Benefit Plans. "**Employee Benefit Plans**" shall mean any compensation and benefit plans, contracts and arrangements, including, without limitation, all pension (including all such employee pension benefit plans as defined in Section 3(2) of ERISA), profit-sharing, savings and thrift, fringe benefit, stock option, stock bonus, equity, phantom equity, bonus, change-in-control, retention, incentive or deferred compensation, severance pay, sick leave and medical and life insurance plans and employee welfare benefit plans (including all such plans as defined in Section 3(1) of ERISA) covering any current or former director, officer, employee, independent contractor or leased employee or their beneficiaries, whether or not reduced to writing, which are maintained, sponsored, contributed to or required to be contributed to by the Company of any ERISA Affiliate or under which the Company or any ERISA Affiliate has or could have any obligation or Liability.

(b) With respect to each Employee Benefit Plan, the Company has provided to Buyer correct and complete copies of: (i) each Employee Benefit Plan and any trust agreement and insurance contracts relating to such plan; (ii) the most recent summary plan description and summaries of material modification for each Employee Benefit Plan for which such a summary plan description is required; (iii) the annual report on Form 5500 and all attachments thereto filed with the Department of Labor or Internal Revenue Service with respect to such Employee Benefit Plan for the preceding three (3) years, if applicable; (iv) the most recent determination or opinion letter, if any, issued by the Internal Revenue Service with respect to any Employee Benefit Plan which is an "employee pension benefit plan" as defined in Section 3(2) of ERISA and intended to be tax qualified under Section 401(a) of the Code; (v) a written description of each Employee Benefit Plan that is not in writing; (vi) a copy of the nondiscrimination testing conducted for each such Employee Benefit Plan for the preceding three (3) years; and (vii) each administrative services agreement related to an Employee Benefit Plan. Except as specifically provided in the foregoing documents made available to Buyer: (A) there are no amendments to any such Employee Benefit Plan that have been adopted, approved, implemented, planned or proposed; and (B) except as required to comply with applicable Law, the Company has not undertaken to make any such amendments or to adopt or approve any new Employee Benefit Plan. Except as set forth on **Section 4.22(b)** of the Company Disclosure Schedules, the Company

does not have any express or implied commitment to create, or incur any material Liability with respect to or cause to exist any Employee Benefit Plan or to modify any Employee Benefit Plan in a manner that would result in a material increase in expense or funding obligations, other than as required by Law.

(c) As to Employee Benefit Plans which are “employee pension benefit plans” as defined in Section 3(2) of ERISA, such plans sponsored by the Company is tax qualified under Section

401(a) of the Code and no such plan is a “defined benefit plan” as defined in Section 3(35) of ERISA. No Employee Benefit Plan is currently under examination by, nor are any matters pending before, the IRS, the Employee Benefits Security Administration or any other Governmental Authority, is subject to any pending or threatened claim, suit or arbitration (other than routine claims for benefits), or is subject to the minimum funding standards of Section 412 of the Code. Each Employee Benefit Plan is in material compliance with and has been administered in accordance with its terms in all material respects (except as may be noted next to each Employee Benefit Plan listed on **Section 4.22(c)** of the Company Disclosure Schedules) and in material compliance with all applicable requirements of Law, including the Code and ERISA, and there have been no prohibited transactions as defined in Section 4975 of the Code or ERISA Section 406 with respect to such plan which could subject the Company to a Tax or penalty under Sections 4975 through 4980 of the Code or ERISA Section 502(i).

(d) Each Employee Benefit Plan which is intended to be qualified within the meaning of Section 401(a) of the Code: (i) has received a favorable determination or opinion letter as to its qualification; or (ii) has been established under a preapproved plan for which a current favorable Internal Revenue Service advisory letter or opinion letter has been obtained by the sponsor of the preapproved plan and for which the adopting employer may rely on such advisory or opinion letter. No events have occurred that would reasonably be expected to adversely affect any such Employee Benefit Plan’s tax qualified status.

(e) No Employee Benefit Plan is a multiemployer pension plan (as defined in Section 3(37) of ERISA) (“**Multiemployer Plan**”) or other pension plan, in each case, that is subject to Title IV of ERISA (including any defined benefit pension plan or any plan, program or arrangement) and the Company and each ERISA Affiliate have not sponsored or contributed to or been required to contribute to a Multiemployer Plan or other pension plan subject to Title IV of ERISA at any time. No Employee Benefit Plan is a multiple employer plan within the meaning of Section 413(c) of the Code or a “multiple employer welfare arrangement” within the meaning of Section 3(40) of ERISA and the Company and each ERISA Affiliate have not sponsored or contributed to or been required to contribute to any such Employee Benefit Plan at any time. No Employee Benefit Plan is subject to the laws of a jurisdiction other than the United States.

(f) Except as disclosed in **Section 4.22(f)** of the Company Disclosure Schedules, no Employee Benefit Plan provides for the payment of separation, severance, termination or similar-type benefits to any person or provides health care or other welfare benefits to former employees or beneficiaries or dependents thereof, except for continuation coverage as required by COBRA or by applicable state insurance Laws, and then only to the extent that the former employee pays the “**applicable premium**” as defined in COBRA.

(g) All contributions (including all employer contributions and employee salary reduction contributions, if any) that are due prior to the Closing Date have been made (or will be made prior to the Closing Date) within the time period prescribed by ERISA to each Employee Benefit Plan. The Company has made appropriate entries in their financial records and statements for Liabilities under Employee Benefit Plans that have accrued but are not due.

(h) Except as disclosed in **Section 4.22(h)** of the Company Disclosure Schedules or in this Agreement, no Employee or former Employee of the Company will become entitled to any bonus, retirement, severance, job security or similar benefit or enhancement of any such benefit (including acceleration of vesting or exercise of an incentive award, equity compensation award, or any similar compensation arrangement) in connection with, or as a result of, the Closing. Neither the execution or delivery of this Agreement nor the consummation of the transactions contemplated hereby would result, individually or in connection with any other events or circumstances, in the payment of any “excess parachute payment” for the purposes of Section 280G or Section 4999 of the Code. The Company has no obligation to gross-up or reimburse any

individual for any tax or tax-related interest or penalties incurred by such individual, including under Sections 409A or 4999 of the Code or otherwise.

(i) Since January 1, 2020, the Company and each Employee Benefit Plan have been in compliance in all material respects with (i) the applicable requirements of COBRA, (ii) the applicable

requirements of the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA), and (iii) the applicable requirements of the Patient Protection and Affordable Care Act of 2010, as amended. The Company has not paid, and has no Liability for, any tax, penalty or other payment pursuant to Section 4980D or Section 4980H of the Code.

(j) Except as set forth on **Section 4.22(f)** of the Company Disclosure Schedules, none of the Employee Benefit Plans is subject to Section 409A of the Code and each such Employee Benefit Plan has been established, administered and maintained in compliance with the documentary and operational requirements of Section 409A of the Code and the regulations promulgated thereunder. The Company has no liability for nonreporting or underreporting of income subject to Section 409A of the Code. In addition, the Company has not previously sponsored an Employee Benefit Plan or similar arrangement which was subject to Section 409A of the Code.

#### Section 4.23 **Affiliate Transactions.**

(a) For the past three (3) years, except for: (i) advances to employees of the Company for expenses incurred in the Ordinary Course of Business; (ii) Employment Agreements with any Employee of the Company set forth on **Section 4.14(a)(vi)** of the Company Disclosure Schedules; (iii) any benefits under any Employee Benefit Plan; and (iv) those Contracts disclosed on **Section 4.23(a)** of the Company Disclosure Schedules; no Company Securityholder nor any manager, officer, employee, member, director or Affiliate of the Company or any Company Securityholder, or any immediate family member of any of the foregoing: (A) is a party to or has any beneficial interest in, directly or indirectly, any Contract to which the Company is a party or by which any of its assets are bound or commitment or transaction with the Company; (B) has (directly or indirectly) any interest (other than ownership of two percent (2%) or less of any class of securities of a company whose securities are registered under the Exchange Act) in, or serves as an officer, director, manager, or employee of, any Person which is a client, supplier, vendor, service provider, customer, lessor, lessee, licensor, developer, or competitor of the Company; (C) has any interest in any property or asset, tangible or intangible, used in the operation of the Business as currently operated and currently contemplated to be operated; (D) is indebted to the Company for money borrowed or other loans or advances; or (E) provides, causes to be provided or has provided or received within the last twelve (12) months any assets, services or facilities to or from (as the case may be) the Company.

(b) Other than Contracts disclosed in **Section 4.23(a)** of the Company Disclosure Schedules, all Contracts, agreements, arrangements and transactions by and between the Company, on the one hand, and any director, manager, officer, employee, member (including any Company Securityholder) or Affiliate of the Company or any entity in which such Person has an interest, directly or indirectly, on the other hand, have been terminated. None of such terminations (i) involved any of the Ownership Interests in the Company, including the Company Units, or (ii) will have any adverse impact on the results of operations of the Company or the Business.

#### Section 4.24 **Books and Records; Bank Accounts.**

(a) The books of account, minute books, member record books, seals (if any) and other books and records of the Company whether in writing, electronic or machine-readable form (collectively, the “***Books and Records***”), are complete and correct in all material respects and have been maintained in all material respects in accordance with sound business practices consistent with the historical practices of the Company.

(b) **Section 4.24** of the Company Disclosure Schedules sets forth true, complete and correct list of all deposit, demand, time, savings, passbook, security or similar accounts that the Company maintains, with any bank or

financial institution, the names and addresses of such account, the purpose for which such account is established, and the authorized signatories on each such account.

Section 4.25 **Data Privacy.**

(a) The Company is and has been, for the past three (3) years, in compliance in all material respects with all Privacy Laws, Privacy and Data Security Policies, and Privacy Agreements (collectively, “**Data Processing Obligations**”). The Company does not and has not hosted, stored, or otherwise maintained Personal Information for or on behalf of its customers.

(b) Vendors and service providers who interact with the Company or who perform Data Activities for the Company are and have been for the past three (3) years, in material compliance with all Data Processing Obligations. The Company regularly monitors and audits such vendors’ and service providers’ compliance with applicable Data Processing Obligations, and the Company has not found or otherwise become aware of any substantial non-compliance with any Data Processing Obligations.

(c) The Company has at all times during the past three (3) years implemented, maintained, and monitored reasonable and adequate Privacy and Data Security Policies and other measures (including with respect to technical, administrative, and physical security) to ensure the confidentiality, availability, and integrity of all Systems, IT Assets, and Company Data. The Company has established and maintained commercially reasonable and appropriate technical, physical, and organizational measures and security systems designed to protect Company Data, Systems, and IT Assets against Security Incidents. The Company has implemented and maintained reasonable and appropriate disaster recovery and business continuity plans, procedures, and facilities for its business and all Systems, IT Assets, and Company Data. The Company has remediated all material privacy, data protection, and security gaps and vulnerabilities identified by or to the Company, including in any review or assessment conducted by or for the Company.

(d) During the past three (3) years, the Company has not received any notification or allegation from any Governmental Authority or other third party alleging that the Company has not complied with any Data Processing Obligations. During the past three (3) years, there has been no Security Incident, and the Company has not notified, nor been required under any Data Processing Obligation to notify, any Governmental Authority or any other Person of any Security Incident.

Section 4.26 **Product and Service Warranties.** All of the products manufactured, sold, leased, and delivered by the Company at any time have conformed in all respects with all applicable contractual commitments and all express and implied warranties.

Section 4.27 **Complete Copies of Materials.** The Company has made available to Buyer true, correct and complete copies of (i) each Material Contract and each other Contract, document, or other information set forth or referenced in the Company Disclosure Schedules or required to be set forth or referenced in the Company Disclosure Schedules to make any representation or warranty of the Company in this Agreement true and correct and (ii) the minute books, equity transfer ledgers, and other similar company records of the Company as well as such other Books and Records requested by Buyer, each as amended to date.

Section 4.28 **NO OTHER REPRESENTATIONS.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES MADE BY BUYER IN THIS AGREEMENT OR IN ANY ANCILLARY AGREEMENT, NONE OF BUYER OR MERGER SUB, NOR ANY AFFILIATE OF BUYER OR MERGER SUB, NOR ANY OTHER PERSON HAS MADE OR IS MAKING ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT

TO BUYER, THE BUSINESS OF BUYER OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OF THE ANCILLARY AGREEMENTS AND THE COMPANY ACKNOWLEDGES THAT BUYER HEREBY EXPRESSLY DISCLAIMS ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES, WHETHER IMPLIED OR MADE BY BUYER OR ANY OF ITS OFFICERS, MANAGERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS OR REPRESENTATIVES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES MADE BY BUYER IN THIS AGREEMENT OR IN ANY ANCILLARY AGREEMENT, (I) THE COMPANY ACKNOWLEDGES THAT EACH OF BUYER AND MERGER

SUB HEREBY EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO ANY PROJECTION, FORECAST OR INFORMATION MADE AVAILABLE, COMMUNICATED OR FURNISHED (ORALLY OR IN WRITING) TO THE COMPANY OR ANY AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO THE COMPANY OR ANY AFFILIATES OR REPRESENTATIVES BY ANY MANAGER, OFFICER, DIRECTOR, SHAREHOLDER, MEMBER, PARTNER, EMPLOYEE, AGENT, CONSULTANT OR REPRESENTATIVE OF BUYER OR ANY OF ITS AFFILIATES), AND (II) EACH OF BUYER AND MERGER SUB MAKES NO REPRESENTATIONS OR WARRANTIES TO THE COMPANY, ANY OF ITS AFFILIATES, UNITHOLDERS, MEMBERS OR SECURITYHOLDERS REGARDING THE PROBABLE SUCCESS OR PROFITABILITY OF THE BUSINESS OF BUYER OR THE COMPANY IN THE FUTURE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE FOREGOING SHALL NOT LIMIT THE RIGHT OF ANY PARTY TO SEEK ANY AVAILABLE REMEDY FOR FRAUD.

## **Article V**

### **COVENANTS OF THE COMPANY AND BUYER**

Section 5.1 **Further Assurances**. The Sellers' Representative, the Company, Buyer and Merger Sub agree that, from time to time after the Effective Time, each of them will execute and deliver all such further instruments and take all such other action as may be reasonably requested by another Party as reasonably necessary or desirable to evidence and effectuate this Agreement and the transactions contemplated hereby.

Section 5.2 **Public Announcements**. None of the Company, the Sellers' Representative, Buyer, Merger Sub or their respective Affiliates or Representatives shall make, or cause to be made, any press release or public announcement with respect to this Agreement or the transactions contemplated by this Agreement without the prior written consent of Buyer (with respect to any press release or public announcement by the Sellers' Representative or, prior to the Effective Time, the Company), on the one hand, and the Sellers' Representative (with respect to any press release or public announcement by Buyer or, following the Effective Time, the Company), on the other hand, such consent not to be unreasonably withheld, conditioned or delayed, and the Parties to this Agreement shall cooperate as to the timing and contents of any such press release or public announcement, in each case, except as otherwise required by Law or applicable stock exchange regulation (including applicable securities Laws, rules and regulations). Notwithstanding anything set forth in this Agreement, each of the Company, and Sellers' Representative further understands and acknowledges that Buyer, Merger Sub and one or more of their respective members and Affiliates may have certain regulatory requirements in order to maintain compliance with the rules and regulations of the Securities and Exchange Commission (the "**SEC**"), and certain public disclosure practices that are consistent with historical practices of Buyer, its members, managers, directors, officers and Affiliates, and each of the Company, Sellers' Representative (after the Effective Time) and Company Unitholders approves and consents to the disclosure of the transactions contemplated by this Agreement for such purposes and nothing in this Agreement shall prohibit Buyer, Merger Sub or their respective members, managers, directors, officers or Affiliates from disclosing this transaction to (i) the SEC, (ii) Buyer or Merger Sub's partners and investors, or (iii) Buyer or Merger Sub's auditors, attorneys or accountants. Notwithstanding anything herein to the contrary, following Closing and after the public announcement of the transaction by Buyer and the Company, the Sellers' Representative shall be permitted to announce that it has been engaged to serve as the Sellers' Representative in connection herewith as long as such announcement does not disclose any of the other terms hereof or any information not publicly disclosed by Buyer, Merger Sub or the Company.

Section 5.3 **Resignations**. Immediately prior to the Effective Time, the Company shall deliver to Buyer written resignations, effective as of the Effective Time, of any manager, director or officer of the Company listed on **Schedule 5.3** hereof.

Section 5.4 **Access to Information**. Following the Effective Time, for a period of at least seven (7) years, unless a longer period is required by applicable Law or Order, Buyer and the Company shall allow the Sellers' Representative reasonable access to the Books and Records (including the right to

make photocopies at the sole cost and expense of the Sellers' Representative), at reasonable times and upon reasonable notice, to the extent reasonably required for the preparation of Returns or review of the Closing Statement, including the items and calculations contained therein, provided, that (a) each Company Unitholder shall have entered into (or be subject to) a confidentiality agreement in favor of the Company and Buyer with respect to such information in a customary form reasonably requested by Buyer and (b) nothing herein shall require the Company or Buyer to furnish to the Sellers' Representative's access to information that legal counsel for the Company, Buyer or any of their Affiliates reasonably concludes is subject to attorney-client privilege or is the subject of any applicable restrictions on sharing of information under applicable privacy Laws.

Section 5.5 **R&W Policy.** For purposes of this Agreement, the "***Buyer R&W Insurance Policy***" means the representation and warranty insurance policy issued by Liberty Surplus Insurance Corporation (the "***R&W Insurer***") to Buyer in connection with the transactions contemplated by this Agreement. Buyer shall provide such proposed Buyer R&W Insurance Policy to the Company in advance of the execution thereof in order to allow the Company to confirm the terms regarding the waiver of subrogation rights provided in the Buyer R&W Insurance Policy. Buyer shall bear fifty percent (50%) of all costs associated with obtaining the Buyer R&W Insurance Policy, including the premium, fees (including broker, due diligence and underwriting fees), commissions, Taxes and legal fees for counsel engaged by the underwriter. For the avoidance of doubt, nothing in this Agreement is intended to, nor shall it have the effect of, limiting or diminishing Buyer's (or its Affiliates' and their respective officers', directors', managers', employees', agents', successors' and assignees') or any other Person's right to seek or obtain recovery under the Buyer R&W Insurance Policy.

Section 5.6 **WARN Act.** The Buyer shall be responsible for any Liability under the WARN Act (or any similar foreign, state or local Law) associated with any plant closing or mass layoff solely in connection with any actions commenced by the Company after the Effective Time.

Section 5.7 **Commercially Reasonable Efforts.** Subject to the terms and conditions of this Agreement, each Party will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable Laws to consummate the Merger and the transactions contemplated by this Agreement.

Section 5.8 **Buyer Financing.** Notwithstanding anything contained in this Agreement to the contrary, Buyer expressly acknowledges and agrees that Buyer's obligations hereunder are not conditioned in any manner upon obtaining any debt or equity financing.

Section 5.9 **Confidentiality.**

(a) The Company and Buyer shall remain bound to that certain confidentiality agreement effective as of July 26, 2024 by the Parties (or on their behalf) (the "***Confidentiality Agreement***"), until the Closing at which time such agreement shall terminate.

(b) The Sellers' Representative agrees to treat and hold as confidential for a period of three (3) years after the Closing Date all of the Confidential Information and refrain from using any of the Confidential Information except in connection with this Agreement (or the enforcement thereof); *provided, however*, that the obligations under this **Section 5.9(b)** as they relate to Confidential Information that is a trade secret under applicable Law shall apply as long as the Confidential Information remains a trade secret under applicable Law. If a the Sellers' Representative is requested

or required to disclose any Confidential Information, then the Sellers' Representative shall notify the other Parties (to the extent legally permissible) promptly of the request or requirement so that Buyer may seek an appropriate protective order or waive compliance with the provisions of this **Section 5.9(b)**, and if, in the absence of a protective order or the receipt of a waiver hereunder, they are required to disclose any Confidential Information by applicable Law, then they may disclose the Confidential Information to the extent required by such applicable Law. Notwithstanding this **Section 5.9(b)**, each Company Unitholder may disclose Confidential Information to its Representatives, provided that such Representatives agree to treat such Confidential Information confidential on the same basis as set forth in this **Section 5.9(b)**. Notwithstanding anything herein to the contrary, following Closing, the Sellers' Representative shall be

permitted to disclose information as required by Law or to advisors and representatives of the Sellers' Representative and to the Company Unitholders, in each case who have a bona fide need to know such information in connection with the Sellers' Representative's fulfillment of its duties under this Agreement, provided that such Persons are subject to confidentiality obligations with respect thereto.

Section 5.10 **Notices and Consents**. The Company shall use its reasonable best efforts to obtain all consents, waivers and approvals of any third parties to any Contract as are required thereunder in connection with the transactions contemplated by this Agreement in order for such Contract to remain in full force and effect following the transactions contemplated by this Agreement, including those set forth on **Schedule 6.1(f)(x)**. Such consents, modifications, waivers and approvals shall be in form and substance reasonably acceptable to Buyer. In the event that any of the transactions contemplated by this Agreement do not close for any reason, none of Buyer nor any of its Affiliates or any of their Representatives shall have any liability to the Company or any other Person for any costs, claims, liabilities or damages resulting from the Company seeking to obtain such consents, modifications, waivers and approvals.

Section 5.11 **Company Unitholder Documents**.

(a) **Joinder Agreements**. Prior to the Closing, the Company shall use its reasonable best efforts to deliver to Buyer fully executed Joinder Agreements from each Company Unitholder, and shall deliver the fully executed Joinder Agreement to such Company Unitholder as promptly as reasonably practicable after the execution and delivery of this Agreement.

(b) **Investor Questionnaire**. Prior to the Closing Date, the Company shall have provided to Buyer duly completed and executed Investor Questionnaires from each Company Unitholder.

(c) **Amended and Restated LLC Agreement**. Prior to the Closing Date, the Company has provided from each Company Unitholder and delivered to the Company and Buyer an executed signature page to the A&R LLC Agreement. Prior to the Closing, the Company shall have taken all actions necessary for the A&R LLC Agreement to be effective at the Effective Time.

(d) **Cancelled Company Options**. Prior to the Effective Time, the Company shall ensure that each Company Optionholder has executed an Option Termination Agreements. The Company shall keep Buyer reasonably informed of any material developments with respect to obtaining the Option Termination Agreements. All agreements, notices, or other documents prepared by the Company in connection with the Option Termination Agreements shall be subject to the prior review, comment, and approval of Buyer (which approval shall not be unreasonably withheld, conditioned, or delayed).

Section 5.12 **D&O Tail**. Prior to the Effective Time, the Company shall purchase an extended reporting period endorsement under the Company's existing members' and officers' liability insurance coverage to provide members and officers of the Company prior to the Closing with coverage for a period of up to six (6) years after the Closing (the "***D&O Tail***").

Section 5.13 **Conduct of Company Business**. During the period from the execution of this Agreement and continuing until the Effective Time, the Company shall (A) conduct its businesses in the usual, regular and ordinary course, and, to the extent consistent with such business, use commercially reasonable efforts to (i) preserve intact the present business

organizations of the Company, (ii) keep available the services of the present Employees, (iii) preserve the assets (including intangible assets) and properties of the Company and (iv) preserve the relationships of the Company with customers, suppliers, distributors, licensors, licensees, and others having business dealings with them, in each case, with the goal of preserving unimpaired the goodwill and ongoing businesses of the Company at the Effective Time

and (B) shall not take any actions that would cause any of the representations or warranties of the Company set forth in this Agreement to fail to be true and correct.

## Article VI CLOSING CONDITIONS

Section 6.1 **Closing Conditions and Deliverables to be Made by the Company**. The obligation of Buyer and Merger Sub to effect the Merger shall be subject to the satisfaction in full of, or compliance with, as of the Closing Date, each of the conditions precedent listed below in this **Section 6.1**, any of which in **Sections 6.1(a)** through **Section 6.2(j)**, may be waived in writing in whole or in part by Buyer to the extent permitted by Law.

(a) The Fundamental Representations, shall (without giving effect to any “materiality,” “Material Adverse Effect” or similar qualification set forth therein) have been true and correct in all material respects on and as of the date of this Agreement and shall be true and correct in all material respects on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of such date, except for such representations and warranties that speak as of a specific earlier date or time, in which case such representations and warranties shall have been true and correct in all material respects on and as of such specific earlier date or time, respectively.

(b) Notwithstanding **Section 6.1(a)**, the representations and warranties set forth in **Section 4.3** (Capitalization) and the representation and warranty in **Section 4.6** (Absence of Certain Changes) regarding there not having been a Material Adverse Effect shall have been true and correct on and as of the date of this Agreement and shall be true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of such date, except for such representations and warranties that speak as of a specific earlier date or time, in which case such representations and warranties shall have been true and correct on and as of such specific earlier date or time, respectively.

(c) The representations and warranties of the Company contained in this Agreement (other than those representations and warranties referred to in **Section 6.1(a)** or **Section 6.1(b)**) shall (without giving effect to any “materiality,” “Material Adverse Effect” or similar qualification set forth therein, other than, for the avoidance of doubt, any reference to “Material Contracts”) have been true and correct on and as of the date of this Agreement and shall be true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of such date, except for (i) representations and warranties that speak as of a specific earlier date or time, in which case such representations and warranties shall have been true and correct as of such specific earlier date or time, as applicable; and (ii) inaccuracies or failures to be true and correct of representations or warranties (including the circumstances giving rise to such inaccuracy or failure to be true and correct) which, individually or in the aggregate, do not constitute and could not reasonably be expected to have a Material Adverse Effect.

(d) The covenants and agreements of the Company to be performed or complied with on or before the Closing Date in accordance with this Agreement shall have been duly performed and complied with in all material respects.

(e) Since the date of this Agreement, no Material Adverse Effect shall have occurred.

(f) At the Closing, the Company shall deliver, or cause to be delivered, the following to Buyer:

(i) Each Signing Support Unitholder shall have duly executed and delivered to the Company and Buyer the Joinder Agreement;

(ii) the Consideration Spreadsheet;

(iii) each of the Ancillary Agreements to which any Company Unitholder or the Company is a party, duly executed by the applicable Company Unitholder or the Company party thereto;

(iv) certificates dated within ten (10) days of the Closing Date from the appropriate office of the jurisdiction of organization of the Company certifying that the Company is validly existing and in good standing;

(v) a certificate, dated as of the Closing Date from a duly authorized officer of the Company certifying: (1) that attached thereto are true and complete copies of all necessary documents of the Company, that authorize and approve the execution, delivery and performance of this Agreement and the other documents related hereto and the consummation of the transactions contemplated hereby and thereby, and that all authorizing resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby and have not been amended except as attached thereto; (2) the names and signatures of the managers of the Company authorized to sign this Agreement, any Ancillary Agreements and the other documents related hereto and the other documents to be delivered hereunder and thereunder by the Company; and (3) attached thereto are true and complete copies of the Company's Organizational Documents, as amended and/or restated and in effect as of immediately prior to execution of this Agreement and the Closing;

(vi) a valid and duly completed IRS Form W-9 executed by (or with respect to) each Company Unitholder;

(vii) the resignations required by **Section 5.3**;

(viii) the minute book(s) for the Company;

(ix) the Escrow Agreement and the Paying Agent Agreement, duly executed by Sellers' Representative;

(x) all consents, waivers and approvals of parties to any Contract as set forth on **Schedule 6.1(f)(x)** in a form reasonably acceptable to Buyer, in accordance with **Section 5.10**;

(xi) counterpart signature pages to the A&R LLC Agreement duly executed by each Company Unitholder;

(xii) an Option Termination Agreement duly executed by each Company Optionholder and the Company; and

(xiii) a certificate validly executed on behalf of the Company and the Company Unitholders by the Manager of the Company, to the effect that, as of the Closing, the conditions set forth in **Sections 6.1(a), 6.1(b), 6.1(c), 6.1(d) and 6.1(e)** have been satisfied.

(g) At least three (3) Business Days prior to the Closing, the Company shall deliver, or cause to be delivered, the following to Buyer:

(i) from each holder of Closing Indebtedness for borrowed money or as otherwise may be requested by Buyer, a payoff letter (or other similar documentation), which payoff letter (or other similar documentation)

shall be in form and substance satisfactory to Buyer and include the amounts required in order to pay in full such Closing Indebtedness and an indication therein that the holder of such Closing Indebtedness has agreed to release and terminate all Liens in respect of such Closing Indebtedness relating to the assets and properties of the Company upon receipt of the amounts indicated in such payoff letter (or other similar documentation) (collectively, the “*Payoff Letters*”); and

(ii) from each investment banker and each financial advisor to the Company or the Company Unitholders, a payoff letter, which payoff letter shall be in form and substance

satisfactory to Buyer and include the amounts that are (or will be) owed to such investment banker or financial advisor (including any fees, costs or expenses) by the Company and providing that upon payment of such amounts, all fees, costs and expenses owed or that could become owed or payable to such investment banker or financial advisor by the Company shall have been paid in full; and

(h) The Key Employee Documents executed concurrently with this Agreement by the Key Employees shall be in full force and effect and shall not have been revoked, rescinded or otherwise repudiated by any Key Employee. Each Key Employee shall continue to be an employee of the Company as of the Closing and no Key Employee shall have terminated his or her employment with the Company or any of its Subsidiaries, or expressed an intention, or taken action toward terminating, such employment with the Company or any of its Subsidiaries at or prior to the Closing, or with the Company or Buyer or its applicable Affiliate following the Closing.

(i) The Non-Competition and Non-Solicitation Agreements executed concurrently with this Agreement by the Restricted Parties shall be in full force and effect and shall not have been revoked, rescinded or otherwise repudiated by any Restricted Party.

(j) The Requisite Approval shall have been obtained.

(k) There shall be no Law in effect promulgated or issued by a Governmental Authority of competent jurisdiction that makes illegal or otherwise prohibits the transactions contemplated by this Agreement, and there shall be no Order in effect issued by a Governmental Authority of competent jurisdiction that enjoins, makes illegal or otherwise prohibits the consummation of the transactions contemplated by this Agreement.

Section 6.2 **Closing Conditions and Deliverables to be Made by Buyer.** The obligation of the Company to effect the Merger shall be subject to the satisfaction in full of, or compliance with, as of the Closing Date, each of the conditions precedent listed below in this **Section 6.2**, any of which in **Section 6.2(a)** or **Section 6.2(b)** may be waived in writing in whole or in part by the Company.

(a) The representations and warranties of Buyer and Merger Sub contained in this Agreement shall be true and correct in all material respects (except that any representation and warranty which by its terms is expressly qualified by materiality shall be true and correct in all respects) on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of such date, except for (a) representations and warranties that speak as of a specific date or time other than the Closing Date; and (b) inaccuracies of representations or warranties where the circumstances giving rise to which, individually or in the aggregate, do not constitute and could not reasonably be expected to prevent the ability of Buyer and Merger Sub to consummate the transactions contemplated by this Agreement. The covenants and agreements of Buyer and Merger Sub to be performed on or before the Closing Date in accordance with this Agreement shall have been duly performed in all material respects.

(b) At the Closing, Buyer shall deliver, or cause to be delivered, the following to the Company:

(i) a certificate, dated as of the Closing Date, from a duly authorized officer of Buyer certifying: (A) names and signatures of the officers of Buyer authorized to sign this Agreement, any Ancillary Agreements and the other documents related hereto and the other documents to be delivered hereunder and thereunder by Buyer;

(ii) the Buyer R&W Insurance Policy;

(iii) each of the Ancillary Agreements to which each of Buyer or Merger Sub is a party, duly executed by Buyer and Merger Sub, as applicable;

- (iv) the Escrow Agreement and the Paying Agent Agreement, duly executed by Buyer; and
- (v) the Non-Competition and Non-Solicitation Agreements.

(c) There shall be no Law in effect promulgated or issued by a Governmental Authority of competent jurisdiction that makes illegal or otherwise prohibits the transactions contemplated by this Agreement, and there shall be no Order in effect issued by a Governmental Authority of competent jurisdiction that enjoins, makes illegal or otherwise prohibits the consummation of the transactions contemplated by this Agreement.

(d) All permits, authorizations, consents, orders or approvals of, and all declarations and filings with, any Governmental Authority as may be required to be obtained in connection with the consummation of the transactions contemplated by this Agreement are shall have been filed, made or obtained.

## **Article VII TAX MATTERS**

### **Section 7.1 Returns.**

(a) The Company shall timely prepare and file or cause to be timely prepared and filed all Returns with respect to the Company for all Tax reporting periods ending on or before the Closing Date, with a due date (taking into account permitted and routine extensions) on or before the Closing Date. Each such Return shall be prepared in a manner consistent with prior practice of the Company in preparing comparable Returns, except as otherwise required by applicable Law or this Agreement. The Company shall timely pay the Taxes reflected as due on any such Return to the appropriate Governmental Authority.

(b) The Sellers' Representative shall cause to be timely prepared, and the Company shall file, all Returns with respect to the Company that relate to Income Taxes and that reflect items of income, deductions, credits, gains or losses passed through to the Company Unitholders, for all Tax reporting periods ending on or before the Closing Date with a due date (taking into account permitted and routine extensions) after the Closing Date (each, a "***Pre-Closing Income Tax Return***"). In connection with any such Pre-Closing Income Tax Returns, Buyer and the Company shall use commercially reasonable efforts to facilitate the Sellers' Representative's utilization of the Company's existing tax return preparation firm(s) (the "***Accounting Firm***"), including (i) providing reasonable access to the Company's books and records and accounting staff and (ii) taking such reasonable steps as may be necessary to cause the Accounting Firm to take reasonable direction from the Sellers' Representative. Each Pre-Closing Income Tax Return shall be prepared in a manner consistent with prior practice of the Company in preparing comparable Returns, except as otherwise required by applicable Law or this Agreement. The Sellers' Representative shall provide a copy of each such draft Return to the Buyer and shall permit the Buyer to review and comment on each such Return for a forty-five (45) day period prior to filing and shall consider in good faith such revisions to such Returns as are reasonably requested by the Buyer. The Sellers' Representative shall deliver such revised and final Pre-Closing Income Tax Returns to Buyer no later than five (5) Business Days prior to the due date for filing such Return. The Company Unitholders shall timely pay the Income Taxes reflected as due on any such Return to the appropriate Governmental Authority.

(c) Buyer shall prepare or cause to be prepared all other Returns with respect to the Company and its Subsidiaries for Pre-Closing Tax Periods that are not described in **Section 7.1(a)** or **Section 7.1(b)**, including all Returns for

all Straddle Periods, required to be filed after the Closing Date. Buyer shall provide a copy of each such Return to the Sellers' Representative and shall permit the Sellers' Representative to review and comment on each such Return for a thirty (30) day period (for any such Return with respect to Income Taxes) or a twenty (20) day period (for any such Return not with respect to Income Taxes) prior to filing and shall consider in good faith such revisions to such Returns as are reasonably requested by the Sellers' Representative. The Company Unitholders, jointly and severally,

shall pay to Buyer an amount equal to the Taxes reflected as due on any such Return that are attributable to the Pre-Closing Tax Period (but only to the extent of such amount not taken into account as a reduction to the final determination of the Closing Cash Merger Consideration) no later than five (5) Business Days before the due date of such Return.

(d) With respect to any Pre-Closing Tax Period, the Company shall make the election under Section 6221(b) of the Code if such election is available as of the date hereof (or any date thereafter). This **Section 7.1(d)** shall apply *mutatis mutandis* with respect to any corresponding or similar provision of state, local, or non-U.S. Law.

**Section 7.2 Straddle Periods.** All Taxes of the Company and its Subsidiaries for any Straddle Period shall be apportioned between the portion of the Straddle Period ending on the Closing Date and the portion of the Straddle Period beginning on the date immediately after the Closing Date as follows: (i) Taxes, other than those referred to in clause (ii) below, for a Straddle Period shall be apportioned by means of a closing of the books of the Company or the relevant Subsidiary as of the end of the Closing Date and (ii) property Taxes and ad valorem Taxes for a Straddle Period shall be apportioned between the portion of such Straddle Period ending as of the Closing Date and the portion of the Straddle Period beginning as of the date immediately after the Closing Date in proportion to the number of days in each such portion of the Straddle Period. Buyer, the Company Unitholders and the Company shall, to the extent permitted by applicable Law, elect with the relevant Taxing Authority to treat for all applicable Tax purposes the Closing Date as the last day of a Taxable period of the Company and its Subsidiaries.

**Section 7.3 Controversies.**

The Sellers' Representative, at least 10 days prior to the expiration of any deadline to appeal, shall promptly notify Buyer upon receipt by the Sellers' Representative or any Company Unitholder of written notice of any Tax Matter with respect to the Company or any of its Subsidiaries, and Buyer shall, at least 10 days prior to the expiration of any deadline to appeal, notify the Sellers' Representative upon receipt by Buyer or any of its Affiliates of written notice of any Tax Matter in each case with respect to Income Taxes for a Pre-Closing Tax Period. The Company Unitholders, at their sole cost and expense, shall have the authority to represent the interests of the Company with respect to any Tax Matter provided that (i) such Tax Matter relates solely to Pre-Closing Income Tax Returns, (ii) neither Buyer nor any of its Affiliates is reasonably expected to have any liability with respect to such Tax Matter (determined without regard to any Buyer R&W Insurance Policy or other indemnification) and (iii) the Company Unitholders provide written notice to Buyer within twenty (20) days of becoming aware of such Tax Matter of its election to represent the interests of the Company with respect to such Tax Matter (any such Tax Matter, a "**Unitholder's Tax Matter**") before any Taxing Authority and shall have, subject to the other provisions of this **Section 7.3**, the sole right to control the defense, compromise or other resolution of a Unitholder's Tax Matter. The Sellers' Representative shall keep Buyer informed with respect to the commencement, status and nature of the Unitholder's Tax Matter and shall provide Buyer with copies of all correspondence (including any correspondence sent or received in electronic format) relating to the Unitholder's Tax Matter no later than five (5) Business Days following the sending or receipt thereof. The Sellers' Representative shall, in good faith, allow Buyer to make comments to the Sellers' Representative regarding the conduct of or positions taken in any Unitholder's Tax Matter, and Buyer shall have the right (but not the duty) to participate in the defense of any Unitholder's Tax Matter and to employ counsel, at its own expense, separate from the counsel employed by the Sellers' Representative. The Sellers' Representative shall not enter into any settlement or compromise of any Tax Matter with any Taxing Authority, and shall not elect to appeal, or seek judicial review of, any determination made with respect to a Unitholder's Tax Matter without the prior written consent of Buyer, which consent shall not be unreasonably conditioned, delayed or withheld.



(a) Buyer shall have the sole right to control any Tax Matter other than a Unitholder's Tax Matter. In the case of any Tax Matter that would have been a Unitholder's Tax Matter but for the fact that the Company Unitholders failed to provide Buyer written notice of their election to represent the interests of the Company with respect to such Tax Matter in accordance with 0, Buyer shall, and shall cause the Company to, (i) keep the Sellers' Representative reasonably informed with respect to such Tax Matter, (ii) in good faith, allow the Sellers' Representative to make comments to Buyer regarding the conduct of or positions taken in such Tax Matter, (iii) allow the Sellers' Representative to participate at its own expense in such Tax Matter, and (iv) not enter into any settlement or compromise without the prior written consent of the Sellers' Representative, which consent shall not unreasonably be conditioned, delayed, or withheld.

(b) The Company shall elect (or cause to be elected) the application of Section 6226(a) of the Code with respect to any "imputed underpayment" or other "partnership adjustment" relating to any Pre-Closing Tax Period. This **Section 7.3(b)** shall apply *mutatis mutandis* with respect to any corresponding or similar provision of state, local, or non-U.S. Law.

(c) This **Section 7.3**, and not, to the extent inconsistent with this **Section 7.3**, **Section 9.5**, shall apply to Tax Matters.

Section 7.4 **Refunds**. Any Income Tax refunds that are received by Buyer or its Affiliates ("**Tax Refund**") that relate to Income Taxes paid by any Company Unitholder or the Company prior to the Closing with respect to the Company's income or gain passed through to the Company Unitholders for Tax periods or portions thereof ending on or before the Closing Date, as such refunds or credits are provided in **Schedule 7.4**, shall be for the account of the Company Unitholders, but only to the extent such Tax Refund (i) was not included in the computation of the Final Closing Cash Merger Consideration and (ii) did not arise as the result of a carryback of a net operating losses, capital losses or other Tax attributes from a taxable period or portion thereof beginning after the Closing Date, and Buyer shall pay over to the Company Unitholders any such Tax Refund (net of any reasonable out-of-pocket expense and any Income Taxes of Buyer or any of its Subsidiaries or Affiliates (including the Company) attributable to such Tax Refund) within fifteen (15) days after receipt or entitlement thereto. If the amount of any such Tax Refund is subsequently determined by any Governmental Authority to be less than the amount paid by the Buyer pursuant to this **Section 7.4**, the Company Unitholders shall, jointly and severally, promptly pay to the Buyer the amount of any such disallowed Tax Refund (including any interest and penalties in respect of such disallowed amount).

Section 7.5 **Amended Returns and Retroactive Elections**. Unless otherwise required by Law or this Agreement, Buyer shall not, and shall not cause or permit the Company to, (i) amend any Pre-Closing Income Tax Returns or (ii) make any Tax election that has retroactive effect to any such Return, in each such case without the prior written consent of the Sellers' Representative, which consent shall not be unreasonably conditioned, delayed or withheld.

Section 7.6 **Tax Sharing Agreements**. Any and all existing Tax sharing or allocation agreements of the Company shall be terminated as of the Closing Date (other than any commercial agreements (i) entered into in the Ordinary Course of Business and (ii) the primary purpose of which does not relate to Taxes). After such time, the Company shall not have any further rights or Liabilities thereunder.

Section 7.7 **Transfer Taxes**. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement or the transactions contemplated by this Agreement (collectively, "**Transfer Taxes**"), shall be borne fifty percent (50%) by Buyer and fifty

percent (50%) by the Company Unitholders. The Party required by Law to file Returns and other documents with respect to Transfer Taxes shall timely file any such Return and other document (and pay the Transfer Taxes required to be paid in connection with

such filings), and the other Parties (other than the Sellers' Representative) shall cooperate with respect thereto (including the payment of such Party's share of the Transfer Taxes).

Section 7.8 **Section 754 Election; Interim Closing Method.**

(a) The Company shall have an election under Section 754 of the Code (and any similar or analogous provision of state, local or non-U.S. Tax Law) in effect for the taxable year that includes the Closing Date and any subsequent taxable year, unless otherwise agreed to in writing by Buyer. Each Company Unitholder will, upon request, supply any information necessary to give proper effect to any such election.

(b) The Company shall apply the "interim closing method" described in Treasury Regulations Section 1.706-4 for purposes of determining Buyer's and the Company Unitholders distributive share of taxable income for the taxable year that includes the Closing Date for U.S. federal income tax purposes. This **Section 7.8(b)** shall apply *mutatis mutandis* with respect to any applicable state, local, or non-U.S. Tax Law.

Section 7.9 **Tax Treatment; Purchase Price Allocation.**

(a) For U.S. federal income Tax purposes, the Parties hereto agree to treat (i) the transaction effected on the Closing Date pursuant to this Agreement as (A) the sale of Company Units by the Company Unitholders to Buyer under Sections 741 and 751 of the Code, as determined pursuant to this Agreement, (B) the nontaxable exchange of such Company Units by Buyer for Buyer's Surviving Company Class A Units, and (C) the nontaxable exchange of the Company Units by the Company Unitholders for the Surviving Company Class B Units, as determined pursuant to this Agreement, and (ii) the Company as a continuing partnership, except in each case to the extent otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code (or any similar provision of state, local or non-U.S. Law).

(b) The Buyer shall deliver a proposed allocation of the Final Closing Cash Merger Consideration (together with any other amounts treated as consideration for U.S. federal income Tax purposes), consistent with **Schedule 7.9(b)** among the assets treated as acquired by the Buyer for U.S. federal income Tax purposes to the Sellers' Representative not later than one-hundred twenty (120) days after the Closing Date ("**Buyer's Allocation**"). If the Sellers' Representative disagrees with Buyer's Allocation, the Sellers' Representative may, within thirty (30) days after receipt of Buyer's Allocation, deliver a notice (the "**Unitholder's Allocation Notice**") to Buyer to such effect, specifying those items as to which the Sellers' Representative disagrees and setting forth the Sellers' Representative's proposed allocation, which shall be consistent with **Schedule 7.9(b)**. Buyer and the Sellers' Representative shall, during the twenty (20) days following such delivery, use commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine the allocation of the Final Closing Cash Merger Consideration (and other relevant amounts). If Buyer and the Sellers' Representative are unable to reach such agreement following timely delivery of Unitholder's Allocation Notice, the dispute shall be submitted to the Neutral Auditors consistent with **Section 2.11**, and the Neutral Auditors shall determine the final allocation of all disputed amounts in a manner that is consistent with **Schedule 7.9(b)** (and the costs of the Neutral Auditors shall be allocated between Buyer and the Company Unitholders in accordance with the principles of **Section 2.11(c)**). To the extent that the Sellers' Representative fails to timely deliver a Unitholder's Allocation Notice or Buyer and the Sellers' Representative have resolved all disagreements with respect to Buyer's Allocation following a timely delivery of a Unitholder's Allocation Notice, none of Buyer or any Company Unitholder shall (and shall cause their respective Affiliates not to) take any position inconsistent with Buyer's Allocation or such other agreed allocation, respectively, on any Return or

in any Tax audit or proceeding, in each case, except to the extent otherwise required pursuant to a “determination” within the meaning of Section 1313(a) of the Code (or any similar provision of state, local or non-U.S. Law).

**Article VIII**  
**TERMINATION**

Section 8.1 **Termination.** This Agreement may be terminated at any time prior to the Effective Time as set forth below:

- (a) by mutual written consent of Buyer and the Company;
- (b) by the Company or Buyer by giving written notice of such termination to the other Party, if:

(i) the Merger is not consummated by 11:59PM Eastern Time on December 26, 2024 (the “*Outside Date*”, subject to **Section 10.11**); *provided, however*, that the right to terminate this Agreement under this **Section 8.1(b)(i)** shall not be available (i) to the Company, if any action or failure to act by the Company or any Company Unitholder has been a principal cause of, or resulted in the failure of, the Merger to occur on or before such date and such action or failure to act constitutes a breach of this Agreement or (ii) to Buyer if any action or failure to act by Buyer has been a principal cause of, or resulted in the failure of, the Merger to occur on or before such date and such action or failure to act constitutes a breach of this Agreement; or

(ii) a Governmental Authority of competent jurisdiction issues or enacts any Law or takes any other action (including the failure to have taken an action), in any case having the effect of permanently restraining, enjoining or otherwise prohibiting the Merger, which Law or other action is final and non-appealable such that the condition set forth in **Section 6.1** or **6.2** cannot be satisfied, as applicable;

(c) by the Company, upon a breach of any representation, warranty, covenant or agreement set forth in this Agreement by Buyer, such that the conditions set forth in **Section 6.2(a)** would not be capable of being satisfied as of the time of such breach or as of the time such representation or warranty will have become untrue; provided, however, that if such breach is curable by Buyer prior to the Outside Date through the exercise of reasonable efforts, then the Company may not terminate this Agreement under this **Section 8.1(c)** prior to 11:59PM Eastern Time on the date that is 20 days following the receipt of written notice to Buyer from the Company of such breach (it being understood that the Company may not terminate this Agreement pursuant to this **Section 8.1(c)** if (i) such breach by Buyer is cured such that such conditions in **Section 6.2(a)** would then be satisfied or be capable of being satisfied or (ii) the Company or any Company Unitholder is in breach of this Agreement such that the conditions set forth in **Section 6.1** would not be capable of being satisfied); or

(d) by Buyer, upon a breach of any representation, warranty, covenant or agreement set forth in this Agreement by the Company, such that the conditions set forth in any of **Sections 6.1(a)** through **6.1(d)** would not be capable of being satisfied as of the time of such breach or as of the time such representation or warranty will have become untrue; provided, however, that if such breach is curable by the Company or any Company Unitholder, as applicable, prior to the Outside Date through the exercise of reasonable efforts, then Buyer may not terminate this Agreement under this **Section 8.1(d)** prior to 11:59PM Eastern Time on the date that is 20 days following the receipt of written notice to the Company from Buyer of such breach (it being understood that Buyer may not terminate this Agreement pursuant to this **Section 8.1(d)** if (i) such breach by the Company or any Company Unitholder is cured such that such conditions in **Sections 6.1(a)** through **6.1(d)** would then be satisfied or be capable of being satisfied or (ii) Buyer is in breach of this Agreement such that the conditions set forth in **Section 6.2** would not be capable of being satisfied).

Section 8.2 **Notice of Termination; Effect of Termination**. If the Company or Buyer wish to terminate this Agreement pursuant to **Section 8.1**, then such Party will deliver to the other Party a written notice stating that such Party is terminating this Agreement and setting forth a brief description of the basis on which such Party is terminating this Agreement. Subject to the relevant periods and the receiving Party's right to cure pursuant to **Section 8.1**, any termination of this Agreement under **Section 8.1** above will be effective immediately upon the delivery of a valid written notice of the terminating

Party to the other Parties. In the event of the termination of this Agreement as provided in **Section 8.1**, this Agreement will be of no further force or effect, except (a) as set forth in **Article I, Section 5.2, Section 5.9, this Section 8.2 and Article X**, each of which will survive the termination of this Agreement and (b) nothing herein relieves any Party from liability or damages of any kind to any other Party resulting from any (i) willful and intentional breach of this Agreement or (ii) material breach by such Party of any of its obligations under this Agreement.

## **Article IX INDEMNIFICATION**

Section 9.1 **Survival.** If the Merger occurs, the representations and warranties of the Company and the Company Unitholders contained in this Agreement and the Joinder Agreement or in any certificate delivered pursuant hereto shall survive the Closing and shall remain in full force and effect until (i) with respect to the Fundamental Representations (other than the Company Tax Representations), 11:59PM (Eastern Time) on the date that is six (6) years following the Closing Date, (ii) with respect to the Company Tax Representations, 11:59PM (Eastern Time) on the date that is sixty (60) days after the expiration of the longest statute of limitations applicable to the subject matter of such representation or warranty, after giving effect to any waiver, mitigation, tolling or extension thereof, and (iii) with respect to all other representations and warranties in this Agreement, 11:59PM (Eastern Time) on the date that is twelve (12) months following the Closing Date (the “**General Expiration Date**” and together with the other survival expiration dates described above, the “**Expiration Dates**”). Notwithstanding the foregoing or any other term of this Agreement (x) no such expiration shall affect the rights of any Buyer Indemnified Party under this **Article IX** or otherwise, to seek recovery of Losses arising out of Fraud and (y) any Claim asserted in writing pursuant to **Section 9.4** prior to the applicable Expiration Date shall not thereafter be barred by the expiration of such survival period and such claims (and the representation, warranties and covenants with respect thereto) shall survive until finally resolved.

Section 9.2 **Indemnification of Buyer.** Subject to terms and limitations in this **Article IX**, from and after the Closing, the Support Unitholders (the “**Seller Indemnifying Parties**”), severally and not jointly, shall indemnify Buyer and its Affiliates and their respective equityholder, employees and representatives (the “**Buyer Indemnified Parties**”) against, and shall hold such parties harmless from and against, any and all Losses incurred, suffered or sustained by, or imposed upon, a Buyer Indemnified Party arising out of, resulting from or in connection with:

(a) any breach or failure to be true of, or inaccuracy in, any representation or warranty (other than the Fundamental Representations) made by the Company in this Agreement as of the date of this Agreement or as of the Closing Date as though such representation or warranty were made on both the date of this Agreement and the Closing Date;

(b) any breach or failure to be true of, or inaccuracy in, any Fundamental Representations as of the date of this Agreement or as of the Closing Date as though such representation or warranty were made on both the date of this Agreement and the Closing Date;

(c) (i) any breach or failure to perform or comply with any covenant, agreement or obligation by the Company pursuant to this Agreement that is contemplated to be performed or complied with by the Company at or prior to the Closing and (ii) any breach or failure to perform or comply with any covenant, agreement or obligation of the Company Unitholders in the Joinder Agreement or the Sellers’ Representatives pursuant to this Agreement;

(d) any Pre-Closing Taxes;

(e) any Stakeholder Claim;

(f) any inaccuracy in, or error in, or omissions from, the information or calculations set forth in the Closing Statement, the Consideration Spreadsheet, the True-Up Payments Spreadsheet or the Indemnity Escrow Payment Spreadsheet, including any inaccuracy in, or error in, or omission from the calculation of, and any overstatement, or understatement or failure to include, in the Closing

Statement, the Consideration Spreadsheet, the True-Up Payments Spreadsheet or the Indemnity Escrow Payment Spreadsheet any components or sub-components of the Closing Cash Merger Consideration or any amount or distribution from the Escrow Funds (without duplication for amounts recovered from the Adjustment Escrow Fund pursuant to **Section 2.11**);

(g) any Fraud committed by or on behalf of the Company, any Company Securityholder or the Sellers' Representative in connection with the transactions contemplated by this Agreement; and

(h) the matters set forth on **Schedule 9.2(h)**.

Section 9.3 **Scope of Indemnification; Certain Limitations.**

(a) Subject to **Section 9.3(h)**, the Buyer Indemnified Parties shall not be entitled to recover under the provisions of **Section 9.2(a)**, until the aggregate amount which the applicable Buyer Indemnified Parties would be entitled to recover thereunder, but for this **Section 9.3(a)**, exceeds \$600,000 (the "**Threshold Amount**") in which event the applicable Buyer Indemnified Parties shall only be entitled to recover for Losses under the provisions of **Section 9.2(a)** in excess of the Threshold Amount.

(b) **Indemnity Caps.**

(i) Subject to **Section 9.3(h)**, (A) recovery from the Buyer R&W Insurance Policy shall be the sole and exclusive source of recovery with respect to Losses pursuant to **Section 9.2(a)** in excess of the amounts held in the Indemnity Escrow Fund; *provided, however*, for the avoidance of doubt, this clause (A) shall not apply to or limit any claim for Losses pursuant to any of **Sections 9.2(b)** through **Section 9.2(h)** (which are addressed below) and (B) the amount of all Losses for which each Company Unitholder shall be liable pursuant to **Section 9.2(b)** through **Section 9.2(g)** shall not exceed the portion of the Closing Cash Merger Consideration paid or payable with respect to the Company Units of such Company Unitholder. Without limiting any claim against the Escrow Funds, no Company Unitholder shall be liable for any inaccuracy, breach or non-fulfillment of any other Company Unitholder's representations, warranties or covenants in the Joinder Agreement.

(ii) Subject to **Section 9.3(h)**, the Schedule 9.2(h) Escrow Fund shall be the sole and exclusive source of recovery with respect to Losses pursuant to **Section 9.2(h)**; *provided, however*, for the avoidance of doubt, this sentence shall not apply to or limit any claim for Losses pursuant to any of **Sections 9.2(a)** through **Section 9.2(g)**.

(c) Payments by a Seller Indemnifying Party pursuant to **Section 9.2** in respect of any Loss shall be limited to the amount of any Losses that remains after deducting therefrom any insurance proceeds actually received by the Buyer Indemnified Parties in respect of any such claim, net of costs of recovery (including future increases in premiums).

(d) Nothing herein shall be deemed to waive any duty of mitigation under Delaware Law of any Buyer Indemnified Party.

(e) No Seller Indemnifying Party (including any officer, director, manager, employee or service provider of the Company) shall have any right of contribution, indemnification or right of advancement from any Buyer Indemnified Party with respect to any Loss directly or indirectly resulting from, arising out of, in connection with, or relating to, any matter set forth or described in **Section 9.2**, except with the express written consent of Buyer.

(f) For purposes of this **Article IX**, in determining the amount of any Losses that are the subject matter of an indemnification claim and whether a breach, inaccuracy, failure to perform or failure to comply has occurred, each representation and warranty of the Company shall be read without giving effect to any materiality, Material Adverse Effect or similar qualification limiting the scope of such representation or warranty (other than, for the avoidance of doubt, in the phrases “Material Contract”).

(g) Notwithstanding anything to the contrary in this Agreement, the Company Unitholders shall not be obligated to indemnify any Buyer Indemnified Party under this Agreement with respect to, or based on, Taxes that (i) are attributable to Tax periods (or portions thereof) beginning after the Closing Date, other than Taxes arising from a breach of any Company Tax Representation, (ii) are due to the unavailability in any Tax period (or portion thereof) beginning after the Closing Date of any net operating loss, credit, or other Tax attribute of the Company existing immediately prior to the Closing, (iii) result from transactions or actions taken by Buyer or any of its Affiliates (including, for the avoidance of doubt, the Company) on the Closing Date outside the ordinary course of business that are not expressly permitted or required by this Agreement or any Ancillary Agreements.

(h) Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall limit the liability of any Person with respect to, or any claim based on, Fraud committed by or on behalf of such Person or Fraud as to which such Person had actual knowledge.

#### Section 9.4 **Indemnification Procedures.**

(a) **Claim Notice.** If a Buyer Indemnified Party wishes to assert a claim under this **Article IX** (each, a “**Claim**”), Buyer shall deliver written notice thereof (a “**Claim Notice**”) to the Sellers’ Representative. The Claim Notice shall set forth: (a) that a Buyer Indemnified Party has directly or indirectly incurred, suffered or sustained or reasonably believes it may incur, suffer or sustain, Losses; (b) the actual or estimated amount of such Losses to the extent known or reasonably estimable and (c) a brief description, in reasonable detail (to the extent reasonably available to such Buyer Indemnified Party), of the facts, circumstances or events giving rise to the alleged Losses based on such Buyer Indemnified Party’s belief thereof. Subject to the applicable limitations in **Section 9.1**, a Claim Notice may be updated and amended from time to time by Buyer by delivering an updated or amended Claim Notice to the Sellers’ Representative. All Claims properly set forth in an original Claim Notice or any update or amendment thereto shall remain outstanding until such Claims for Losses have been finally resolved or satisfied.

(b) **Resolution of Claim Notice.**

(i) **Uncontested Claims.** If, within thirty (30) days after a Claim Notice is delivered to the Sellers’ Representative (such 30-day period, the “**Objection Period**”), the Sellers’ Representative either consents in writing to the Claim Notice, or does not contest all or any portion of such Claim Notice in writing to Buyer, then the Sellers’ Representative shall be conclusively deemed to have agreed, on behalf of all Seller Indemnifying Parties, to the recovery by each applicable Buyer Indemnified Party of the full amount of Losses (or, if a portion of the Claim Notice is contested, the uncontested portion thereof) (subject to the limitations contained in this **Article IX**) arising out of, resulting from or in connection with the matters specified in the Claim Notice, including the delivery to Buyer of all or a portion of the Indemnity Escrow Fund (or, with respect to a claim pursuant to **Section 9.2(h)**, the Schedule 9.2(h) Escrow Fund) to satisfy such Losses and, subject to the limitations contained in this **Article IX**, the recovery from the Seller Indemnifying Parties of any amounts in excess of the Indemnity Escrow Fund.

(ii) **Contested Claims.** If, during the Objection Period, the Sellers’ Representative delivers to Buyer written notice contesting all or any portion of a Claim Notice (the contested portion, a “**Contested Claim**”), then such Contested Claim shall be resolved by either (i) a written settlement agreement executed by Buyer and the Sellers’ Representative or (ii) in the absence of such a written settlement agreement being entered into within 30 days following

receipt by Buyer of the written notice of a Contested Claim (or such longer period as agreed in writing by Buyer and the Sellers' Representative), in accordance with the terms and provisions of **Section 9.4(b)(iii)**.

(iii) Resolution of Contested Claims. If Buyer and the Sellers' Representative do not enter into a written settlement agreement resolving a Contested Claim during the period contemplated by **Section 9.4(b)(ii)**, either Buyer or the Sellers' Representative may bring suit in accordance with **Section 10.2** to resolve the Contested Claim. Final judgment upon any award rendered by the trial court may be entered in any court having jurisdiction. Notwithstanding the foregoing, if and to

the extent Buyer and the Sellers' Representative mutually agree in their respective sole discretion, Buyer and the Sellers' Representative may submit a Contested Claim to alternative dispute resolution prior to, or in lieu of, pursuing the claim in court.

(c) Payment of Claims. If any amounts are determined, agreed or deemed agreed, in each case, to be owed to any Buyer Indemnified Party, including pursuant to this **Section 9.4** (each such amount, an "**Owed Amount**"), then, any Losses with respect thereto shall be satisfied as follows: (i) first so long as there are amounts remaining in the Indemnity Escrow Fund, Buyer shall be entitled to receive a portion of the Indemnity Escrow Fund with a value equal to the Owed Amount (and, if applicable, with respect to any Owed Amount pursuant to Section 9.2(h), Buyer shall be entitled to receive a portion of the Section 9.2(h) Escrow Fund with a value equal to the Owed Amount), in which case, the Sellers' Representative and Buyer shall execute and deliver a joint written instruction to the Escrow Agent instructing the Escrow Agent to release to Buyer from the Indemnity Escrow Fund (or the Section 9.2(h) Escrow Fund with respect to Owed Amounts pursuant to Section 9.2(h)), the Owed Amount (or, if such amount exceeds the amounts then remaining in such Escrow Funds, the entire remaining in such Escrow Fund, as applicable), (ii) second, by recovery from the Buyer R&W Insurance Policy, to the extent recovery is available with respect to such Owed Amount and (iii) third, subject to the limitations contained in this **Article IX**, directly against the Seller Indemnifying Parties and each Seller Indemnifying Party shall, within twenty (20) Business Days following the date such Owed Amount is determined, agreed or deemed agreed to be owed, pay in cash such Seller Indemnifying Party's Pro Rata Indemnity Portion of such remaining Owed Amount to Buyer or such Buyer Indemnified Party designated by Buyer. The Sellers' Representative shall, subject to its prior receipt of a Notice Schedule, promptly notify each Seller Indemnifying Party of any obligation with respect to any such amounts owed under this **Section 9.4(c)**, provided, that the Sellers' Representative's obligation to notify each Seller Indemnifying Party of any obligation to pay amounts owed pursuant to this **Section 9.4(c)** shall be satisfied upon transmission of such email notice to the email addresses included in the Notice Schedule. Notwithstanding any other provision in this Agreement, Buyer agrees it shall promptly provide the Sellers' Representative any denial of coverage letter or notice under from the R&W Insurer denying coverage for any claim against the Buyer R&W Insurance Policy to the extent Buyer has or is making a Claim with respect to such matter.

Section 9.5 **Defense and Settlement of Third-Party Claims.** If Buyer becomes aware of a legal proceeding by a third party that is not an Affiliate of any of the Parties or the Seller Indemnifying Parties (a "**Third-Party Claim**") that Buyer in good faith believes may result in a Claim by or on behalf of a Buyer Indemnified Party, Buyer shall have the right in its sole discretion to conduct the defense of, and to control and, subject to the below terms of this **Section 9.5**, settle, such Third-Party Claim. Buyer shall notify the Sellers' Representative of any such Third-Party Claim, and the Sellers' Representative shall be entitled, on behalf of the Seller Indemnifying Parties, at their expense, to participate in, but not to determine or conduct, the defense of, such Third-Party Claim. The Sellers' Representative shall have the right to receive copies of all pleadings, notices and court filings with respect to the Third-Party Claim to the extent that receipt of such documents does not affect any privilege relating to Buyer or any Buyer Indemnified Party and subject to execution by the Sellers' Representative of Buyer's standard non-disclosure agreement to the extent that such materials contain confidential or proprietary information. Except with the consent of the Sellers' Representative (which shall not be unreasonably withheld, conditioned or delayed, and which shall be deemed to have been given unless the Sellers' Representative shall have objected within ten (10) Business Days after a written request for such consent by Buyer), the amount paid or payable in the settlement or other resolution of any such Third-Party Claim shall not be determinative of the existence of or amount of Losses or whether a Buyer Indemnified Party is entitled to indemnification pursuant to this **Article IX** relating to such matter. In the event that the Sellers' Representative has consented in writing to any such settlement or other resolution, then such settlement or other resolution shall be binding

on the Sellers' Representative and the Seller Indemnifying Parties, and neither the Sellers' Representative nor any Seller Indemnifying Party shall have any power or authority to object to the amount of any claim by or on behalf of any Buyer Indemnified Party against the Indemnity

Escrow Fund, the Schedule 9.2(h) Escrow Fund or directly against the Seller Indemnifying Parties for indemnity with respect to such settlement or other resolution.

Section 9.6 **Tax Treatment of Indemnification Payments**. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Merger Consideration for Tax purposes, unless otherwise required by Law.

Section 9.7 **Escrow Distributions**.

(a) **Indemnity Escrow Fund**. Promptly following the General Expiration Date, the Sellers' Representative shall deliver to Buyer an updated Consideration Spreadsheet in a form and substance reasonably acceptable to Buyer reflecting the allocation of the Excess Indemnity Escrow Amount (as defined below) among the Company Unitholders in accordance with their Pro Rata Allocation Portions (the "***Indemnity Escrow Payment Spreadsheet***"). Within five (5) Business Days following the later of the General Expiration Date and the delivery of the Indemnity Escrow Payment Spreadsheet to Buyer, Buyer and the Sellers' Representative shall execute and deliver joint written instructions to the Escrow Agent instructing the Escrow Agent in accordance with the terms of the Escrow Agreement to release to the Paying Agent (for further distribution to the Company Unitholders in accordance with their Pro Rata Allocation Portions) an amount of cash (the "***Excess Indemnity Escrow Amount***") equal to the amount (if any) by which (a) the then remaining Indemnity Escrow Fund *exceeds* (b) the amount reasonably necessary to satisfy any unresolved or unsatisfied Claims that were asserted on or before the General Expiration Date (each an "***Unresolved Indemnity Claim***" and such amount specified in clause (b)(ii), the "***Retained Indemnity Escrow Amount***"); *provided, however*, the Paying Agent (i) shall pay the amount of any Transaction Payroll Taxes with respect to the payments contemplated in this **Section 9.7(a)** to the Company (or an Affiliate designated by Buyer) and (ii) shall pay any portion of the Excess Indemnity Escrow Amount that is subject to withholding as wages or compensation to the Company (or an Affiliate of the Company designated by Buyer) for further payment to the payee through the Company's (or such Affiliate's) payroll system and net of any applicable withholding Taxes payable with respect thereto. If there are any Unresolved Indemnity Claims as of the General Expiration Date, the Escrow Agent shall retain possession and custody of the Retained Indemnity Escrow Amount. Once all Unresolved Indemnity Claims have been finally resolved and all amounts owed to the Buyer Indemnified Parties have been satisfied, Buyer and the Sellers' Representative shall jointly direct the Escrow Agent to deliver the remaining amounts in the Indemnity Escrow Fund, if any, to be delivered to the Company Unitholders in accordance with their respective Pro Rata Allocation Portions, in the manner indicated above. Any amounts payable by the Paying Agent to the Company Unitholders shall be paid pursuant to the wire instructions for such Company Unitholder as set forth in such Company Unitholder's Letter of Transmittal.

(b) **Schedule 9.2(h) Escrow Fund**. Promptly following the date that is eighteen months following the Closing Date, the Sellers' Representative shall deliver to Buyer an updated Consideration Spreadsheet in a form and substance reasonably acceptable to Buyer reflecting the allocation of the Excess Schedule 9.2(h) Amount (as defined below) among the Company Unitholders in accordance with their Pro Rata Allocation Portions (the "***Schedule 9.2(h) Payment Spreadsheet***"). Within five (5) Business Days following the later of the date that is 18 months after the Closing Date and the delivery of the Schedule 9.2(h) Payment Spreadsheet to Buyer, Buyer and the Sellers' Representative shall execute and deliver joint written instructions to the Escrow Agent instructing the Escrow Agent in accordance with the terms of the Escrow Agreement to release to the Paying Agent (for further distribution to the Company Unitholders in accordance with their Pro Rata Allocation Portions) an amount of cash (the "***Excess Schedule 9.2(h) Amount***") equal to the amount (if any) by which (a) the then remaining Schedule 9.2(h) Escrow Fund *exceeds* (b) the amount reasonably necessary to satisfy any unresolved or unsatisfied Claims that were asserted on or before the date that is 18 months after the Closing Date (each an

*“Unresolved Schedule 9.2(h) Claim”* and such amount specified in clause (b)(ii), the *“Retained Schedule 9.2(h) Amount”*); *provided, however*, the Paying Agent (i) shall pay the amount of any Transaction Payroll Taxes with respect to the payments contemplated in this **Section 9.7(b)** to the Company (or an Affiliate designated by Buyer) and (ii) shall pay any portion of the Excess Schedule 9.2(h) Amount that is subject to withholding as wages or compensation to the Company (or an Affiliate of the Company designated by Buyer) for further payment to the payee through the Company’s (or such

Affiliate's) payroll system and net of any applicable withholding Taxes payable with respect thereto. If there are any Unresolved Schedule 9.2(h) Claims as of the date that is 18 months after the Closing Date, the Escrow Agent shall retain possession and custody of the Retained Schedule 9.2(h) Amount. Once all Unresolved Schedule 9.2(h) Claims have been finally resolved and all amounts owed to the Buyer Indemnified Parties have been satisfied, Buyer and the Sellers' Representative shall jointly direct the Escrow Agent to deliver the remaining amounts in the Schedule 9.2(h) Escrow Fund, if any, to be delivered to the Company Unitholders in accordance with their respective Pro Rata Allocation Portions, in the manner indicated above. Any amounts payable by the Paying Agent to the Company Unitholders shall be paid pursuant to the wire instructions for such Company Unitholder as set forth in such Company Unitholder's Letter of Transmittal.

Section 9.8 **Exclusive Remedies.** Following the Closing, except for (a) claims for Fraud, (b) claims for specific performance or equitable relief and (c) the post-closing adjustment procedures in **Section 2.11** and (d) the obligation of the Company Unitholders to pay Taxes as provided in **Article VII**, the rights to indemnification under this **Article IX** shall be the sole and exclusive remedy of the Buyer Indemnified Parties against the Seller Indemnifying Parties with respect to any breach or inaccuracy of any representations, warranties, covenants and agreements set forth in this Agreement. Nothing in this **Article IX** shall be deemed to limit the rights or remedies of any Buyer Indemnified Party under any Contract, other than this Agreement, entered into by Buyer or any of its Affiliates in connection with this Agreement or the transactions contemplated hereby.

## **Article X** **MISCELLANEOUS**

Section 10.1 **Counterparts; Facsimile or Electronic Transmission.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. This Agreement shall become effective when one or more counterparts have been executed by each of the parties and delivered to each other Party. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic transmission (including electronic mail of .pdf files, DocuSign or other electronic means) shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic transmission (including electronic mail of .pdf files, DocuSign or other electronic means) shall be deemed to be their original signatures for all purposes.

Section 10.2 **Governing Law; Jurisdiction; Venue.**

(a) This Agreement, any dispute or matter arising out of or in connection with this Agreement, the Ancillary Agreements or the transactions contemplated hereby or thereby, including all claims or causes of action (whether in contract or tort), or the negotiation, execution or performance hereof or thereof, and the legal relationship among the Parties, shall be governed by and construed in accordance with the laws of the State of Delaware, including such Laws relating to applicable statutes of limitation and burdens of proof and available remedies, without regard to conflicts-of-law principles that would require the application of any other law.

(b) Subject to the provisions of **Section 10.10**, each Party to this Agreement irrevocably consents to and submits to the exclusive jurisdiction of any court of competent jurisdiction in the State of Delaware in any Action arising out of or relating to this Agreement, and hereby irrevocably agrees that all claims in respect of such Action may be heard and determined in such state or federal court. Each such Party to this Agreement hereby irrevocably waives, to the fullest extent

it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. Such Parties further agree, to the fullest extent permitted by law, that a final and unappealable judgment against any of them in any action or proceeding contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified copy of which shall be conclusive evidence of the fact and amount of such judgment.

Section 10.3 **Entire Agreement**. This Agreement (including all exhibits, schedules or other attachments hereto), the Ancillary Agreements constitute the complete and exclusive statement of the terms of the agreement among the Parties hereto with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings, promises, and arrangements, oral or written, between the Parties with respect to the subject matter hereof and thereof.

Section 10.4 **Expenses**. Except as otherwise expressly provided in this Agreement, each Party shall pay its own fees and expenses (including, without limitation, the fees of any attorneys, accountants, investment bankers or others engaged by such Party) incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the transactions contemplated hereby.

Section 10.5 **Notices**. All notices, consents, waivers and other communications required or permitted under this Agreement shall be sufficiently given if in writing and: (a) hand delivered; (b) delivered by certified or registered mail, return receipt requested and proper postage prepaid; (c) delivered by a nationally recognized overnight courier service; or (d) delivered by electronic mail, in each case to the address, facsimile number or e-mail address and to the attention of the person (by name or title) set forth below (or to such other address and to the attention of such other person as a Party may designate by written notice to the other Parties).

If to the Sellers's Representative (after the Closing): Shareholder Representative Services LLC  
950 17<sup>th</sup> Street, Suite 1400  
Denver, CO 80202  
Attention: Managing Director  
Telephone No.: (303) 648-4085  
E-mail: deals@srsacquiom.com

with a mandatory copy (which shall not constitute notice) to: Bodman PLC  
210 S. Division, Suite 400  
Ann Arbor, Michigan 48105  
Attn: Tim Damschroder  
Facsimile No.: (734) 930-2494  
E-mail: tdamschroder@bodmanlaw.com

If to the Company (before the Closing): Hiya Health Products, LLC  
6454-56 East Rogers Circle  
Boca Raton, FL 33487  
Attn: Adam Gillman  
E-mail: support@hiyahealth.com

with a mandatory copy (which shall not constitute notice) to: Bodman PLC  
210 S. Division, Suite 400  
Ann Arbor, Michigan 48105  
Attn: Tim Damschroder  
Facsimile No.: (734) 930-2494  
E-mail: tdamschroder@bodmanlaw.com



If to Buyer, Merger Sub or the Surviving Company to: Joshua Foukas  
Chief Legal Officer and General Counsel  
USANA Health Sciences, Inc.  
3838 West Parkway Blvd.,  
West Valley City, Utah 84120  
Email: Joshua.Foukas@usanainc.com

with a mandatory copy (which shall not constitute notice) to: Wilson Sonsini Goodrich & Rosati,  
Professional Corporation  
15 West South Temple  
Gateway Tower West  
Suite 1700  
Salt Lake City, Utah 84101  
Attention: Marc Porter; Brian Keyes  
Email: mcporter@wsgr.com; bkeyes@wsgr.com

All notices shall be deemed to have been duly given at the time of receipt by the Party to which such notice is addressed. Any notice or other communication to the Sellers' Representative under or pursuant to this Agreement shall be deemed to have been delivered and given to the Company Unitholders.

Section 10.6 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns; provided, however, that no Party shall assign any of its rights or delegate any of its obligations under this Agreement without the express prior written consent of each other Party. Notwithstanding the forgoing, Buyer may, without obtaining the consent of any Party hereto: (i) assign any of its rights and/or obligations under this Agreement to any of its lenders as collateral security; (ii) assign any or all of its rights and interests hereunder to one or more of its Affiliates or to any successor to Buyer by merger, consolidation or reorganization so long as such successor will own all or substantially all of the assets of Buyer; and (iii) designate one or more of its Affiliates to perform its obligations hereunder (in any or all of which cases); provided, however, Buyer shall not be relieved of its obligations hereunder in respect of any such assignment. Any purported assignment of rights or delegation of obligations in violation of this **Section 10.6**, whether voluntary or involuntary, by merger, consolidation, dissolution, operation of law, or otherwise, is void.

Section 10.7 **Headings; Definitions; Construction and Interpretive Matters.** Captions, titles and headings to articles, sections or paragraphs of this Agreement are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement, and all provisions of this Agreement shall be enforced and construed as if no caption had been used in this Agreement. All references in this Agreement to "Article," "Section," "Exhibit" or "Schedule" refer to the corresponding articles, sections, exhibits or schedules of this Agreement unless otherwise stated and, unless the context otherwise specifically requires, refer to all subsections or subparagraphs thereof. All defined terms and phrases used in this Agreement are equally applicable to both the singular and plural forms of such terms. Nouns and pronouns will be deemed to refer to the masculine, feminine or neuter, singular and plural, as the identity of the person or persons may in the context require. Unless the context of this Agreement otherwise clearly requires: (i) the words "include," "includes" and "including" do not limit the preceding terms or words and shall be deemed to be followed by the words "without limitation;"

(ii) the terms “hereof,” “herein,” “hereunder,” “hereto” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement; (iii) references herein to any Person shall include such Person’s heirs, executors, personal representatives, administrators, successors and assigns; *provided, however*, that nothing contained in this clause (iii) is intended to authorize any assignment or transfer not otherwise permitted by this Agreement; (iv) if the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day,

then the time for the giving of such notice or the performance of such action shall be extended to the next succeeding Business Day; (v) any information or materials “provided,” “made available” or “delivered” to Buyer in respect of periods on or prior to the date hereof means posted in the Company’s electronic data room hosted by William Hood & Company, LLC, at least two (2) Business Days prior to the date hereof and only to the extent such documents and information has remained available to Buyer from the date of initial posting through the Closing; and (iv) all references to the Company shall be deemed to be a reference to the Company and all of its direct and indirect Subsidiaries. The words “day” or “days” shall mean calendar day, unless denoted as a Business Day. Any reference to “\$,” “dollar” or similar references shall mean United States dollars, unless expressly stated otherwise. The exhibits and schedules referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. The Parties agree that any drafts of this Agreement or any Ancillary Agreements prior to the final fully executed drafts shall not be used for purposes of interpreting any provision of this Agreement or any Ancillary Agreement, and each of the Parties agrees that no Party shall make any claim, assert any defense or otherwise take any position inconsistent with the foregoing in connection with any dispute or proceeding among any of the foregoing or for any other purpose. Accounting terms which are not otherwise defined in this Agreement have the meanings given to them under GAAP; provided, however, that to the extent that the definition of an accounting term defined in this Agreement is inconsistent with the meaning of such term under GAAP, the definition set forth in this Agreement will control.

Section 10.8 **Amendments; Waivers.** This Agreement shall not be amended, modified, supplemented or waived except by an agreement in writing duly executed by Buyer, on the one hand, and the Company (before the Closing) or the Sellers’ Representative (after the Closing), on the other hand. No failure of any Party hereto to exercise any right or remedy given to such Party under this Agreement or otherwise available to such Party or to insist upon strict compliance by any other Party with its obligations hereunder, and no custom or practice of the Parties in variance with the terms hereof, shall constitute a waiver of any Party’s right to demand exact compliance with the terms hereof. Any written waiver shall be limited to those items specifically waived therein and shall not be deemed to waive any future breaches or violations or other non-specified breaches or violations unless, and to the extent, expressly set forth therein. Notwithstanding the foregoing, this Agreement may be amended with only the written consent of Buyer solely for the purpose of adding any Company Unitholders to this Agreement in connection with the execution by such Company Unitholders of a Joinder Agreement. Each of the Company, Company Unitholders and the Sellers’ Representative acknowledge and agree that any amendment of this Agreement in accordance with this **Section 10.8** shall be binding upon and effective against the Company, the Company Unitholders and the Sellers’ Representative.

Section 10.9 **Representation of Parties.** The Parties acknowledge that they have been represented by competent counsel of their own choice and that this Agreement has been the product of negotiation between them. Accordingly, the Parties agree that in the event of any ambiguity in any provision of this Agreement, this Agreement shall not be construed against a Party regardless of which Party was responsible for the drafting thereof.

Section 10.10 **Dispute Resolution.** From and after the Closing, in the event of any dispute or disagreement between any of the Buyer or the Sellers’ Representative as to the interpretation of any provision of this Agreement or any agreement incorporated herein, the performance of obligations hereunder or thereunder, or any other disputed matter relating hereto or thereto (except for the determinations to be made by the Neutral Auditors pursuant to **Section 2.11**) (each, a “**Dispute**”), such Dispute, upon the written request of either Buyer or the Sellers’ Representative, shall be referred to an authorized representative of Buyer and the Sellers’ Representative, or their respective designees. Such Parties shall attempt in good faith to resolve the Dispute for a period of twenty (20) days prior to pursuing other remedies, *provided* that the foregoing shall not restrict a Party’s right to seek specific performance or injunctive relief, provided further that if the matter

has not been resolved within twenty (20) days of the written request related to such Dispute the Parties may pursue any remedies available to such Parties under this Agreement including filing an Action in any court of competent jurisdiction. The provisions of

this **Section 10.10** shall not apply to the provisions of **Article VII** (Tax Matters) or **Article IX** (Indemnification).

Section 10.11 **Specific Performance**. The Parties hereto agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached (whether or not such breach is material or willful). It is accordingly agreed that the Parties hereto will be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at law or in equity. Each of the Parties hereto hereby further waives: (a) any defense in any action for specific performance that a remedy at law would be adequate; and (b) any requirement under any Law to post security or bond as a prerequisite to obtaining equitable relief.

Section 10.12 **Waiver of Jury Trial**. EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF. EACH PARTY FURTHER WAIVES ANY RIGHT TO SEEK TO CONSOLIDATE ANY PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER PROCEEDING IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED.

Section 10.13 **Third Parties**. Except for the Buyer Indemnified Parties, who are intended third party beneficiaries of **Article IX**, nothing in this Agreement, express or implied, is intended to or shall be construed to confer upon or give any person other than the Parties and their respective successors and permitted assigns, any legal or equitable right, remedy or claim under or with respect to this Agreement.

Section 10.14 **Severability**. In the event that a court or arbitral body of competent jurisdiction holds any provision of this Agreement invalid, illegal or unenforceable, such decision shall not affect the validity or enforceability of any of the other provisions of this Agreement, which other provisions shall remain in full force and effect, and the application of such invalid, illegal or unenforceable provision to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable shall be valid and be enforced to the fullest extent permitted by law. To the extent permitted by Law, each Party waives any provision of law that renders any provision of this Agreement invalid, illegal or unenforceable in any respect.

Section 10.15 **Certain Matters Regarding Bodman PLC's Representation of the Company Unitholders**. Buyer, on behalf of itself and its Affiliates, hereby consents to Bodman's representation of the Company Unitholders or Sellers' Representative after the Closing in connection with any matter relating to this Agreement and the other Ancillary Agreements, including any negotiation, transaction or dispute with such person and such person's Affiliates under or relating to this Agreement or the other Ancillary Agreements and any related matters.

Section 10.16 **Sellers' Representative**.

(a) By virtue of the execution and delivery of the Joinder Agreement by the Support Unitholders, and the adoption of this Agreement and approval of the Merger by the Company Unitholders, and receiving the benefits of the Merger, including any consideration payable hereunder, each Company Unitholder hereby irrevocably constitutes, appoints and designates Shareholder Representative Services LLC, as of the Closing, as its true and lawful attorney-in-fact and agent,

for all purposes in connection with this Agreement, and any related agreements, with full power and authority to represent such Company Unitholders and such Company Unitholder's successors and assigns with respect to all matters arising under this Agreement and the Ancillary Agreements and all actions taken by the Sellers' Representative under this Agreement or the Ancillary Agreements will be binding upon each Company Unitholder and such Company Unitholder's successors and assigns as if expressly ratified and confirmed in writing by them. Without limiting the generality of the foregoing, the Sellers'

Representative has full power and authority, on behalf of each Company Unitholder and such Company Unitholder's successors and assigns, to interpret the terms and provisions of this Agreement, to dispute or fail to dispute any claim for a Loss under this Agreement or the Ancillary Agreements, to negotiate and compromise any dispute that may arise under this Agreement or the Ancillary Agreements and to sign any releases or other documents with respect to any such dispute. Each Company Unitholder will be deemed a party or a signatory to any agreement, document, instrument or certificate for which the Sellers' Representative signs on behalf of such Company Unitholder. All decisions, actions and instructions by the Sellers' Representative will be conclusive and binding on each Company Unitholder and no Company Unitholder shall have any right to object, dissent, protest or otherwise contest the same. The Buyer has the right to rely conclusively on the instructions and decisions of the Sellers' Representative as to the settlement of any actions required to be taken by the Sellers' Representative hereunder, and no Party will have any cause of action against the Buyer for any action taken by the Buyer in reliance upon the instructions or decisions of the Sellers' Representative. The appointment of the Sellers' Representative is an agency coupled with an interest and is irrevocable and any action taken by the Sellers' Representative pursuant to the authority granted in this **Section 10.16** is effective and absolutely binding on each Company Unitholder notwithstanding any contrary action of or direction from any Company Unitholder. Notices and communications to or from the Sellers' Representative shall constitute a notice and communication to or from, respectively, each of the Company Unitholders and the Seller Indemnifying Parties. The death or incapacity, or dissolution or other termination of existence, of any Company Unitholder does not terminate the authority and agency of the Sellers' Representative (or successor thereto). The Sellers' Representative may resign at any time. The provisions of this **Section 10.16** are binding upon the executors, heirs, legal representatives and successors of each Company Unitholder, and any references in this Agreement to any Company Unitholder shall mean and include the successors to such Company Unitholder's rights hereunder, whether pursuant to testamentary disposition, the laws of descent and distribution or otherwise.

(b) The Sellers' Representative shall act for the Company Unitholders on all of the matters set forth in this Agreement in the manner the Sellers' Representative believes to be in the best interest of the Company Unitholders as a whole and consistent with its obligations under this Agreement. The Sellers' Representative will incur no liability in connection with its services pursuant to this Agreement and any related agreements except to the extent resulting from its fraud, gross negligence or willful misconduct. The Sellers' Representative shall not be liable for any action or omission pursuant to the advice of counsel. The Company Unitholders shall indemnify the Sellers' Representative against any reasonable, documented, and out-of-pocket losses, liabilities and expenses, including the reasonable fees and expenses of any legal counsel, accountants, auditors and other advisors retained by the Sellers' Representative ("**Sellers' Representative Expenses**") arising out of or in connection with this Agreement and any related agreements, in each case as such Sellers' Representative Expense is suffered or incurred; provided, that in the event that any such Sellers' Representative Expense is finally adjudicated to have been caused by the gross negligence or willful misconduct of the Sellers' Representative, the Sellers' Representative will reimburse the Company Unitholders the amount of such indemnified Sellers' Representative Expense to the extent attributable to such gross negligence or willful misconduct. Sellers' Representative Expenses may be recovered by the Sellers' Representative from (i) the funds in the Sellers' Representative Expense Amount and (ii) any other funds that become payable to the Company Unitholders under this Agreement at such time as such amounts would otherwise be distributable to the Company Unitholders; provided, that while the Sellers' Representative may be paid from the aforementioned sources of funds, this does not relieve the Company Unitholders from their obligation to promptly pay such Sellers' Representative Expenses as they are suffered or incurred. In no event will the Sellers' Representative be required to advance its own funds on behalf of the Company Unitholders or otherwise. Notwithstanding anything in this Agreement to the contrary, any restrictions or limitations on liability or indemnification obligations of, or provisions limiting the recourse against non-parties otherwise applicable to, the Company Unitholders set forth elsewhere in this Agreement are not intended

to be applicable to the indemnities provided to the Sellers' Representative hereunder. The foregoing indemnities will survive the Closing, the resignation or removal of the Sellers' Representative or the termination of this Agreement.

(c) All Sellers' Representative Expenses in excess of the Sellers' Representative Expense Amount shall be paid directly by the Company Unitholders (in accordance with their respective

Pro Rata Indemnity Portions) to the Sellers' Representative. The Sellers' Representative shall hold the Sellers' Representative Expense Amount paid to it at Closing for any expenses incurred by the Sellers' Representative and to satisfy any obligations that may be owed by the Company Unitholders under this Agreement or otherwise in connection with the transactions contemplated hereby, or to satisfy any or to satisfy any costs, expenses, Liabilities, Taxes or other amounts that the Sellers' Representative may incur in connection with acting in such capacity under this Agreement. The Company Unitholders will not receive any interest or earnings on the Sellers' Representative Expense Amount and irrevocably transfer and assign to the Sellers' Representative any ownership right that they may otherwise have had in any such interest or earnings. The Sellers' Representative will hold these funds separate from its corporate funds and will not voluntarily make these funds available to its creditors in the event of bankruptcy. As soon as practicable following the completion of the Sellers' Representative's responsibilities, the Sellers' Representative will deliver any remaining balance of the Sellers' Representative Expense Amount to the Paying Agent for further distribution to the Company Unitholders. For tax purposes, the Sellers' Representative Expense Amount will be treated as having been received and voluntarily set aside by the Company Unitholders at the time of Closing.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, this Agreement has been signed by or on behalf of each of the Parties as of the day first above written.

**“COMPANY”**

**Hiya Health Products, LLC,**  
a Delaware limited liability company

By: /s/ Darren Adam Litt t

Name: Darren Adam Litt

Its: Manager

**[Signature Page to Agreement and Plan of Merger]**

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**IN WITNESS WHEREOF**, this Agreement has been signed by or on behalf of each of the Parties as of the day first above written.

**“SELLERS’ REPRESENTATIVE”**

Shareholder Representative Services LLC, solely in its capacity as the  
Sellers’ Representative

By: /s/ Corey Quinlan

Name: Corey Quinlan

Its: Director, Deal Intake

**[Signature Page to Agreement and Plan of Merger]**

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**IN WITNESS WHEREOF**, this Agreement has been signed by or on behalf of each of the Parties as of the day first above written.

**“BUYER”**

**USANA Health Sciences, Inc.**,  
a Utah corporation

By: /s/ G. Douglas Hekking  
Name: G. Douglas Hekking  
Its: Chief Financial Officer

**“MERGER SUB”**

Karate Merger Sub, LLC,  
a Delaware limited liability company

By: /s/ G. Douglas Hekking  
Name: G. Douglas Hekking  
Its: Manager

**[Signature Page to Agreement and Plan of Merger]**

**AMENDED AND RESTATED**  
**LIMITED LIABILITY COMPANY AGREEMENT**  
**OF**  
**HIYA HEALTH PRODUCTS, LLC**

This Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC (the “**Agreement**”), is entered into on December 23, 2024, and to be effective as of the Effective Time, by and among Hiya Health Products, LLC, a Delaware limited liability company (the “**Company**”), each of the Persons identified on the Unitholder Register (as defined below) as of the date hereof, any Person who becomes a Unitholder after the Effective Time and Adam Gillman as the “Class B Unitholder Representative.” This Agreement amends, restates and supersedes that certain Third Amended and Restated Limited Liability Company Agreement of the Company dated as of January 2, 2024 (the “**Existing Agreement**”).

**AGREEMENT**

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Unitholders hereby amend and restate the Existing Agreement in its entirety and agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

Appendix 1 sets forth the definitions of certain terms relating to the maintenance of Capital Accounts and accounting rules. In addition, the following terms used in this Agreement shall have the following meanings:

“**Act**” means the Delaware Limited Liability Company Act, 6 *Del. C.* Section 18-101, *et seq.*, as amended from time to time.

“**Affiliate**” means with respect to any Person (a) any other Person directly or indirectly controlling, controlled by, or under common control with such first Person and (b) any Person that is a member of such first Person’s Family.

“**Assignee**” means a Person who owns Units but who is not a Member, including each holder of Class A Units who is not a Class A Member and each holder of Class B Units who is not a Class B Member. The Assignees shall only have the rights of assignees of transferable interests under the Act who have not been admitted as Members and the Assignees do not have any voting or consent rights, do not have any information rights and do not have the right to participate as a Member in the management and conduct of the Company’s activities, if applicable. The Assignees only have the economic rights expressly set forth in this Agreement.

“**Capital Contribution**” means any money or property contributed to the capital of the Company by a Person in anticipation of becoming a Member or in such Person’s capacity as a Member.

“**Cause**” means with respect to a Class B Member (or such Class B Member’s Related Person) and unless otherwise defined in an agreement between such Class B Member (or such Class B Member’s Related Person) and the Company, (a) the conviction for, or plea of nolo contendere to, any crime



constituting a felony or a misdemeanor which involves fraud, theft, embezzlement, dishonest acts or similar matters involving moral turpitude; (b) any act of fraud, theft, embezzlement, dishonesty, misappropriation or moral turpitude in connection with the performance of services for the Company; or (c) gross negligence, willful misconduct or willful malfeasance in connection with the performance of services for the Company.

“**Centralized Partnership Audit Regime**” means subchapter C, chapter 63, of the Code, as originally enacted in P.L. 114-74, and as has been and may be amended, and including any Regulations or other administrative guidance promulgated thereunder, and any similar or analogous state or local law.

“**Certificate**” means the Certificate of Formation of the Company, as the same has been or may be amended from time to time.

“**Change of Control**” means, as applicable (a) the closing of a sale, lease, exchange or other disposition of all or substantially all of the Company’s assets, with or without goodwill, outside the ordinary course of the Company’s business; or (b) the Company’s merger into or consolidation with any other entity, or any other reorganization or transfer of the equity interests in the Company, in which the holders of the Company’s outstanding equity interests immediately prior to such transaction receive or retain, in connection with such transaction on account of their equity interests, securities representing 50% or less of the voting power of the entity surviving such transaction (or if the Company or such other surviving or resulting entity is a wholly-owned subsidiary immediately following such acquisition, its parent).

“**Class A Member**” means (a) each Class A Member identified as such on the Unitholder Register until such time, if any, that such Class A Member is no longer a Class A Member; (b) any Person acquiring Class A Units directly from the Company and who is admitted as a Class A Member in accordance with this Agreement until such time, if any, that such Person no longer holds any Class A Units or otherwise ceases to be a member of the Company; and (c) any Person who acquires Class A Units and who satisfies the condition for admission as a Class A Member, until such time, if any, that such Person no longer holds any Class A Units or otherwise ceases to be a member of the Company, in each case, in such Person’s capacity as a Class A Member of the Company.

“**Class A Unitholder**” means each Class A Member and each Assignee holding Class A Units.

“**Class A Units**” means the units designated as such by the Managers in accordance with this Agreement representing an ownership interest in the Company having the rights, powers, preferences and obligations set forth in this Agreement.

“**Class B Member**” means (a) each Class B Member identified as such on the Unitholder Register until such time, if any, that such Class B Member no longer holds any Class B Units or otherwise ceases to be a member of the Company; (b) any Person acquiring Class B Units directly from the Company and who is admitted as a Class B Member in accordance with this Agreement until such time, if any, that such Person no longer holds any Class B Units or otherwise ceases to be a member of the Company; and (c) any Person who acquires Class B Units in a Permitted Transfer and who satisfies the condition for admission as a Class B Member, until such time, if any, that such Person is no longer a Class B Member, in each case, in such Person’s capacity as a Class B Member.

“**Class B Unitholder**” means each Class B Member and each Assignee holding Class B Units.



“**Class B Units**” means the units designated as such by the Managers in accordance with this Agreement representing an ownership interest in the Company having the rights, powers, preferences and obligations set forth in this Agreement.

“**Code**” means the Internal Revenue Code of 1986. All references herein to sections of the Code shall include any corresponding provision or provisions of succeeding law.

“**control**,” “**controlled**” and “**controlling**” means the power to direct or cause the direction of the management and policies of a Person and shall be deemed to exist if any Person directly or indirectly owns, controls, or holds the power to vote 50% or more of the voting securities of such other Person.

“**Conversion Event**” means any of the following: (a) written consent by the Managers and the Class A Members to effect a public offering of the Company’s securities (in which case the conversion to corporate form shall occur reasonably in advance of such public offering); (b) a written proposal by a bona fide third party to provide equity or debt financing that has been approved by the Managers and the Class A Members, but that has been made conditional by the proposing party upon a conversion of the Company to corporate form (in which case the conversion to corporate form shall be conditioned upon the consummation of such financing); (c) written consent of the Class A Members and approval of the Managers; or (d) any acquisition or divestiture that has been approved by the Managers and the Class A Members that requires a conversion to corporate form (in which case the conversion to corporate form shall be conditioned upon the consummation of such acquisition or divestiture).

“**Distribution**” means a transfer of money or other property from the Company to a Unitholder on account of such Unitholder’s ownership of Units.

“**Effective Time**” means the Effective Time as defined in the Merger Agreement.

“**Family**” means a child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, niece, nephew or first cousin, including, adoptive relationships, of a natural person referred to herein, or any other relative/person approved by the Managers.

“**Fiscal Year**” means the Company’s taxable year, which shall be a calendar year except as otherwise required by law.

“**Interest Rate**” means the rate per annum equal to *The Wall Street Journal* prime rate of interest as quoted in the Money Rates section of *The Wall Street Journal*.

“**Majority Consent**” means (a) with respect to the Class A Members, the written consent of Class A Members who hold a majority of the then outstanding Class A Units held by all Class A Members; (b) with respect to the Class B Members, the written consent of Class B Members who hold a majority of the then outstanding Class B Units held by all Class B Members; and (c) with respect to the Managers, the written consent or affirmative vote of a majority of the Persons then serving as Managers.

“**Manager**” means each individual appointed to serve as a manager of the Company pursuant to Article 4.

“**Member**” means each Class A Member and each Class B Member.



“**Merger Agreement**” means that certain Agreement and Plan of Merger dated as of the date hereof, by and among USANA Health Sciences, Inc., Karate Merger Sub, Inc. (“**Merger Sub**”), the Company, and Shareholder Representative Services LLC.

“**Net Available Cash Flow**” means, with respect to any period, the Company’s gross cash receipts derived from any source whatsoever, reduced by any amount that the Managers determine to reserve and withhold from distribution, which shall in any event include the portion thereof used to pay or establish reasonable reserves for all Company expenses, debt payments and accrued interest (including principal and interest payments on loans made to the Company), contingencies, and proposed acquisitions, investments and capital expenditures. Any funds released from reserve shall be considered a cash receipt by the Company for purposes of this definition.

“**Partnership Representative**” shall mean (a) the Company’s “partnership representative” within the meaning of Code Section 6223, (b) if the Person described in (a) is an entity, that Person’s “Designated Individual” within the meaning of Regulations Section 301.6226-1 and (c) any Person serving under any similar or analogous state or local tax law in a capacity similar to any of the foregoing.

“**Percentage Interest**” means the percentage interest of each Unitholder determined with respect to a particular Unitholder at any particular time by dividing the number of Units held by such Unitholder by the aggregate number of Units held by all Unitholders.

“**Person**” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

“**Quorum**” means (a) with respect to the Class A Members, a Class A Member or Class A Members who hold a majority of the outstanding Class A Units then held by all Class A Members; (b) with respect to the Class B Members, a Class B Member or Class B Members who hold a majority of the outstanding Class B Units then held by all Class B Members; and (c) with respect to the Managers, a majority of the Persons who are then serving as Managers of the Company.

“**Regulations**” means the Treasury Regulations promulgated under the Code as such Regulations may be amended and in effect from time to time (including corresponding provisions of succeeding Regulations).

“**Related Party**” means, with respect to a Person, such Person’s Affiliates and their respective owners, directors, managers, partners, members, officers, employees, agents and representatives.

“**Related Person**” means, with respect to any Person, each Affiliate of such Person and each owner, member, partner, stockholder, equityholder, beneficiary, director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates including those Persons set forth on Schedule A attached hereto. Any Person holding Class B Units as of the Effective Time will constitute a Related Person of any transferee of such Class B Units (whether such Transfer is in one or more Permitted Transfers), other than with respect to any Transfer to the Company or its assign(s).

“**Resignation Without Good Reason**” means with respect to a Class B Member (or such Class B Member’s Related Person) who is an officer of the Company, including those individuals set forth on



Schedule B attached hereto, and unless otherwise defined in an agreement between such Class B Member (or such Class B Member's Related Person) and the Company, such Class B Member's voluntary resignation as an officer of the Company or voluntary termination of employment with the Company for any reason other than: (a) a material reduction in such Person's total cash compensation from the Company following the Effective Time without such Person's consent and other than a reduction that is part of and proportionally consistent with a broad-based reduction in compensation applicable to other officers generally; (b) a material diminution in such Person's authority, duties or responsibilities with the Company following the Effective Time without such Person's consent; (c) the Company's material breach following the Effective Time or any employment agreement between the Company and such Person; or (d) a change in the location where such Person is required to work on a routine basis for the Company to a location that is an increase of at least fifty miles driving distance from such Person's primary residence as of the Effective Time without such Person's consent, in each case where (i) prior to such resignation or termination such Person provides written notice to the Company and the Managers within sixty days after the first occurrence of such event setting forth in reasonable detail the basis for such Person's resignation with the Company or termination of employment with the Company, allows the Company at least thirty days from receipt of such written notice to cure such event and such event is not reasonably cured within such thirty-day period, and (ii) such Person resigns from all positions then held by such Person with the Company and terminates such Person's employment with the Company no later than thirty days after the expiration of such cure period.

**“Restrictive Covenant Agreement”** means any confidentiality, invention assignment, non-competition or non-solicitation agreement (or any combination of the foregoing) between the Company and the applicable Class B Member (or such Class B Member's Related Person).

**“Reviewed Year Unitholder”** means any Person who was a Unitholder during a “reviewed year” of the Company as defined in Code Section 6225 (regardless of whether such Person is a Unitholder during the applicable “adjustment year” of the Company within the meaning of Section 6225 of the Code).

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

**“Target Balance”** means, with respect to any Unitholder as of the close of any period for which allocations are made under Article 6, the amount the Unitholder would receive (or be required to contribute) in a hypothetical liquidation of the Company as of the close of such period assuming for purposes of such hypothetical liquidation (a) a sale of all the Company assets at prices equal to their Gross Asset Values; and (b) the distribution of the net proceeds from such sale to the Unitholders pursuant to Section 13.2(b), after payment of all Company indebtedness and any other liabilities related to the Company assets (limited, in the case of nonrecourse liabilities, to the collateral securing or otherwise available to satisfy such liabilities).

**“Taxing Jurisdiction”** means any government (or government agency or other Person authorized by any government) that collects tax, interest, and penalties, however designated, on any Unitholder's share of income or gain attributable to the Company.

**“Transfer”** means, when used as a noun, any voluntary or involuntary assignment, conveyance, sale, lease, encumbrance, including a mortgage, pledge or security interest, gift or transfer by operation of law, and, when used as a verb, voluntarily or involuntarily to assign, convey, sell, lease, encumber, gift or transfer by operation of law.



“U.S.” means the United States of America.

“Unit” means each Class A Unit and each Class B Unit.

“Unitholder” means each Member and each Assignee.

“**Withdrawal Event**” means with respect to a Class B Member, (a) the occurrence of any event that makes it unlawful to carry on the Company’s activities and affairs if such Person remains a Unitholder; (b) the Transfer or attempted Transfer of any Units by such Class B Member in violation of this Agreement, including any involuntary Transfer (such as the entry of any judicial decree or order resolving the property rights of such Class B Member that is a natural person and such Class B Member’s spouse in connection with their marital dissolution or legal separation or the execution of any contract or agreement relating to the distribution or division of such Class B Member’s property rights); (c) such Class B Member does any of the following: (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudged a bankrupt or insolvent, or has entered against such Class B Member an order for relief, in any bankruptcy or insolvency proceeding; (iv) files a petition or answer seeking for such Class B Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or rule; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Class B Member in any proceeding of the nature described in clause (i) through (iv); or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of such Class B Member or of all or any substantial part of such Class B Member’s properties; (d) one hundred twenty days after the commencement of any proceeding against such Class B Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if such proceeding has not been dismissed, or if within ninety days after the appointment without such Class B Member’s consent or acquiescence of a trustee, receiver or liquidator of such Class B Member or of all or any substantial part of such Class B Member’s properties, the appointment is not vacated or stayed or within ninety days after the expiration of any stay, the appointment is not vacated; (e) such Class B Member (or such Class B Member’s Related Person) at any time commits an act that constitutes Cause; (f) a material breach of this Agreement by such Class B Member or a material breach of the Restrictive Covenant Agreement by such Class B Member (or such Class B Member’s Related Person), which material breach of this Agreement or such Restrictive Covenant Agreement, if capable of cure, is not cured within thirty days of such Class B Member’s receipt of written notice of the same from the Company; or (g) if such Class B Member (or such Class B Member’s Related Person) is employed by the Company, the termination of such Class B Member’s (or such Class B Member’s Related Person’s) employment with the Company by such Class B Member (or such Class B Member’s Related Person) or by the Company for any or no reason.

“**Withdrawn Member**” means a Class B Member that has ceased to be a Member following the occurrence of a Withdrawal Event with respect to such Class B Member; *provided* in the case of an involuntary Transfer (such as the entry of any judicial decree or order resolving the property rights of a Class B Member that is a natural person and such Class B Member’s spouse in connection with their marital dissolution or legal separation or the execution of any contract or agreement relating to the distribution or division of such Class B Member’s property rights), such Class B Member shall become a Withdrawn Member only with respect to the Class B Units not retained by such Class B Member in connection with such involuntary Transfer.

“**writing**,” “**written**” and words of similar import means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.



## ARTICLE 2 GENERAL

2.1 **General.** The Unitholders shall execute and acknowledge any and all certificates and instruments and do all filing, recording, and other acts as may be necessary or appropriate to comply with the requirements of the Act relating to the formation, operation, and maintenance of the Company in accordance with the terms of this Agreement.

2.2 **Name.** The name of the Company is Hiya Health Products, LLC and the business of the Company shall be carried on in this name with such variations and changes as the Managers deem necessary or appropriate to comply with requirements of the jurisdictions in which the Company's operations shall be conducted.

2.3 **Purposes and Powers.** The business purpose of the Company shall be to transact any lawful business as may be authorized under the Act.

2.4 **Designated Office.** The principal place of business of the Company shall be located at 6454-56 East Rogers Circle, Boca Raton, FL 33487, or such other place or places as the Managers may determine from time to time.

2.5 **Registered Agent; Registered Office.** The registered office for service of process on the Company in the State of Delaware and the name of its registered agent at that address shall be as set forth in the Certificate.

2.6 **Term.** The term of the Company shall not expire except in accordance with the provisions of Article 13 or in accordance with the Act.

2.7 **Company Classification.** The Unitholders intend that the Company always be operated in a manner consistent with its treatment as a "partnership" for U.S. federal and applicable state and local income tax purposes. The Unitholders also intend that the Company not be operated or treated as a "partnership" for any other purposes, including Section 303 of the Federal Bankruptcy Code. Neither the Managers nor the Unitholders may take any action inconsistent with this express intent of the Unitholders.

2.8 **Third Party Rights.** Nothing contained in this Agreement is intended or will be deemed to benefit any creditor of the Company, nor will any creditor of the Company be entitled to require any Unitholder to make any contributions of capital to the Company.

## ARTICLE 3 CAPITAL CONTRIBUTIONS; UNITHOLDERS

3.1 **Initial Capital Account Balances.** Each Unitholder shall have a Capital Account as of the Effective Time in proportion to the Percentage Interest of such Unitholder as of the Effective Time.

3.2 **Additional Capital Contributions.** No Unitholder shall be required to make additional Capital Contributions, and no Unitholder shall be allowed to make an additional Capital Contribution without the approval of the Managers. If the Managers and the Class A Members determine that additional Capital Contributions are needed to enable the Company to conduct its business (each, a "**Capital Call**"), the Managers shall deliver to the Members written notice of the Capital Call, which shall specify the total size of the Capital Call and the number and class (and, if applicable, series) of Units to be issued in consideration for the additional Capital Contributions (the "**Capital Call Notice**"). The Capital Call

Notice shall specify all rights and obligations associated with the class (and, if applicable, series) of Units to be issued in connection with the Capital Call and the amendments, if any, required to be made to this Agreement to reflect the rights and obligation of such Units and the other terms and conditions of the Capital Call, as determined by the Managers and the Class A Members. The per Unit price for each Unit

issued to a Member participating in a Capital Call shall be equal to the fair market value of such Unit as of the date of the Capital Call Notice, as determined by the Managers in good faith and the Class A Members in good faith (the “**Capital Call Per Unit Price**”). Concurrently with each Capital Contribution made pursuant to such Capital Call, this Agreement shall be deemed to be automatically amended, without requiring any further action on the part of the Members or the Managers, to reflect the rights and obligations associated with the Units issued pursuant to such Capital Call as set forth in the Capital Call Notice and such other rights and obligations approved by the Managers and the Class A Members. Each Member shall have the right, but not the obligation, to contribute a percentage of the total Capital Contributions required by the Capital Call equal to the Percentage Interest of such Member relative to the Percentage Interests of all Members. If any Member does not fully participate in the Capital Call within thirty days of the Managers’ delivery of the Capital Call Notice, the Members who fully participated in the Capital Call during such thirty day period may make additional Capital Contributions during the following thirty days until the entire Capital Call is satisfied, with the amount of such additional Capital Contributions to be determined by the Members making such additional Capital Contributions. Upon payment of any Capital Contribution pursuant to this Section 3.2, the Company shall issue additional Units of the class (and, if applicable, series) set forth in the Capital Call Notice to the contributing Member equal to the amount of such Capital Contribution divided by the Capital Call Per Unit Price, the Capital Account of the contributing Members shall be increased by the amount of such Capital Contributions and the Percentage Interests of all Unitholders shall be adjusted. If the entire Capital Call is not satisfied pursuant to this Section 3.2, the Company shall have ninety days thereafter to sell the remaining Units subject to such Capital Call to third parties on terms and conditions not materially more favorable to the purchasers thereof than specified in the Capital Call Notice. If the Company has not sold such Units within such ninety-day period, the Company shall not thereafter issue or sell any Units without first complying with this Section 3.2.

3.3 **No Unauthorized Withdrawals of Capital Contributions.** No Unitholder shall have the right to withdraw or to be repaid any of such Unitholder’s Capital Contributions, except as provided in this Agreement.

3.4 **Return of Capital.** Except as otherwise provided in this Agreement, no Unitholder shall be entitled to the return of such Unitholder’s Capital Contributions to the Company.

3.5 **Borrowing.** The Company may, with the approval of the Managers, borrow from banks, lending institutions, or other unrelated third parties, or from Affiliates of the Company or any Unitholder or any Manager, and may pledge Company properties or any income therefrom to secure or provide for the repayment of any such loans.

3.6 **Merger.** Pursuant to and by virtue of the Merger (as defined in the Merger Agreement), (a) the limited liability company interests in Merger Sub outstanding immediately prior to the Effective Time are cancelled and converted into and thereafter evidence the number of Class A Units calculated pursuant to the Merger Agreement and as set forth opposite the Class A Members’ names set forth on Annex B of the Unitholder Register as of the date hereof (the issuance thereof being hereby ratified and confirmed) and (b) the Company Units (as defined in the Merger Agreement) outstanding immediately prior to the Effective Time are cancelled and converted into and thereafter evidence the number of Class B Units calculated pursuant to the Merger Agreement and as set forth opposite the Class B Members’ names set forth on Annex B of the Unitholder Register as of the date hereof (the issuance thereof being hereby ratified and confirmed) and as set forth, with respect to each Unitholder, on the counterpart signature page to this Agreement provided to such Unitholder for execution. The Unitholder Register as of the date hereof takes into account the Merger and the foregoing conversions; accordingly, no adjustment shall be made to Unitholder Register as of the date hereof as a result of the Merger.

3.7 **Members and Units**. The Managers shall cause to be maintained in the books and records of the Company a register containing the name and address, the class and the number of Units held and the Percentage Interests of the Unitholders (the “**Unitholder Register**”). The Unitholder

Register may be updated from time to time by the Managers to reflect any change in the name, address, class or number of Units held by or the Percentage Interest of any Unitholder. Any reference to the Unitholder Register in this Agreement includes any amendment to reflect any changes in the information specified therein. As of the Effective Time, there are (i) 806,026 Class A Units and (ii) 216,251 Class B Units outstanding. Promptly following request by a Unitholder, the Managers shall provide to such Unitholder the information set forth on the Unitholder Register that specifically relates to such Unitholder (but not any other Unitholder).

## ARTICLE 4 MANAGEMENT

4.1 **Management by Managers; Authority of Managers.** The Company shall be managed by the Managers. Accordingly, except as expressly provided by this Agreement or a nonwaivable provision of the Act, any matter relating to the activities and affairs of the Company shall be decided exclusively by the Managers and the Managers are hereby vested with full, exclusive and complete discretion, power, and authority, to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated. Members are not agents of the Company solely by reason of being Members.

### 4.2 **Restrictions of the Power of the Managers.**

(a) Notwithstanding anything to the contrary in this Agreement, the Managers may take the following actions only with the consent of the Class A Members:

(i) issue additional Units or any options, warrants or other rights to purchase, exercisable for or convertible into Units or redeem any Units or any options, warrants or other rights to purchase, exercisable for or convertible into Units or enter into any phantom equity, profit sharing, sale bonus or similar agreement or adopt any phantom equity, profit sharing, sale bonus or similar plan or amend any of the foregoing;

(ii) take any action (other than as contemplated in Article 12) which would cause the dissolution of the Company under the Act or this Agreement or cause the Company to be classified as an “association” or otherwise taxable as a corporation under the Code;

(iii) change or reorganize the Company into any other legal form, including, without limitation, any merger, conversion or domestication under the Act;

(iv) take any action which would make it impossible to carry on the ordinary business or accomplish the purposes of the Company;

(v) consummate a Change of Control;

(vi) amend the Certificate;

(vii) take any action which, pursuant to this Agreement, specifically requires the consent of the Class A Members; or

(viii) enter into any agreement, arrangement or understanding, written or oral, to do any of the foregoing.

(b) Notwithstanding anything to the contrary in this Agreement, the Managers may take the following actions only with the consent of the Class B Members: amend, alter or repeal any provision of this Agreement in a manner that materially and adversely affects the powers, preferences, obligations or rights of the Class B Units in a manner disproportionate to the effect on the other then-

outstanding classes and series of Units (it being understood that the Class B Units shall not be deemed to be materially and adversely affected in a manner disproportionate to the effect on the other then-outstanding class and series of Units because of the creation, authorization or issuance of any new class or series of Units (including any additional class or series of Units that is senior to or *pari passu* with the Class A Units or Class B Units in any or all respects)).

4.3 **No Guaranty of Return of Capital or Distribution of Cash.** The Managers do not in any way guarantee the return of the Unitholders' Capital Contributions or the realization of a profit from their investment in the Company. There is no guarantee of the Distribution of any particular amount of cash to the Unitholders at any particular times.

4.4 **Number of Managers; Managers' Tenure and Qualifications.**

(a) From and after the Effective Time, the Class A Members shall have the right to determine the number of Managers, which shall initially be four.

(b) The Class A Members shall be entitled to designate all Managers except the Class B Manager (as defined below) (the "**Class A Managers**"). The initial Class A Managers shall be G. Douglas Hekking, P. Joshua Foukas and Walter Noot.

(c) The Class B Members shall be entitled to designate one Manager (the "**Class B Manager**") for so long as there are any Class B Units outstanding that are held by one or more Class B Members. The initial Class B Manager shall be Darren A. Litt.

(d) Each Manager shall hold office until the earlier of such Manager's death, resignation in accordance with Section 4.5 or removal in accordance with Section 4.6. A Person need not be a Member to be a Manager, but if a Member who is a Manager becomes a Withdrawn Member, such Person shall be deemed to have automatically resigned as a Manager upon the occurrence of the Withdrawal Event. If a Person that is both a Manager and a Member ceases to be a Manager, such cessation does not itself constitute a Withdrawal Event.

4.5 **Resignation.**

(a) A Class A Manager may resign at any time by delivering written notice to the all of the other Managers.

(b) The Class B Manager may resign at any time by delivering written notice to all of the other Managers.

(c) The resignation of a Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Such resignation shall not affect such Manager's rights and liabilities as a Unitholder, if applicable, except to the extent otherwise specifically provided in this Agreement.

4.6 **Removal.**

(a) A Class A Manager may be removed at any time by the Class A Members with or without cause.

(b) The Class B Manager may be removed at any time by either the Class B Members or the Class A Members with or without cause.

4.7 **Vacancies.**

(a) Any vacancy occurring for any reason in the office of a Class A Manager may be filled by the Class A Members.

(b) Any vacancy occurring for any reason in the office of the Class B Manager may be filled by a Person designated by the Class B Members who is also approved by the Class A Managers, and such Class A Managers approval shall not be unreasonably withheld, conditioned or delayed.

4.8 **Meetings.** The Managers may hold meetings at which a Quorum is present at a time and place determined by the Managers. Any Manager may call a meeting of the Managers by giving at least forty-eight hours' notice of the meeting and the time, place and purpose for such meeting to each other Manager. Managers may waive the forty-eight-hour notice requirement by attending the meeting (except when a Manager attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been properly called or convened) or by waiving the notice requirement in writing before or after such meeting. Any Manager may participate in a meeting by, or conduct the meeting through the use of, any means of communication by which all Managers participating may simultaneously hear each other during the meeting, in which case, any required notice of the meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. A Manager participating in a meeting by this means is deemed to be present in person at this meeting.

4.9 **Approval Requirement; Voting.** Actions taken by the Managers and all actions requiring the approval, election or waiver of the Managers under this Agreement, the Act or otherwise shall require Majority Consent of the Managers at a meeting at which a Quorum is present. Any action which may be taken by the Managers at a special or regularly scheduled meeting may be taken without a meeting and without prior notice if the Managers consent to the action in writing or by electronic transmission by Majority Consent of the Managers. The Managers may not vote by proxy.

#### 4.10 **Officers.**

(a) **Appointment; Resignation; Removal.** The Managers may appoint officers of the Company with such titles and authorities as determined by the Managers. Each officer shall hold office until he or she resigns, dies or is removed by the Managers. The Managers may remove an officer at any time with or without cause. An officer may resign at any time by giving written notice to the Managers. The resignation of such officer shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The Company shall reimburse the officers for their reasonable expenses (as determined by the Managers in their sole discretion) incurred in connection with the Company's business. The officers shall be compensated for their services for such amount and upon such terms and conditions as determined by the Managers from time to time.

#### (b) **Officers.**

(i) The chief executive officer, if any, shall, subject to the direction and supervision of the Managers, (1) see that all orders and resolutions of the Managers are carried into effect; (2) exercise general direction and supervision of the business and affairs of the Company; and (3) perform all other duties incident to the office of chief executive officer and as from time to time may be assigned to the chief executive officer by the Managers. The chief executive officer may sign, subject to such restrictions and limitations as may be imposed from time to time by the Managers, agreements, deeds, mortgages, bonds, contracts or other instruments which have been duly approved for execution.

(ii) The president, if any, shall, subject to the direction and supervision of the Managers and the chief executive officer, (1) exercise general and active management and control of the business and affairs of the Company and shall see that all orders and resolutions of the Managers and the chief executive officer are carried into effect; and (2) perform all other duties incident to the office of

president and as from time to time may be assigned to the president by the Managers or the chief executive officer. The president may sign, subject to such restrictions and limitations as may be imposed from time to time by the Managers or the chief executive officer, agreements, deeds, mortgages, bonds, contracts or other instruments which have been duly approved for execution.

(iii) The chief operating officer, if any, shall, subject to the direction and supervision of the Managers, the chief executive officer and the president, (1) direct and supervise the operations of the Company; and (2) perform all other duties incident to the office of chief operating officer and as from time to time may be assigned to the chief operating officer by the Managers, the chief executive officer or the president. The chief operating officer may sign, subject to such restrictions and limitations as may be imposed from time to time by the Managers, the chief executive officer or the president, agreements, deeds, mortgages, bonds, contracts or other instruments which have been duly approved for execution.

(iv) Each vice president, if any, shall assist the chief operating officer, the president and the chief executive officer and shall perform such duties as may be assigned by the Managers, the chief operating officer, the president or the chief executive officer.

(v) The secretary, if any, shall (1) have responsibility for the preparation and maintenance of minutes of the proceedings of the Managers and the Class A Members; (2) have responsibility for the preparation and maintenance of the other records and information required to be kept by the Company under the Act; (3) be custodian of the Company's records; (4) when requested or required, authenticate any records of the Company; and (5) in general perform all duties incident to the office of secretary, including such other duties as from time to time may be assigned to the secretary by the chief operating officer, the president, the chief executive officer or the Managers.

(vi) The chief financial officer, if any, shall (1) be the principal financial officer of the Company and have responsibility for the care and custody of all its funds, securities, evidences of indebtedness and other personal property and deposit and handle the same in accordance with instructions of the Managers; (2) receive and give receipts for funds paid in on account of the Company, and pay out of funds on hand all bills, payrolls and other just debts of the Company of whatever nature upon maturity; (3) unless there is a controller, be the principal accounting officer of the Company and as such prescribe and maintain the methods and systems of accounting to be followed, keep complete books and records of account, prepare and file all local, state and federal tax returns, prescribe and maintain an adequate system of internal audit and prepare and furnish to the chief executive officer and the Managers statements of account showing the financial position of the Company and the results of its operations; (4) upon request of the Managers, make such reports to it as may be required at any time; and (5) perform all other duties incident to the office of treasurer and such other duties as from time to time may be assigned to the chief financial officer by the Managers.

## **ARTICLE 5 DISTRIBUTIONS**

5.1 **Distributions.** Distributions, if any, shall be made to the Unitholders at the times and in the aggregate amounts determined by the Managers. All Distributions, including Distributions of Net Available Cash Flow, shall be made to the Unitholders pro rata in accordance with the Unitholders' respective Percentage Interests.

5.2 **Amounts Withheld.** All amounts withheld pursuant to the Code or any provisions of other applicable tax law with respect to any allocation, payment or Distribution to the Unitholders from the Company shall be treated as amounts distributed to the relevant Unitholder or Unitholders for all purposes of this Agreement.



5.3 **State Law Limitation on Distributions.** Notwithstanding anything to the contrary in this Agreement, the Company shall not make a Distribution to any Unitholder on account of such Unitholder's Units if such Distribution would violate the Act or other applicable law.

5.4 **Distributions with Respect to Taxes.**

(a) The Company shall within ninety days following the end of each Fiscal Year make a Distribution to each Unitholder entitled to receive a Distribution (a "**Tax Distribution**") equal to the product of: (i) the highest combined marginal U.S. federal and state of California income tax rates imposed on income of individuals or corporations who are residents of California for tax purposes (taking into account the deductibility of state taxes and the character of the relevant income for U.S. federal income tax purposes) and (ii) the Company's taxable income for U.S. federal income tax purposes allocated to such Unitholder for the relevant fiscal period and calculated without regard to (x) items of depreciation or amortization allocated under, or attributable to, any special basis adjustment with respect to any Member pursuant to Sections 734(b), 743(b) and 754 of the Code or (y) items of income, gain, loss or deduction allocated under the principles of Section 704(c) of the Code, in all cases as may be reasonably determined or estimated by the Managers. Notwithstanding the foregoing, no Tax Distributions shall be required to be made with respect to 2024 (or any portion or period thereof) to any current or former Unitholder (or any of their successors or transferees).

(b) Notwithstanding anything to the contrary in this Section 5.4, the amount to be distributed to a Unitholder as a Tax Distribution in respect of any Fiscal Year shall be reduced on a dollar-for-dollar basis by any Distributions made to such Unitholder pursuant to Section 5.1 during such Fiscal Year.

(c) For the avoidance of doubt, any Tax Distributions shall be considered an advancement of, and shall not be in addition to, Distributions to which Unitholders would otherwise be entitled hereunder and shall reduce such Distributions on a dollar-for-dollar basis.

## ARTICLE 6 ALLOCATION OF PROFITS AND LOSSES

6.1 **Profit and Loss Allocations.** Subject to and after making any special allocations required under **Appendix 1**, for each Fiscal Year (or other relevant period), Profits and Losses (and, if necessary, individual items of gross income, gain, loss, or deduction) shall be allocated among the Unitholders for such Fiscal Year (or other relevant period) in such a manner as to cause their Capital Account balances to equal, as nearly as possible, their Target Balances. For purposes of the preceding sentence, the balance of each Unitholder's Capital Account will be determined after crediting thereto any amount the Unitholder is obligated or deemed obligated to restore under this Agreement or Regulations Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1), or 1.704-2(i)(5).

6.2 **Tax Allocations.**

(a) Except as otherwise provided in Section 6.2(b), for U.S. income tax purposes, all items of income, gain, loss, deduction and credit of the Company for any tax period shall be allocated among the Unitholders in accordance with the allocation of Profits and Losses prescribed in this Article 6 and Appendix 1.

(b) In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated

among Unitholders so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value. In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section A1 of Appendix 1, subsequent allocations of income, gain, loss and deduction with respect to such asset shall

take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder; *provided, however*, that unless otherwise determined by the Managers, the Company shall adopt the Traditional Method as defined under Regulations Section 1.704-3(b), and shall not adopt the Traditional Method with Curative Allocations as defined under Regulations Section 1.704-3(c) or the Remedial Allocation Method as defined in Regulations Section 1.704-3(d) that would require any Unitholder to report any item of income or gain for Code Section 704(c) purposes that differs in amount or timing from the Profit that the Company allocates to such Unitholder under Code Section 704(b). Allocations pursuant to this Section 6.2 are solely for purposes of U.S. federal, state and local income taxes and shall not affect, or in any way be taken into account in computing, any Unitholder's Capital Account or share of Profits, Losses or other items or Distributions pursuant to any provision of this Agreement.

(c) The Unitholders are aware of the income tax consequences of the allocations made by this Article 6 and Appendix 1 and hereby agree to be bound by the provisions of this Article 6 and Appendix 1 in reporting their distributive shares of the Company's taxable income and loss for income tax purposes.

6.3 **Section 706 Method.** For the taxable year that includes the Effective Time, income, gain, loss, deduction or credit attributable to any Units which have been Transferred shall be allocated between the transferor and the transferee under the interim closing method described in Code Section 706 and the Regulations thereunder.

## ARTICLE 7 RIGHTS AND OBLIGATIONS OF UNITHOLDERS

7.1 **Waiver of Action for Partition.** Each Unitholder irrevocably waives during the term of the Company any right that such Unitholder may have to maintain any action for partition with respect to Company property or other Company assets.

7.2 **Voting Rights.** Except as otherwise expressly provided in this Agreement, and the Members, in their capacity as such, shall have no voting or consent rights pursuant to the Act or this Agreement. The Class A Members shall have the right to vote only on those matters specifically reserved for their consent set forth in this Agreement. The Class B Members shall have no voting or consent rights except as set forth in Section 4.2(b), Section 4.4(c), Section 4.5(b), Section 4.6(b), Section 4.7(b) and Section 15.3. All actions, appointments or elections which the Class A Members are collectively permitted to take or make or requiring the consent of the Class A Members pursuant to this Agreement may be taken only with Majority Consent of the Class A Members. All actions, appointments or elections which the Class B Members are collectively permitted to take or make or requiring the consent of the Class B Members pursuant to this Agreement may be taken only with Majority Consent of the Class B Members.

7.3 **Voting Procedure.** In any circumstances requiring consent by the Class A Members or Class B Members, as applicable, such consent shall be given or withheld in the sole and absolute discretion of the Class A Members or Class B Members, respectively, and conveyed in writing or by electronic transmission to the Managers not later than five days after such consent is requested by the Managers in a written notice directed to the Class A Members or Class B Members, as applicable. Failure to respond within the requisite time period (which shall in all cases never be less than ten days) shall constitute a vote consistent with the Managers' recommendation with respect to the proposal, if any. If the Managers receive the necessary consent of the Class A Members or the Class B Members, as applicable, to such action, the Managers shall be authorized to implement such action without further authorization by the Class A Members or the Class B Members, respectively.

7.4 **Written Consent**. All actions, appointments and elections taken by the Class A Members or the Class B Members, as applicable, shall be in writing or by electronic transmission and shall be

effective as of the date the last written consent or electronic transmission necessary to authorize or take the action, appointment or election is received by the Company or such future date or time (including a time determined upon the happening of an event) specified therein. Any Class A Member or Class B Member, as applicable, or an authorized representative of such Class A Member or such Class B Member, as applicable, may revoke a consent or electronic transmission by a signed writing or electronic transmission describing the action and stating that such Class A Member's or such Class B Member's, as applicable, prior consent is revoked, if the writing or electronic transmission is received by the Company prior to the effective date and time of the action.

7.5 **Limitation on Bankruptcy Proceedings.** Without the prior consent of the Class A Members, no Unitholder or Manager shall file or cause to be filed any action in bankruptcy involving the Company or seek, consent to or acquiesce in the appointment of a trustee, receiver or liquidator for the assets of the Company.

## ARTICLE 8 LIABILITY, EXCULPATION, INDEMNIFICATION AND FIDUCIARY DUTIES

8.1 **Liability.** Except as otherwise provided by the Act, a debt, obligation or other liability of the Company, whether arising in contract, tort or otherwise, is solely the debt, obligation or liability of the Company and no Member or Manager is personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation or liability of the Company solely by reason of being or acting as a Member or Manager. The failure of the Company to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on any Member or Manager for a debt, obligation or other liability of the Company.

8.2 **Reimbursement.** The Company shall reimburse each Manager for any payment made by such Manager in the course of their activities on behalf of the Company if such Manager obtained any approvals required by this Agreement.

8.3 **Exculpation.** Except as otherwise provided herein and to the maximum extent permitted by the Act, no Manager or any of such Manager's Related Parties, no Class A Member or any of such Class A Member's Related Parties, no Class B Member or any of such Class B Member's Related Parties and no officer of the Company (collectively, the "**Covered Persons**") shall be liable to any Manager, the Company or any Unitholder for monetary damages for any loss suffered by any Manager, the Company or any Unitholder arising out of any act or omission performed or omitted by such Covered Person in a manner reasonably believed by such Covered Person to be within the scope of authority conferred on such Covered Person by this Agreement, and, solely with respect to a Covered Person in such Person's capacity as an officer of the Company, in good faith on behalf of the Company, unless such loss is caused by such Covered Person's breach of the express terms of this Agreement or in the case of an officer, such officer's breach of such officer's fiduciary duties set forth in this Agreement, in each case, as determined by a final judgment, order or decree of a court of competent jurisdiction (which is not appealable or with respect to which the time for appeal therefrom has expired and no appeal has been perfected) or any losses that are attributable to such Covered Person's or such Covered Person's Affiliates' (excluding, for purposes hereof, the Company) present or future breaches of any representations, warranties, duties or covenants by such Covered Person or such Covered Person's Related Parties (excluding, for purposes hereof, the Company), contained herein or in any other agreement with the Company. Any Manager may consult with counsel and accountants and other experts, including financial advisors, in respect of the Company affairs and, provided such Person acts in good faith reliance upon the advice or opinion of such counsel or accountants or other experts, such Person shall not be liable for any loss suffered by the Company or any Unitholder in reliance thereon. The preceding sentence shall in no way limit any Person's right to rely on information to the extent provided in Section 18-406 of the Act.

8.4 **Indemnification.**

(a) The Company hereby agrees to indemnify and hold harmless any Person to the fullest extent permitted under the Act against all expenses, liabilities and losses (including attorney fees, judgments, fines, excise taxes or penalties) reasonably incurred or suffered by such Person (or one or more of such Person's Affiliates or of which such Person is an Affiliate) by reason of the fact that such Person is or was a Unitholder, a Manager or an officer of the Company (each, an "**Indemnified Person**") if, in each case, (i) such Indemnified Person acted in a manner the Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Agreement, and, solely with respect to a Indemnified Person in such Person's capacity as an officer of the Company, in good faith on behalf of the Company; or (ii) the Managers so determine, within their reasonable judgment; *provided*, that no Indemnified Person shall be indemnified for any expenses, liabilities and losses suffered that are attributable to such Indemnified Person's breach of the express terms of this Agreement or in the case of an officer, such officer's breach of such officer's fiduciary duties set forth in this Agreement, in each case, as determined by a final judgment, order or decree of a court of competent jurisdiction (which is not appealable or with respect to which the time for appeal therefrom has expired and no appeal has been perfected) or such Indemnified Person's or such Indemnified Person's Affiliates' (excluding, for purposes hereof, the Company) present or future breaches of any representations, warranties, duties or covenants by such Indemnified Person or such Indemnified Person's Related Parties (excluding, for purposes hereof, the Company), contained herein or in any other agreement with the Company. Expenses, including attorneys' fees and expenses, incurred by any such Indemnified Person in defending any claim, demand, action, suit or proceeding (a "**Proceeding**") shall be paid by the Company as incurred in advance of the final disposition of such Proceeding, including any appeal therefrom, upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall ultimately be determined that such Indemnified Person is not entitled to be indemnified by the Company. The rights granted pursuant to this Section 8.4(a) shall be deemed contract rights and no amendment, modification or repeal of this Section 8.4(a) shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any amendment, modification or repeal.

(b) Notwithstanding anything contained herein to the contrary (including in this Section 8.4), any indemnity by the Company relating to the matters covered in this Section 8.4 shall be provided out of and to the extent of the Company assets only, and no Unitholder (unless such Unitholder otherwise agrees in writing or is found in a final decision by a court of competent jurisdiction to have personal liability on account thereof) shall have personal liability on account thereof or shall be required to make additional Capital Contributions to help satisfy such indemnity of the Company (except as expressly provided herein).

**8.5 No Fiduciary Duties of Managers or Unitholders.** To the fullest extent permitted by law, including Section 18-1101(c) of the Act, and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, the Unitholders and the Company hereby agree that no Manager (in such capacity) and no Unitholder (in such capacity) shall owe any fiduciary duties to the Company, the Members or any other Person bound by this Agreement; *provided*, that the foregoing shall not eliminate the duty to comply with the implied contractual covenant of good faith and fair dealing. To the maximum extent permitted by applicable law and without limiting the foregoing, the Company and each Unitholder hereby waives any claim or cause of action against each Manager and Unitholder (for the avoidance of doubt, other than claims or causes of action against any Unitholder solely in such Person's capacity as an officer or other service provider to the Company or against any Unitholder for breach of this Agreement) and such Manager's or Unitholder's Related Parties for any breach of any fiduciary duty to the Company or the Unitholders by any such Person, including as may result from any conflict of interest, including a conflict of interest between the Company, any of the Managers or its Unitholders and such Person or otherwise. The Company and each Unitholder acknowledges and agrees that in the event of any such conflict of interest, each such Person (in the absence of a bad faith violation of the implied

contractual covenant of good faith and fair dealing) may act in the best interests of such Person or such Person's Related Parties. To the

maximum extent permitted by applicable law and without limiting the foregoing, no Manager or Unitholder (for the avoidance of doubt, other than any Unitholder solely in such Person's capacity as an officer or other service provider of the company) shall be obligated to give any consideration to any interest of or factors affecting the Company or the Unitholders, or to recommend or take any action in its capacity as a Manager or Unitholder that prefers the interests of the Company or the Unitholders over the interests of such Person or such Person's Related Parties, and each of the Company and each Unitholder hereby waives the fiduciary duty, if any, of such Person to the Company or the Unitholders, including in the event of any such conflict of interest or otherwise. The provisions of this Agreement, to the extent that they restrict or eliminate the duties (including fiduciary duties) and liabilities of a Covered Person or an Indemnified Person otherwise existing at law or in equity, are agreed by the Company and each Unitholder to replace such other duties and liabilities of such Covered Person or Indemnified Person.

8.6 **Fiduciary Duties of Officers.** The officers of the Company, in the performance of their duties as such, shall owe to the Company fiduciary duties (including of loyalty and due care) of the type owed by the officers of a corporation to such corporation and its stockholders under the laws of the State of Delaware.

## ARTICLE 9 TAX MATTERS AND BANKING

9.1 **Tax Matters.** The Unitholders intend that the Company shall be operated in a manner consistent with its treatment as a partnership for U.S. federal and applicable state and local tax purposes. Notwithstanding any provision in this Agreement, the Unitholders shall not take any action inconsistent with this expressed intent. Neither the Partnership Representative nor any other Person shall take any action to cause the Company to elect to be classified as an association taxed as a corporation pursuant to Regulations Section 301.7701-3(a) or any counterpart under state or local law or to otherwise be taxed as a corporation. The Company and each Unitholder agrees not to make any election for the Company to be excluded from the application of the provisions of Subchapter K of the Code.

9.2 **Tax Returns and Other Tax Matters.** The Managers shall cause the Company accountants to prepare and timely file all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. The Managers shall instruct Company accountants to prepare and deliver all necessary tax returns and information to each Unitholder within a reasonable period following the end of each Fiscal Year.

(a) The Managers may, where permitted by the rules of any Taxing Jurisdiction, file a composite, combined, or aggregate tax return reflecting Company income, and pay the tax, interest, and penalties of some or all Unitholders on such income to the Taxing Jurisdiction. In such case the Company shall inform the Unitholders of the amount of such tax, interest, and penalties so paid. Any such amount shall be treated as a Tax Distribution made to the respective Unitholder.

(b) The Managers shall designate the Partnership Representative for each Fiscal Year as required by the Centralized Partnership Audit Regime. Notwithstanding anything to the contrary in this Agreement, the Partnership Representative shall act as such only at the direction of the Managers. Any Person so designated as the Partnership Representative shall receive no compensation (other than compensation, if any, otherwise specified in this Agreement) from the Company or its Members for its services in that capacity. To the extent and in the manner permitted by the Code and Regulations, the Partnership Representative may be removed by the Managers or resign.

(c) The Managers shall cause the Company to make the election provided under Code Section 754 and any corresponding provision of applicable state or law for the Fiscal Year that includes the Effective Time, and shall ensure that the Company has a valid election under Code Section

754 in effect (and if appropriate shall make a new election under Code Section 754) for any Fiscal Year that includes a Unit Purchase Closing Date.

(d) Each Unitholder shall report Company items on such Unitholder's income tax return in a manner consistent with the Company income tax return, except as otherwise approved by the Managers. If a Unitholder reports inconsistently, such Unitholder shall be liable to, and hereby agrees to indemnify, the other Unitholders and the Company for any expenses, including professionals' fees, tax, interest, penalties, or litigation costs, that may arise as a consequence of such inconsistent reporting, such as an audit by a Taxing Jurisdiction.

(e) For each Fiscal Year for which it is eligible, the Company shall elect out of the Centralized Partnership Audit Regime pursuant to Code Section 6221(b). If the Company is ineligible or otherwise fails for any reason to so elect out for a Fiscal Year with respect to which there is an adjustment of an item of Company income, gain, loss, deduction or credit or a Unitholder's distributive share thereof, the Company shall (i) elect the alternative payment procedures described in Code Section 6226, (ii) require the Reviewed Year Unitholders to comply with the amended return or other procedures in Code Section 6225, or (iii) take any other steps as may reasonably be determined by the Managers in consultation with the Company's tax advisers. In any case, each Reviewed Year Unitholder shall indemnify the Company from and against any loss attributable to such Reviewed Year Unitholder's allocable share of any "imputed underpayment" (within the meaning of the Centralized Partnership Audit Regime), including any interest, penalty, other additions to tax, and all other costs and expenses (including reasonable attorney's fees) that may be sustained by the Company in connection therewith, as determined by the Managers in their reasonable discretion. The Company shall be entitled to recover such loss by any lawful means, including by offsetting such loss against amounts otherwise distributable to the Reviewed Year Unitholder or the Reviewed Year Unitholder's transferees or assignees.

(f) Subject to the second sentence of Section 9.2(b), the Partnership Representative is hereby authorized and empowered to act for and represent the Company and each of the Unitholders before the Internal Revenue Service and other Taxing Jurisdictions in any audit or examination of any Company tax return and before any court selected by the Unitholders for judicial review of any adjustment assessed by the Internal Revenue Service and any other Taxing Jurisdictions. The Unitholders specifically acknowledge, without limiting the general applicability of this Section 9.2(f), that the Partnership Representative shall not be liable, responsible or accountable in damages or otherwise to the Company or to any Unitholder with respect to any action taken by it in good faith in its capacity as the Partnership Representative. All reasonable out-of-pocket expenses incurred by the Partnership Representative in its capacity as such shall be considered expenses of the Company for which the Partnership Representative shall be entitled to full reimbursement.

(g) Each Unitholder (whether or not a Unitholder at the time of the request) shall furnish such information as may be reasonably requested by the Partnership Representative or the Managers in connection with any audit or other proceeding against or with respect to the Company by any taxing authority. Such information shall be furnished in the time and manner specified.

(h) This Section 9.2, and the Company's and each Unitholder's obligations under this Section 9.2, shall survive the liquidation of the Company and any Transfer or other event that causes a Unitholder to cease to be a Unitholder (with such Person continuing to be obligated by this Section 9.2 thereafter).

9.3 **Bank Accounts**. The Company shall maintain checking or other accounts in such bank or banks as the Managers shall determine and all funds received by the Company shall be deposited therein and withdrawn therefrom under such general or specific authority as this Agreement or the Act shall grant to the Managers or the officers of the Company.

Company funds shall not be commingled with the funds of any other Person. Checks shall be drawn upon the Company account or accounts only for Company purposes and shall be signed by authorized Persons on the Company's behalf.

**ARTICLE 10**  
**ADMISSIONS; WITHDRAWALS; CALL OPTION**

10.1 **Admission of Member.** As of the Effective Time, upon its execution of a counterpart signature page to this Agreement, each Person listed on the Unitholder Register as of the Effective Time as a Member hereby continues or is admitted, as applicable, as a Member of the Company. After the Effective Time, a Person may be admitted as a Class A Member or Class B Member, as applicable, (a) as a result of the issuance of Class A Units or Class B Units, as applicable, by the Company with the approval of the Managers and the Class A Members; (b) in connection with a Transfer that is a Permitted Transfer; or (c) as a result of a merger, interest exchange, conversion or domestication consummated in accordance with this Agreement and the Act.

10.2 **No Right to Withdraw.** No Member shall have the right to voluntarily withdraw or resign from the Company without the approval of the Managers.

10.3 **Rights of Withdrawn Member.** Upon the occurrence of a Withdrawal Event with respect to a Class B Member, such Class B Member shall become a Withdrawn Member and shall for all purposes of this Agreement be treated as an Assignee; *provided* that in the case of an involuntary Transfer (such as the entry of any judicial decree or order resolving the property rights of a Class B Member that is a natural person and such Class B Member's spouse in connection with their marital dissolution or legal separation or the execution of any contract or agreement relating to the distribution or division of such Class B Member's property rights), such Class B Member shall become an Assignee only with respect to the Class B Units not retained by such Class B Member in connection with such involuntary Transfer. A Class B Member subject to a Withdrawal Event is liable to the Company and the other Members for damages caused by the Withdrawal Event only if such Withdrawal Event is an event described in clause (b) (with respect to any voluntary Transfer in violation of this Agreement), clause (e), clause (f) or clause (g) (if termination of employment is by the Company for Cause or by such Class B Member (or such Class B Member's Related Person) and constitutes a Resignation Without Good Reason) of the definition of "Withdrawal Event." A Withdrawal Event with respect to a Class B Member does not itself discharge such Class B Member from any debt, obligation or other liability to the Company or to the other Members which such Member incurred while a Class B Member.

10.4 **Determination of Withdrawal Event.** The Managers shall determine in good faith whether a Withdrawal Event has occurred with respect to any Class B Member by providing the affected Class B Member with written notice thereof including a description of the rationale of such good faith determination.

10.5 **Call Right upon Withdrawal Event.**

(a) If elected by the Managers, following the occurrence of a Withdrawal Event with respect to a Class B Member, at any time prior to the date that is one hundred eighty days following the date on which the Managers became aware of such Withdrawal Event (the "**Purchase Election Period**"), the Company (or, if elected by the Company, its assign(s)) shall have the option, but not the obligation, to purchase all or any portion of the Withdrawn Member's Class B Units, free and clear of all Liens; *provided* that in the case of an involuntary Transfer (such as the entry of any judicial decree or order resolving the property rights of a Class B Member that is a natural person and such Class B Member's spouse in connection with their marital dissolution or legal separation or the execution of any contract or agreement relating to the distribution or division of such Class B Member's property rights), the purchase option shall apply only to the Class B Units not retained by such Class B Member in connection with such involuntary Transfer (the "**Purchase Option**" and the Class B Units which are purchased upon exercise of the Purchase Option, the "**Subject Withdrawal Units**"). If the Company (or, if

elected by the Company, its assign(s)) elects to exercise the Purchase Option, the Company (or, if elected by the Company, its assign(s)) shall deliver a written notice of such election to the Withdrawn

Member during the Purchase Election Period specifying the number of Subject Withdrawal Units in the form of Exhibit D.

(b) The purchase price to be paid for each Subject Withdrawal Unit shall be the Per Unit Purchase Price (as defined below) that would be payable in connection with a Call Right (as defined below) exercised in the calendar year during which the Withdrawal Event occurs determined in accordance with Section 12.3(c), Section 12.3(d) and Section 12.3(e) (and if the Per Unit Purchase Price for such calendar year is not required to be determined in accordance with Section 12.3, (i) the Company (by action of the Managers by Majority Consent) and such Withdrawn Member (or the personal representative, conservator or other successor-in-interest of such Withdrawn Member) shall determine the Per Unit Purchase Price in accordance with the Section 12.3 as if the Call Right was exercised for such Subject Withdrawal Unit during the such calendar year, (ii) all references to the Class B Unitholder Representative in Section 12.3 shall be replaced with such Withdrawn Member (or the personal representative, conservator or other successor-in-interest of such Withdrawn Member); and (iii) the Company Value Reference Amount for the applicable twelve-month period ended December 31<sup>st</sup> of the year immediately prior to the calendar year in which such Withdrawal Event occurs shall be based on the same Final Adjusted EBITDA Reference Amount thresholds and multiples and caps applicable to the twelve-month period ended on December 31, 2027 set forth in Exhibit A), *provided*, in each case, that the purchase price to be paid for such Subject Withdrawal Unit shall be 50% of such Per Unit Purchase Price (as determined as indicated above) if the Withdrawal Event is clause (b) (with respect to a voluntary Transfer in violation of this Agreement), clause (e), clause (f), or clause (g) if in the case of clause (g) (1) termination of employment is by the Company for Cause at any time, (2) if termination of employment is by such Class B Member (or such Class B Member's Related Person) at any time on or prior to December 31, 2025 and constitutes a Resignation Without Good Reason of the definition of "Withdrawal Event", or (3) if termination of employment is by such Class B Member (or such Class B Member's Related Person) at any time after June 30, 2026 but prior to December 31, 2027 and constitutes a Resignation Without Good Reason of the definition of "Withdrawal Event," but only if (X) such Class B Member (or such Class B Member's Related Person) fails to provide at least six-months' prior written notice of such termination to the Managers (the "**Termination Notice Period**") or (Y) such Class B Member (or such Class B Member's Related Person) fails to reach a mutually agreeable transition plan with the Managers to transition duties related to such Class B Member's employment services to the Company during such Termination Notice Period, (such applicable purchase price amount determined pursuant to this sentence, as applicable, the "**Purchase Price**").

(c) If the Purchase Option is exercised, the closing for the purchase and sale of the Subject Withdrawal Units shall take place on or prior to the later of (i) the date that is two hundred ten days following the date on which the Managers became aware of the Withdrawal Event and (ii) thirty days following the determination of the Purchase Price in accordance with Section 10.5(b). The specific time and place of closing shall be as agreed by the Company (or, if elected by the Company, its assign(s)) and the Withdrawn Member or such Withdrawn Member's personal representative, conservator or other successor in interest, as applicable. Upon the Company's (or, if elected by the Company, its assign(s)) purchase of the Subject Withdrawal Units, such Units shall be automatically cancelled.

(d) At the option of the Company (or, if elected by the Company, its assign(s)), the Purchase Price for the Subject Class B Units shall be payable in any combination of cash or promissory notes, the terms of which notes will be up to the earlier of (i) three years, and (ii) the next Unit Purchase Closing Date (as defined below). Such notes shall bear interest at the Interest Rate in effect as of the Withdrawal Event.

(e) The Purchase Price shall be subject to setoff and reduced by any amounts owed to the Company or any of its Affiliates by such Withdrawn Member, any Related Person of such Withdrawn Member or any Person with respect to whom such Withdrawn Member is a direct or indirect assignee of Class B Units (any such amount, a "**Reducing**

**Setoff Amount**”). If at the time that any amounts are payable to such Withdrawn Member pursuant to this Section 10.5, the Company (or, if

elected by the Company, its assign(s)) has made a claim against such Withdrawn Member, any Related Person of such Withdrawn Member or any Person with respect to whom such Withdrawn Member is a direct or indirect assignee of Class B Units and such claim unresolved at such time, the Company (or, if elected by the Company, its assign(s)) shall be entitled to the retain from such payment the portion of such amount that the Company (or, if elected by the Company, its assign(s)) determines in good faith would reasonably be expected to constitute a Reducing Setoff Amount, if such claim were resolved in the Company's (or, if elected by the Company, its assign(s)) favor (any such amount, a "**Purchaser Claim Amount**"). Promptly following the resolution of such claim, the Company (or, if elected by the Company, its assign(s)) shall pay to such Withdrawn Member an amount equal to the Purchaser Claim Amounts, minus any portion thereof that constitutes a Reducing Setoff Amount. The right to withhold and retain the Reducing Setoff Amounts and the Purchaser Claim Amounts, as applicable, shall not limit the obligation of any Withdrawn Member to consummate the sale of such Withdrawn Member's Class B Units to the Company (or, if elected by the Company, its assign(s)) pursuant to this Section 10.5, it being understood that such sale shall be consummated at the time contemplated by this Section 10.5, with the impact of this Section 10.5(e) being limited to the reduction of the per unit price that is required to be paid to such Withdrawn Member pursuant hereto.

## **ARTICLE 11 TRANSFERABILITY; DRAG ALONG RIGHTS**

11.1 **General.** Each Class A Unitholder is entitled to Transfer any Class A Units at any time without restriction, *provided* that such Class A Unitholder first complies with Section 11.10. No Class B Unitholder is entitled to Transfer any Class B Units unless such Transfer constitutes a Permitted Transfer and such Transfer otherwise complies with the conditions set forth in this Article 11.

11.2 **Permitted Transfers.** Subject to the conditions and restrictions set forth in Section 11.3, a Transfer of Class B Units shall constitute a "**Permitted Transfer**" and the Person to whom Units are Transferred (each, a "**Permitted Transferee**") shall be admitted as a Class B Member (if such Transferring Member is a Class B Member) if:

- (a) the Transfer is made by lifetime gift for estate planning purposes or legitimate tax planning purposes to a member or members of such Transferring Class B Member's Family;
- (b) the Transfer is made to a trust for the benefit of such Transferring Class B Member or such Transferring Class B Member's Family;
- (c) the Transfer is made by a Class B Member that is a trust or a Class B Member by virtue of being a trustee of a trust to one or more beneficiaries of such trust;
- (d) the Transfer is made upon death by will or intestacy to a member or members of such Transferring Class B Member's Family;
- (e) the Transfer is made by a Class B Member that is an estate or is acting as a Class B Member by virtue of being a personal representative of an estate;
- (f) the Transfer is made to the Company, including without limitation, any Transfer in accordance with Section 10.5 or Article 12;
- (g) the Transfer is made pursuant to a merger, interest exchange, conversion or domestication of the Company approved in accordance with the Act and this Agreement; or

(h) the Transfer is made in accordance with Section 11.7 or Section 11.10.

11.3 **Conditions To Permitted Transfer.** A Transfer shall not be treated as a Permitted Transfer, and the Person to whom the Class B Units are Transferred shall not be admitted as a Class B Member, unless all of the following conditions are satisfied:

(a) the Transfer does not cause the Company to become a “publicly traded partnership” within the meaning of Code Section 7704(b);

(b) the Class B Units which are the subject of the Transfer are registered under the Securities Act, and any applicable state securities laws; or, alternatively if requested by the Managers, the Transferring Class B Member provides an opinion of counsel, acceptable to the Company and its counsel, that such Transfer is exempt from all applicable registration requirements or that such Transfer will not violate any applicable securities laws; and

(c) with respect to the Transfer of any Class B Units, the transferor and the transferee agree to execute such documents and instruments necessary or appropriate in the Managers’ discretion to confirm such Transfer, including, without limitation, the transferee’s execution of a counterpart to this Agreement pursuant to which the transferee agrees to be bound by the terms of this Agreement and assume all of the transferor’s obligations under this Agreement.

11.4 **Rights as Transferee; Obligations of Transferor.** A Person who acquires Class B Units other than in a Permitted Transfer and who is not admitted to the Company as a Class B Member shall be an Assignee, and a Class B Member who attempts a Transfer of Units which is not a Permitted Transfer shall automatically cease to be a Class B Member and become an Assignee with respect to the Units such Person attempted to Transfer; *provided, however*, that a Class B Member who engages in such Transfer shall retain all obligations and duties as an Assignee and, if applicable, a Class B Member under this Agreement and the Class B Units subject to such Transfer shall continue to be subject to all obligations and all rights of the Company and the other Members under this Agreement. Any Distributions to such purported transferee may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities for damages that the transferor or transferee may have to the Company. All Class B Units acquired by a Person in connection with a Withdrawal Event shall continue to be subject to all obligations and all rights of the Company and the Members under this Agreement, including the Purchase Option and the Call Right (as defined below).

11.5 **Prohibited Transfers; No Circumvention.** Notwithstanding anything to the contrary in this Article 11, any purported Transfer of Class B Units that is not a Permitted Transfer shall be null and void and of no force and effect whatsoever. In the case of an attempted Transfer that is not a Permitted Transfer, the Persons engaging in or attempting to engage in such Transfer shall be liable to and shall indemnify and hold harmless the Company from all loss, cost, liability and damages that the Company and/or any other Member incurs as a result of such attempted Transfer. No Class B Unitholder shall directly or indirectly (a) permit the Transfer of all or any portion of the direct or indirect equity or beneficial interest in such holder or (b) otherwise seek to avoid the provisions of this Agreement by issuing, or permitting the issuance of, any direct or indirect equity or beneficial interest in such holder, in any such case in a manner which would fail to comply with this Article 11 if such holder had Transferred the Class B Units directly.

11.6 **Specific Performance and Other Relief.** Each Class B Unitholder acknowledges and agrees that any breach of this Article 11 would result in substantial harm to the Company and the other Unitholders for which monetary damages alone could not adequately compensate. Therefore, the Unitholders unconditionally and irrevocably agree that the Company and any non-breaching Unitholder shall be entitled to seek protective orders, injunctive relief and other remedies available at law or in equity (including, without limitation, seeking specific performance or the rescission of purchases, sales and other

transfers of Class B Units not made in strict compliance with this Agreement) in connection with any breach of this Article 11.

## 11.7 **Drag Along Rights.**

(a) Notwithstanding anything to the contrary in this Agreement, if, at any time the Class A Members elect (the Class A Members making such election, the “**Electing Members**”) to cause all of the Unitholders to Transfer at least a majority of the outstanding Units to a third party and/or approve a Change of Control (such transaction, the “**Drag-Along Sale**”), the Electing Members shall deliver to each of the other Unitholders (the “**Drag-Along Parties**”) written notice setting forth the purchase price and the other material terms of the Drag-Along Sale (the “**Drag-Along Notice**”).

(b) Each Drag-Along Party hereby agrees, to the extent required by the Electing Members, (i) to sell to such third party, upon the demand of the Electing Members, all or a portion of the Units held by such Drag-Along Party on the same terms and conditions as set forth in the Drag-Along Notice; (ii) to vote in favor of the Drag-Along Sale and the related definitive agreements pursuant to which such Drag-Along Sale is to be consummated (in each case to the extent such Drag-Along Party is entitled to vote with respect to such transaction) and to vote in opposition to any and all other proposals that could reasonably be expected to delay or impair the ability of the Company to consummate such Drag-Along Sale; (iii) to execute and deliver all related documentation and take such other action in support of such Drag-Along Sale as shall reasonably be requested by the Company or the Electing Members in order to carry out the Drag-Along Sale including, (1) executing and delivering instruments of conveyance and transfer, and any purchase agreement, merger agreement, any associated indemnity agreement, any reasonably customary release agreement in the capacity of a securityholder, termination of investment related documents, accredited investor forms, documents evidencing the removal of managers such as power of attorneys or escrow agreement, any associated voting, support, or joinder agreement, consent, waiver, governmental filing, unit certificates duly endorsed for transfer (free and clear of impermissible liens), and any similar or related documents and (2) providing any information reasonably necessary for any public filings with the Securities and Exchange Commission in connection with such Drag-Along Sale; (iv) not to deposit, and to cause such Drag-Along Party’s Affiliates not to deposit, except as provided in this Agreement, any Units owned by such Drag-Along Party or Affiliate in a voting trust or subject any Units to any arrangement or agreement with respect to the voting of such Units, unless specifically requested to do so by the acquirer in connection with such Drag-Along Sale; (v) to refrain from (1) exercising any dissenters’ rights or rights of appraisal under applicable law at any time with respect to such Drag-Along Sale; or (2) asserting any claim or commencing, joining or participating in any way (including as a member of a class) in any action, suit or proceeding challenging such Drag-Along Sale, this Agreement, consummation of the transactions contemplated in connection with such Drag-Along Sale or this Agreement, including without limitation, (A) challenging the validity of, or seeking to enjoin the operation of, the definitive agreement(s) with respect to such Drag-Along Sale; or (B) alleging a breach of any fiduciary duty of the Electing Members or any Affiliate or associate thereof or of any Manager (including aiding and abetting breach of fiduciary duty) in connection with such Drag-Along Sale or any action taken thereby with respect to such Drag-Along Sale; (vi) in the event that the Electing Members, in connection with such Drag-Along Sale, appoint a Unitholder representative (the “**Unitholder Representative**”) with respect to matters affecting the Unitholders under the applicable definitive transaction agreements following consummation of such Drag-Along Sale, (1) to consent to (A) the appointment of such Unitholder Representative; (B) the establishment of any applicable escrow, expense or similar fund in connection with any indemnification or similar obligations; and (C) the payment of such Unitholder’s pro rata portion (from the applicable escrow or expense fund or otherwise) of any and all reasonable fees and expenses to such Unitholder Representative in connection with such Unitholder Representative’s services and duties in connection with such Drag-Along Sale and its related service as the representative of the Unitholders, and (2) not to assert any claim or commence any suit against the Unitholder Representative or any other Unitholder with respect to any action or inaction taken or failed to be taken by the Unitholder Representative, within the scope of the Unitholder Representative’s authority, in connection with its service as the Unitholder Representative, absent fraud, bad faith or willful misconduct. Notwithstanding anything to the contrary in this Agreement, each Drag-Along Party’s

liability with respect to any Drag-Along Sale shall be limited to such Drag-Along Party's applicable share (determined based on the respective proceeds payable to each Unitholder in connection

with such Drag-Along Sale in accordance with the provisions of this Agreement) of a negotiated aggregate indemnification amount that in no event exceeds the amount of consideration otherwise payable to such Drag-Along Party in connection with such Drag-Along Sale in such Person's capacity as a Unitholder, except with respect to claims related to fraud by such Drag-Along Party, the liability for which need not be limited as to such Drag-Along Party.

(c) Notwithstanding anything to the contrary set forth herein, a Drag-Along Party will not be required to comply with Section 11.7(b) in connection with any proposed Drag-Along Sale, unless: (i) the only representations, warranties and covenants which such Drag-Along Party shall be required to make in connection with such Drag-Along Sale are representations and warranties with respect to such Drag-Along Party's own ownership of the Units to be sold by such Drag-Along Party and such Drag-Along Party's ability to convey title thereto free and clear of liens, encumbrances or adverse claims, such Drag-Along Party's due organization (if applicable), due authorization, execution and delivery of definitive purchase, merger or similar agreements (if applicable), the enforceability of such agreements against such Drag-Along Party and no conflict of such Drag-Along Party's organizational documents (if applicable) with such agreements and (ii) the liability of such Drag-Along Party with respect to any representation and warranty made with respect to the Company in connection with the Drag-Along Sale is the several liability of such Drag-Along Party (and not joint with any other Person).

(d) Each Drag-Along Party hereby expressly agrees to be bound by and subject to any escrow or other holdback arrangement (pro rata based on the consideration received) provided for in the agreements relating to the Drag-Along Sale. In the case of any Drag-Along Sale, unless the Managers in good faith determine otherwise based on the different rights and obligations of the Class A Units and the Class B Units, the Drag-Along Parties shall be entitled to receive the same consideration per Unit as the Electing Members.

(e) Each Drag-Along Party agrees to execute and deliver all documentation and take such other action in support of the Drag-Along Sale as shall reasonably be requested by the Electing Members in order to carry out the Drag-Along Sale, including without limitation, executing and delivering instruments of conveyance and transfer, and any purchase agreement, indemnity agreement, escrow agreement, consent, waiver, governmental filing and any similar or related documents. For the avoidance of doubt, a Drag-Along Party is not required to execute a restrictive covenant agreement in connection with the Drag-Along Sale (including without limitation any covenant not to compete or covenant not to solicit customers, employees or suppliers of any party to the Drag-Along Sale) unless any such Drag-Along Party is an officer or employee of the Company or any Unitholder with a Percentage Interest equal to or greater than the Percentage Interest of such Drag-Along Party agrees to execute a restrictive covenant agreement in connection with the Drag-Along Sale.

(f) If the consideration to be paid in exchange for the Units pursuant to this Section 11.7 includes any securities and due receipt thereof by any Unitholder would require under applicable law (i) the registration or qualification of such securities or of any person as a broker or dealer or agent with respect to such securities or (ii) the provision to any Unitholder of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D promulgated under the Securities Act, then such Unitholder agrees to receive, in lieu of any such securities, if elected by the Electing Members, against surrender of the Units which would have otherwise been sold by such Unitholder, an amount in cash equal to the fair market value (as determined in good faith by the Managers) of the securities which such Unitholder would otherwise receive as of the date of the issuance of such securities in exchange for the Units.

(g) In no manner shall this Section 11.7 or any other provision in this Agreement be construed to grant to any Unitholder any dissenters' rights or appraisal rights or give any Unitholder any right to vote on any transaction structured

as a merger or consolidation except as otherwise provided by this Agreement, it being understood that the Unitholders hereby acknowledge that statutory appraisal rights are not provided under Section 18-210 of the Act (entitled “No Statutory Appraisal Rights”) and

grant to the Class A Members the sole right to approve or consent to a Change of Control or a Drag-Along Sale without consent of any other the Unitholders.

(h) In order to secure each Unitholder's obligation to vote such Unitholder's Units (to the extent, if any, such Unitholder is entitled to vote with respect to the Drag-Along Sale), and take all other actions in accordance with the provisions of this Section 11.7, each Class B Unitholder hereby appoints the Managers and each Manager acting alone as such Class B Unitholder's true and lawful proxy and attorney-in-fact, with full power of substitution and re-substitution, to vote all of such Class B Member's Units (to the extent, if any, such Class B Member is entitled to vote on the Drag-Along Sale), and to take all such other actions as expressly provided for in this Section 11.7, including to execute any documents in order to effect a Drag-Along Sale as provided for in (and in accordance with) this Section 11.7(h) (and to take all lawful actions necessary and/or desirable to sell, transfer or otherwise dispose of all Units held by such Class B Unitholder, in connection with the consummation of a Drag-Along Sale). The Managers may exercise the irrevocable proxy granted to them hereunder at any time any such Class B Unitholder fails to comply with the provisions of this Section 11.7. The proxies and powers granted by each Class B Unitholder pursuant to this Section 11.7 are coupled with an interest and are given to secure the performance of such Class B Unitholder's obligations under this Agreement. Such proxies and powers will be irrevocable for the term of this Agreement and will survive the death, incompetency and disability of such Class B Unitholder and the respective holders of Units.

11.8 **Legends.** Each Unitholder agrees that a legend in substantially the following form shall be placed upon any instrument or document evidencing ownership of a Class B Unit and that, in any event, the Transfer of Class B Units are subject to the following restrictions in addition to the other restrictions set forth in this Agreement:

THE UNITS REPRESENTED BY THIS DOCUMENT HAVE NOT BEEN REGISTERED UNDER ANY SECURITIES LAWS AND THE TRANSFERABILITY OF SUCH UNITS IS RESTRICTED. SUCH UNITS MAY NOT BE SOLD, ASSIGNED, GIFTED, TRANSFERRED OR OTHERWISE DISPOSED, NOR WILL THE VENDEE, ASSIGNEE, BENEFICIARY, OR TRANSFEREE BE RECOGNIZED AS HAVING ACQUIRED SUCH UNITS FOR ANY PURPOSES, UNLESS (A) A REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, WITH RESPECT TO SUCH UNITS SHALL THEN BE IN EFFECT AND SUCH HAS BEEN QUALIFIED UNDER ALL APPLICABLE STATE SECURITIES LAWS, OR (B) THE AVAILABILITY OF AN EXEMPTION FROM SUCH REGISTRATION AND QUALIFICATION SHALL BE ESTABLISHED TO THE SATISFACTION OF COUNSEL FOR THE COMPANY.

THE UNITS REPRESENTED BY THIS DOCUMENT ARE SUBJECT TO FURTHER RESTRICTION AS TO THEIR SALE, TRANSFER, HYPOTHECATION, OR ASSIGNMENT AS SET FORTH IN THE LIMITED LIABILITY COMPANY AGREEMENT OF THE COMPANY AND AGREED TO BY EACH HOLDER OF UNITS OF THE COMPANY.

11.9 **Distributions in Respect of Transferred Units.** If any Class B Units are Transferred in compliance with this Article 11, all Distributions on or before the date of such Transfer shall be made to the transferor, and all Distributions thereafter shall be made to the transferee.

11.10 **Tag Along Rights.** Prior to the consummation of any Transfer by a Class A Member of any Class A Units (other than a Transfer by such Class A Member to any of its Affiliates, stockholders, members, partners or other equity

holders and other than in connection with Section 11.7) (“**Class A Unit Sale**”), such Class A Member shall deliver a sale notice to the Managers (who shall immediately notify all

Members of such sale notice) (“**Sale Notice**”) which shall clearly: identify the proposed transferee, the number of Class A Units that the proposed transferee has offered to acquire (the “**Offered Units**”), the proposed date, time and location of the closing of such Transfer, a copy of any form agreement proposed to be executed in connection with such Transfer, and the proposed consideration identifying the per Class A Unit price of such potential Transfer. Any Member who delivers a Tag-along Notice (as defined below) in accordance with this Section 11.10 (each, a “**Tag-along Member**”), shall have the right (“**Tag-along Right**”) to participate in such Class A Unit Sale on a pro rata basis (based on the number of Units held by such Tag-along Member relative to the number of Units held by all participating Tag-along Members and the number of Units held by the Transferring Class A Member) on identical terms and conditions (including the pricing of such Units) (“**Tag-along Sale**”). For the purposes of this Agreement, “**Tag-along Notice**” means a written notice from a Member electing to participate in a Tag-along Sale which is delivered to the Transferring Class A Member and the Managers of the Company within ten days after such Member’s receipt of a Sale Notice clearly exercising such Member’s Tag-along Right. Any Member who does not timely exercise its Tag-along Right pursuant to this Section 11.10 will be deemed to waive such Tag-along Right without recourse and shall not have any right to participate in the Tag-along Sale. Thereafter, the Transferring Class A Member shall be free to consummate the Class A Unit Sale. Each Tag-along Member shall take all actions as may be reasonably necessary to consummate the Tag-along Sale, including, without limitation, entering into agreements and delivering certificates and instruments, in each case, consistent with the agreements being entered into and the certificates being delivered by such Transferring Class A Member. With respect to any Transfer subject to this Section 11.10, the applicable Transferring Class A Member shall use commercially reasonable efforts to obtain the agreement of the prospective transferee(s) to the participation of the Tag-along Members who have elected to participate in the Tag-along Sale. The Tag-along Rights in this Section 11.10 shall automatically terminate upon the earlier of (a) the Company consummating a Change of Control, (b) the Company’s (or any successor’s or parent entity’s) consummation of the IPO (as defined below), (c) the Company’s (or any successor’s or parent entity’s) consummation of a Direct Listing (as defined below) and (d) the Company’s and its assign(s) purchase of all Class B Units pursuant to the terms of Article 12.

## **ARTICLE 12**

### **PUT RIGHT AND CALL RIGHT**

#### **12.1 Put Right and Call Right.**

##### **(a) Put Right.**

(i) **Put Right.** The Class B Unitholders shall have an irrevocable option and right (the “**Put Right**”) exercisable solely by the Requisite Class B Members (as defined below) during each Put Election Period (as defined below) and in accordance with this Article 12, to cause the Company (or, if elected by the Company, its assign(s)) to purchase and acquire from the Class B Unitholders the Subject Class B Units (as defined below) and all right, title and interest therein free and clear of all Liens (as defined below), on the terms and conditions set forth herein (each such purchase, a “**Put Right Unit Purchase**”).

(ii) **Put Right Election Period.** The Put Right may be exercised, subject to Section 12.7, in each of the following periods (each, a “**Put Election Period**”): (A) the period beginning on April 30, 2028 and ending on the date that is thirty days after the applicable Final Determination Date (as defined below) with respect to the applicable Adjusted EBITDA Reference Amount (as defined below) for the period ended December 31, 2027; (B) the period beginning on April 30, 2030 and ending on the date that is thirty days after the applicable Final Determination Date with respect to the applicable Adjusted EBITDA Reference Amount for the period ended December 31, 2029; and (C) if the Put Rights and Call Rights have not, collectively, been exercised with respect to all Class B Units prior to the end of the 2030, the period

beginning on April 30<sup>th</sup> of each year after 2030 (each, an “**Ongoing Election Year**”) and ending on the applicable Final Determination Date with respect to the applicable Adjusted EBITDA Reference Amount for the period ended on December 31<sup>st</sup> of the year immediately prior to such Ongoing

Election Year, as applicable (each, an “**Ongoing Election Period**”); *provided, however*, the Ongoing Election Period shall no longer apply once the Put Rights and Call Rights have, collectively, been exercised with respect to all Class B Units.

(b) **Call Right**.

(i) **Call Right**. The Company (exercisable by the Managers) or, if elected by the Company, its assign(s), shall have an irrevocable option and right (the “**Call Right**”) exercisable during each Call Election Period (as defined below) and in accordance with this Article 12, for the Company (or, if elected by the Company, its assign(s)) to purchase and acquire, and to cause the Class B Unitholders to sell to the Company (or, if elected by the Company, its assign(s)), the Subject Class B Units and all right, title and interest therein free and clear of all Liens, on the terms and conditions set forth herein (such purchase, a “**Call Right Unit Purchase**” and together with each Put Right Unit Purchase, a “**Unit Purchase**”).

(ii) **Call Right Election Period**. The Call Right may be exercised, subject to Section 12.7, in each of the following periods (each, a “**Call Election Period**” and together with each Put Election Period, each an “**Election Period**”): (A) during the same period as each Put Election Period; and (B) if Parent enters into a definitive written agreement providing for a Parent Change of Control (a “**CoC Agreement Date**”), the period beginning on the CoC Agreement Date and ending on the date that is thirty days after the later of (x) the CoC Agreement Date and (y) the Final Determination Date with respect to the Adjusted EBITDA Reference Amount for the period ended on December 31<sup>st</sup> of the year immediately prior to the year in which the CoC Agreement Date occurred (the “**CoC Election Period**”).

12.2 **Definitions**. For the purposes of this Agreement the following terms shall have the meanings set forth in this Section 12.2.

(a) “**Adjusted EBITDA**” shall have the meaning set forth on Schedule 12.2(a) hereto.

(b) “**Adjusted EBITDA Reference Amount**” means, with respect to a Put Right or Call Right duly exercised pursuant to Section 12.4, an amount equal to the Adjusted EBITDA during the twelve month-period ended on December 31<sup>st</sup> of the year immediately prior to the year in which the Election Period began with respect to such duly exercised Put Right or Call Right (such amount with respect to such Put Right or Call Right as finally determined pursuant to Section 12.3(c), Section 12.3(d) and Section 12.3(e) is referred to herein as the “**Final Adjusted EBITDA Reference Amount**”).

(c) “**Class B Unitholder Representative**” means the Person designated and appointed to such position pursuant to Section 12.11 from time to time, who shall initially be Adam Gillman.

(d) “**Company Value Reference Amount**” means, with respect to each Put Right or Call Right duly exercised pursuant to Section 12.4, the sum of (A) an amount equal to the product of: (i) the Final Adjusted EBITDA Reference Amount during the twelve-month period ended on December 31<sup>st</sup> of the year immediately prior to the year in which the Election Period began with respect to such duly exercised Put Right or Call Right, *multiplied by* (ii) the amount determined in Exhibit A under the heading “multiple”, *less* (B) the amount of any debt on the Company’s balance sheet on December 31<sup>st</sup> of the year immediately prior to the year in which the Election Period began with respect to such duly exercised Put Right or Call Right and *plus* (C) the amount of any cash on the Company’s balance sheet on December 31<sup>st</sup> of the year immediately prior to the year in which the Election Period began with respect to such duly exercised Put Right or Call Right, *provided, however*, that in no event shall the Company Value Reference Amount exceed \$1,250,000,000.



(e) “**Final Determination Date**” means with respect to each Adjusted EBITDA Reference Amount, the date upon which such Adjusted EBITDA Reference Amount is finally determined pursuant to Section 12.3(c), Section 12.3(d) and Section 12.3(e).

(f) “**Independent Accountant**” means an independent accounting firm selected by the Company and Class B Unitholder Representative or, if Company and Class B Unitholder Representative are unable to mutually agree upon such an independent accountant within a ten-day period, then Company and Class B Unitholder Representative shall each select an accounting firm and such firms shall together select the Independent Accountant.

(g) “**Lien**” shall mean any option, pledge, security interest, lien, charge, encumbrance, mortgage, trust deed, easement, lease, sublease, claim, right of way, covenant, condition or restriction (whether on sale, transfer or disposition or otherwise) whether imposed by agreement, law or otherwise, whether of record or otherwise.

(h) “**Parent Change of Control**” means, as applicable (a) the closing of a sale, lease, exchange or other disposition of all or substantially all of the assets of USANA Health Sciences, Inc. (“**Parent**”), with or without goodwill, outside the ordinary course of Parent’s business; or (b) Parent’s merger into or consolidation with any other entity, or any other reorganization, tender offer, exchange offer or other transfer or issuance of the equity interests in Parent, in each case, in which the holders of Parent’s outstanding equity interests immediately prior to such transaction do not receive or retain, in the aggregate, in connection with such transaction on account of their equity interests in Parent immediately prior to such transaction, securities representing more than 50% of the voting power of Parent or the entity surviving such transaction (or if Parent or such other surviving or resulting entity is a wholly-owned subsidiary immediately following such transaction, its parent).

(i) “**Per Unit Purchase Price**” means, with respect to a Put Right or Call Right duly exercised pursuant to Section 12.4, the “**Per Unit Purchase Price**” payable in the Unit Purchase resulting from such Put Right or Call Right shall equal the quotient of: (i) the Company Value Reference Amount with respect to such Put Right or Call Right, *divided by* (ii) the sum of (A) 1,022,277 (as adjusted for any splits, combinations and the like), plus (B) the aggregate number of Units issued after the Effective Time that are outstanding as of the date that such Put Right or Call Right was exercised, in each case of clauses (A) and (B), calculated on an as exercised or as converted basis with respect to all rights that are exercisable for, or convertible into, Units.

(j) “**Requisite Class B Members**” means the Class B Members acting by Majority Consent of the Class B Members.

(k) “**Subject Class B Units**” means (i) with respect to a Put Right or Call Right exercised in 2028 (other than a Call Right exercised in a CoC Election Period), 50% of the Class B Units held by each Class B Unitholder at the time such Put Right or Call Right was duly exercised pursuant to Section 12.4, excluding with respect to any Class B Unitholder, any Class B Units for which the Company (or, if elected by the Company, its assign(s)) has exercised repurchase rights or exercises repurchase rights at any time prior to the applicable Unit Purchase Closing Date (as defined below) pursuant to Section 10.5 or any other agreement under which the Company (or, if elected by the Company, its assign(s)) has repurchase rights; and (ii) with respect to any Put Right or Call Right not addressed in clause (i), all Class B Units held by each Class B Unitholder at the time the Put Right or Call Right was duly exercised pursuant to Section 12.4, excluding with respect to any Class B Unitholder, any Class B Units for which the Company (or, if elected by the Company, its assign(s)) has exercised repurchase rights or exercises repurchase rights at any time prior to the applicable Unit Purchase Closing Date (as

defined below) pursuant to Section 10.5 or any other agreement under which the Company (or, if elected by the Company, its assign(s)) has repurchase rights.

12.3 **Company Notice and Adjusted EBITDA Reference Amount Determination.**

(a) No later than the first day of each Election Period, the Company (by action of the Managers) shall prepare and deliver to the Class B Unitholder Representative a statement setting forth the Company's calculation of the Adjusted EBITDA Reference Amount for the period ended on December 31<sup>st</sup> of the year immediately prior to the year in which such Election Period began (each such statement, a "**Company Statement**"). No Company Statement will be required to be delivered with respect to a CoC Election Period if a Company Statement has already been delivered with respect to the Adjusted EBITDA Reference Amount to be applied to any Call Right exercised in such CoC Election Period or if the Company determines not to exercise the Call Right available in such CoC Election Period.

(b) During the thirty-day period following the delivery of the Company Statement to the Class B Unitholder Representative (such period with respect such Company Statement, a "**Review Period**"), the Company shall provide the Class B Unitholder Representative and one independent certified public accountant acting on behalf of the Class B Unitholder Representative with reasonable access, during normal business hours and upon reasonable prior notice, to the Company's books and records reasonably requested by the Class B Unitholder Representative in connection with its review of the amounts set forth in such Company Statement, subject to the Class B Unitholder Representative and such independent certified public accountant entering into a non-disclosure agreement with the Company in customary form as reasonably requested by the Company.

(c) On or prior to the last day of the Review Period with respect to each Company Statement, the Class B Unitholder Representative shall have the right to deliver to the Managers a written notice stating in reasonable detail any and all of the Class B Unitholder Representative's non-duplicative objections to the calculations of the Adjusted EBITDA Reference Amount set forth in such Company Statement (any such dispute notice with respect to a Company Statement, an "**Objection Notice**"). Any Objection Notice shall specify in reasonable detail the dollar amount of any objection, the basis or bases therefor, and shall include reasonable supporting documentation and the Class B Unitholder Representative's calculation of the Adjusted EBITDA Reference Amount covered by the related Company Statement. Any amount or determination set forth in a Company Statement that is not specifically disputed in an Objection Notice delivered to the Managers prior to 11:59 PM Mountain Time on the last day of the Review Period with respect to such Company Statement shall be deemed accepted and shall be final and binding on all Class B Unitholders, the Class B Unitholder Representative and the Company for all purposes of this Article 12. With respect to each Company Statement, if the Class B Unitholder Representative does not deliver an Objection Notice to the Company prior to 11:59 PM Mountain Time on the last day of the Review Period with respect to such Company Statement, the Adjusted EBITDA Reference Amount set forth in such Company Statement shall be final and binding on all Class B Unitholders, the Class B Unitholder Representative and the Company for all purposes of this Article 12.

(d) During the thirty-day period following the Managers' receipt of a timely Objection Notice (if any) with respect to a Company Statement (each such period, a "**Discussion Period**"), the Class B Unitholder Representative and the Company (acting by Majority Consent of the Managers) shall attempt to mutually agree on the items disputed. If the Company (acting by Majority Consent of the Managers) and the Class B Unitholder Representative resolve and come to an agreement regarding any adjustments to the Adjusted EBITDA Reference Amount covered in such Company Statement, the Company and the Class B Unitholder Representative shall prepare, execute and deliver a written memorandum setting forth such resolution (a "**Settlement Memorandum**"). The portion of the Adjusted EBITDA Reference Amount so agreed to as set forth in a Settlement Memorandum shall be final and binding upon the Class B Unitholders, the Class B Unitholder Representative and the Company for purposes of this Article 12.

(e) If the Company (acting by Majority Consent of the Managers) and the Class B Unitholder Representative are unable to resolve all disputes set forth in an Objection Notice during the Discussion Period, then the

Company (acting by Majority Consent of the Managers) and the Class B Unitholder shall cause an Independent Accountant to be selected in order to resolve such dispute as

provided in this Section 12.3(e). The Class B Unitholder Representative and the Company shall submit any adjustments set forth in such Objection Notice that have not been resolved in writing by the Class B Unitholder Representative and the Company (such remaining items in dispute, the “**Disputed Items**”) to the Independent Accountant for resolution. The Company (acting by Majority Consent of the Managers), on the one hand, and the Class B Unitholder Representative, on the other hand, each shall provide the Independent Accountant with their respective determinations of the Disputed Items and their respective resultant calculations of the Adjusted EBITDA Reference Amount and shall instruct the Independent Accountant to deliver to the Company and the Class B Unitholder Representative a written determination of the Independent Accountant (such determination to include a worksheet setting forth all material calculations used in arriving at such determination) of the Disputed Items within thirty days of receipt of the disputed items. The Independent Accountant, acting as an expert and not as an arbitrator, shall make its determination of the Disputed Items and the resultant Adjusted EBITDA Reference Amount, which determination shall be final and binding, absent fraud or manifest error, on the Class B Unitholders, the Class B Unitholder Representative and the Company for all purposes of this Article 12. The determination of any Disputed Items by the Independent Accountant shall be within, and limited by, the range comprised of the respective determination of each of the Company’s and the Class B Unitholder Representative’s calculation with respect to such Disputed Items. The determination of the Disputed Items by the Independent Accountant shall be based on whether such Disputed Items have been calculated in accordance with the terms of this Article 12, and the Independent Accountant shall not make any other determination. The Independent Accountant shall make its determination based solely on presentations and supporting material provided by the Company and the Class B Unitholder Representative and not pursuant to any independent review. The fees, costs, and expenses of the Independent Accountant shall be paid pro rata by the Company, on the one hand, and the Class B Unitholders Representative (on behalf of the Class B Unitholders, with each Class B Unitholder’s share in such fees, costs and expenses based on the number of Class B Units to be sold to the Company relative to the total number of Class B Units to be sold to the Company), on the other hand, in relation to the proportional difference between the Independent Accountant’s determination of the Adjusted EBITDA Reference Amount and the Company’s and the Class B Unitholder Representative’s respective determinations of the Adjusted EBITDA Reference Amount.

#### 12.4 **Put Right and Call Right Exercise.**

(a) If the Requisite Class B Members elect to exercise the Put Right in any Put Election Period, the Class B Unitholder Representative shall deliver to the Managers (on behalf of the Company) no later than 11:59 PM Mountain Time on the last day of such Put Election Period a written notice in substantially the form attached hereto as Exhibit B, signed by the Requisite Class B Members and setting forth such election (a “**Put Election Notice**”). Following the delivery of a Put Election Notice pursuant to this Section 12.4(a), except with the written consent of the Managers, the Put Right as exercised by such Put Election Notice may not be revoked and the Put Right Unit Purchase with respect thereto shall be consummated in accordance with the terms and conditions set forth in Section 12.5. With respect to each Put Election Period, if a Put Election Notice has not been delivered to the Managers on behalf of the Company pursuant to this Section 12.4(a) by 11:59 PM Mountain Time on the last day of such Put Election Period, the Put Right for such Put Election Period shall automatically terminate without any further action on the part of the Requisite Class B Members, the Class B Unitholders or the Company; *provided, however*, that such termination shall not limit the ability of the Requisite Class B Members to exercise the Put Right in any subsequent Put Election Period. The determination whether to exercise the Put Right shall be in the sole discretion of the Requisite Class B Members and, without limiting the express obligations of the Company, the Class B Unitholders or the Class B Unitholder Representative under this Article 12, neither the exercise of the Put Right nor the failure to exercise the Put Right shall give rise to, or form the basis for, any liability or obligation of any of the Company, the Managers, any of the Class A Members, any of their Affiliates or any Requisite Class B Members.

(b) If the Company (by action of Majority Consent of the Managers) or, if elected by the Company, its assign(s)), elect(s) to exercise the Call Right in any Call Election Period, the Company

(by action of Majority Consent of the Managers) or, if elected by the Company, its assign(s), shall deliver to the Class B Unitholder Representative no later than 11:59 PM Mountain Time on the last day of such Call Election Period a written notice in substantially the form attached hereto as Exhibit C, setting forth such election (a “**Call Election Notice**” and together with any Put Election Notice, each an “**Election Notice**”). Following the delivery of a Call Election Notice pursuant to this Section 12.4(b), except with the written consent of the Class B Unitholder Representative, the Call Right as exercised by such Call Election Notice may not be revoked and the Call Right Unit Purchase with respect thereto shall be consummated in accordance with the terms and conditions set forth in Section 12.5. With respect to each Call Election Period, if a Call Election Notice has not been delivered to the Class B Unitholder Representative pursuant to this Section 12.4(b) by 11:59 PM Mountain Time on the last day of such Call Election Period, the Call Right for such Call Election Period shall automatically terminate without any further action on the part of the Company, the Class B Unitholder Representative, the Requisite Class B Members or the Class B Unitholders or the Company; *provided, however*, that such termination shall not limit the ability of the Company (or, if elected by the Company, its assign(s)) to exercise the Call Right in any subsequent Call Election Period. The determination whether to exercise the Call Right shall be in the sole discretion of the Managers and, without limiting the express obligations of the Company, the Class B Unitholders or the Class B Unitholder Representative under this Article 12, neither the exercise of the Call Right nor the failure to exercise the Call Right shall give rise to, or form the basis for, any liability or obligation of any of the Company, the Managers, any of the Class A Members, any of their Affiliates or any Requisite Class B Members.

(c) In order for the Put Right or Call Right to be duly exercised pursuant to Section 12.4, such right must be exercised as indicated above for all of the Subject Class B Units with respect to such Election Period. If a Put Election Notice and a Call Election Notice are made during the same Election Period, the terms and timing of such Unit Purchase shall be governed by the terms applicable to the Election Notice made first; *provided, however*, in the case of a Call Election Notice delivered in a CoC Election Period, such Unit Purchase shall be governed by the terms applicable to such Call Election Notice.

## 12.5 **Closing.**

(a) Subject to Section 12.7, the consummation of each Unit Purchase with respect to a Put Right or Call Right duly exercised pursuant to Section 12.4 (each, a “**Closing**”) shall take place on a date determined by the Company (or, if elected by the Company, its assign(s)), which shall be no later than ninety days following the later of (i) the first date upon which an Election Notice with respect to such Unit Purchase was duly delivered during an Election Period pursuant to Section 12.4 by the Company (or, if elected by the Company, its assign(s)) or the Requisite Class B Members and (ii) the Final Determination Date with respect to the Adjusted EBITDA Reference Amount applicable to such Put Right or Call Right, in each case, which period may be extended by the Company (or, if elected by the Company, its assign(s)) to the extent necessary to obtain any regulatory or governmental approvals (the date so determined by the Company with respect such Unit Purchase). The date upon which a Closing actually occurs is referred to herein as a “**Unit Purchase Closing Date.**” The Company (or, if elected by the Company, its assign(s)) shall give the Class B Unitholders at least fifteen days written notice of the date of such closing.

(b) At each Closing of a Unit Purchase:

(i) The Class B Unitholders shall sell, assign, transfer and convey to the Company (or, if elected by the Company, its assign(s)) the Subject Class B Units with respect to such Unit Purchase and all right, title and interest therein, free and clear of all Liens;

(ii) Each Class B Unitholder shall duly, complete, execute and deliver to the Company (or, if elected by the Company, its assign(s)), the Purchase and Sale Agreement in substantially the form attached hereto as Exhibit E, including by correctly indicating on the schedules to such Purchase

and Sale Agreement the number of Subject Class B Units applicable to such Unit Purchase (the “**Purchase and Sale Agreement**”);

(iii) The Company (or, if elected by the Company, its assign(s)) shall duly execute and deliver to the Class B Unitholder Representative (on behalf of the Class B Unitholders, which shall constitute delivery to the Class B Unitholders) the Purchase and Sale Agreement with respect to such Unit Purchase;

(iv) The Company (or, if elected by the Company, its assign(s)) will pay to the Class B Unitholders with respect to each Subject Class B Unit being sold in such Unit Purchase the Per Unit Purchase Price applicable to such Unit Purchase as provided in Section 12.7 (reduced by applicable taxes); and

(v) The Company will update the Unitholder Register to reflect the Company’s (or, if elected by the Company, its assign(s)) purchase of the Subject Class B Units in such Unit Purchase.

(c) Each Class B Unitholder shall take, and each Requisite Class B Member shall use reasonably best efforts to cause each Class B Unitholder to take, all actions as may be reasonably necessary to consummate the sale, assignment, transfer and conveyance contemplated by this Article 12, including, without limitation, entering into agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate.

(d) Notwithstanding anything to the contrary in this Article 12, the Company (or, if elected by the Company, its assign(s)) shall not be required or allowed to purchase any Class B Units pursuant to this Article 12 if such purchase would violate the Act or other applicable law.

12.6 **Proxy.** In order to secure each Class B Unitholder’s obligation to sell, assign, transfer and convey Class B Units pursuant to this Article 12, and take all other actions in accordance with the provisions of this Article 12, each Class B Unitholder hereby appoints the Managers and each Manager acting alone as such Class B Unitholder’s true and lawful proxy and attorney-in-fact, with full power of substitution and re-substitution, to sell, assign, transfer and convey all Class B Units held by such Class B Unitholder to the extent such Class B Unitholder is required to sell, assign, transfer and convey such Class B Units to the Company (or, if elected by the Company, its assign(s)), or the Company (or, if elected by the Company, its assign(s)) is required to purchase such Class B Units from the Class B Unitholders, pursuant to this Article 12, and to take all such other actions as expressly provided for in this Article 12, including to execute any documents in order to effectuate the sale and purchase of Class B Units in connection with the exercise of the Put Right or the Call Right as provided for in (and in accordance with) this Article 12 (and to take all lawful actions necessary and/or desirable to sell, assign, transfer and convey or otherwise dispose of such Class B Units held by such Class B Unitholder, in connection therewith). The Managers may exercise the irrevocable proxy granted to them hereunder at any time any such Class B Unitholder fails to comply with the provisions of this Article 12. The proxies and powers granted by each Class B Unitholder pursuant to this Section 12.6 are coupled with an interest and are given to secure the performance of such Class B Unitholder’s obligations under this Article 12. Such proxies and powers will be irrevocable for the term of this Agreement and will survive the death, incompetency and disability of such Class B Unitholder and the respective holders of Class B Units. None of the Company (or, if elected by the Company, its assign(s)), the Managers or any of their Affiliates shall have any liability arising from or relating to the exercise of the rights set forth in this Section 12.6.

12.7 **Payments.** Payments required to be made to the Class B Unitholders pursuant to this Article 12 shall be made by wire transfer of immediately available funds to the account of such Class B Unitholder set forth in the applicable

Purchase and Sale Agreement. The amounts payable pursuant to this Article 12 to any Class B Unitholder shall be subject to setoff and reduced by any amounts owed to

the Company or any of its Affiliates or, if elected by the Company, its assign(s) by such Class B Unitholder, any Related Person of such Class B Unitholder or any Person with respect to whom such Class B Unitholder is a direct or indirect assignee of Class B Units (any such amount, a “**Setoff Amount**”). If at the time that any amounts are payable to a Class B Unitholder pursuant to this Article 12, the Company (or, if elected by the Company, its assign(s)) has made a claim against a Class B Unitholder, any Related Person of such Class B Unitholder or any Person with respect to whom such Class B Unitholder is a direct or indirect assignee of Class B Units and such claim unresolved at such time, the Company (or, if elected by the Company, its assign(s)) shall be entitled to retain from such payment the portion of such amount that the Company (or, if elected by the Company, its assign(s)) determines in good faith would reasonably be expected to constitute a Setoff Amount, if such claim were resolved in the Company’s (or, if elected by the Company, its assign(s)) favor (any such amount, a “**Withheld Amount**”). Promptly following the resolution of such claim, the Company (or, if elected by the Company, its assign(s)) shall pay to the Class B Unitholder an amount equal to the Withheld Amounts, minus any portion thereof that constitutes a Setoff Amount. The right to withhold and retain the Setoff Amounts and the Withheld Amounts, as applicable, shall not limit the obligation of any Class B Unitholder to consummate the sale of its Class B Units to the Company (or, if elected by the Company, its assign(s)) pursuant to this Article 12, it being understood that such sale shall be consummated at the time contemplated by this Article 12, with the impact of this Section 12.7 being limited to the reduction of the per unit price that is required to be paid to such Class B Unitholder pursuant hereto.

12.8 **Standstill.** Notwithstanding anything to the contrary in this Article 12, the Company (or, if elected by the Company, its assign(s)) shall not be entitled to exercise or consummate the Call Right, the Class B Unitholders shall not be entitled to exercise or consummate the Put Right and the Company shall not be required to repurchase any Class B Units pursuant to Section 12.5, in each case, during such time as the Company is actively pursuing a Change of Control, an IPO or a Direct Listing (as defined below) (such period, the “**Standstill Period**”); *provided* that such Standstill Period shall not exceed six months from the occurrence of such event. Notwithstanding the foregoing, the Company (by action of Majority Consent of the Managers) shall be entitled to waive the Standstill Period in respect of any Put Right or Call Right at its sole discretion. If there is a Standstill Period and the Company does not consummate such Change of Control, IPO or Direct Listing during such Standstill Period, the Election Periods and required Closing dates set forth in this Article 12 that were delayed due to such Standstill Period shall be adjusted as may be required to allow and require the Company and the Requisite Class B Members and the Class B Unitholder Representative to exercise their rights and fulfill their obligations during the periods of time contemplated in this Article 12. By way of example only, if the Company actively pursues a Change of Control beginning April 15, 2028 and ceases to pursue such Change of Control as of May 15, 2028 and, but for the Standstill Period, an Election Period would have otherwise commenced on April 30, 2028, such Election Period shall be adjusted to begin on May 16, 2028 and end on and ending on the date that is fifteen days after the date that such Election Period would have otherwise ended.

12.9 **Amounts Withheld.** Each Person making a payment to the Class B Unitholders pursuant to this Article 12 shall be entitled to withhold all amounts required to be withheld pursuant to the Code or any provisions of other applicable tax law. All amounts withheld pursuant to the Code or any provisions of other applicable tax law with respect to any payment to the Class B Unitholders pursuant to this Article 12 shall be treated as amounts paid to the relevant Unitholder or Unitholders for all purposes of this Agreement.

12.10 **Operation of Business.** Parent hereby agrees, for the benefit of the Class B Unitholder Representative (on behalf of the Class B Members and subject to Section 12.11), that from the Effective Time until December 31, 2029 (or such earlier date that all of the Class B Units outstanding as of the Effective Time have been repurchased), Parent will not incur any costs allocable to the Company pursuant Schedule 12.2(a) with the sole purpose of reducing the Adjusted EBITDA in

order to reduce the Per Unit Purchase Price payable to the Class B Members, it being understood and agreed that this sentence will not limit the ability of Parent, the Company, or any of their respective officers, directors, managers or

Affiliates from taking any action, or require any of them to refrain from taking any action, with or for any other purpose. Without limiting the express terms in the foregoing sentence, nothing in this Agreement shall require Parent, any of its Affiliates or any Manager or officer of the Company designated by the Class A Members, from taking or refraining from taking any action that would be, or would otherwise be interpreted in a manner that is, inconsistent with the right of Parent, any of its Affiliates' or any Manager or officer designated by the Class A Members, from exercising the power and right to control the business and operations of Parent, the Company and their Affiliates. The Company and each Class B Member expressly acknowledges and agrees that this Section 12.10 contains the entire agreement with respect to the obligations of Parent or any Manager or officer of the Company designated by the Class A Members, in connection with the Company Net Income, the Adjusted EBITDA, the Per Unit Purchase Price or the other provisions of this Article 12, and that notwithstanding anything else to the contrary, for purposes of this Agreement, none of Parent, the Company, any of their Affiliates or any other Person make any, and none of the Class B Members or the Class B Unitholder Representative is relying on any, representation, warranty or covenants to the Class B Members or the Class B Unitholder Representative with respect to support provided to achieve, or the feasibility of achieving, the Company Net Income, Adjusted EBITDA or the payment of any portion of Per Unit Purchase Price or otherwise related to the provisions of this Article 12.

#### 12.11 **Class B Unitholder Representative.**

(a) The Class B Unitholder Representative is hereby designated and appointed as the Class B Unitholders' true and lawful attorney-in-fact and agent, for all purposes designated to the Class B Unitholder Representative in this Article 12 and any related agreements, schedules and exhibits, with full power and authority to represent each Class B Unitholder and such Class B Unitholder's successors and assigns with respect to all matters arising under this Article 12 designated to the Class B Unitholder Representative.

(b) All actions taken by the Class B Unitholder Representative under this Article 12 and any related agreements, schedules and exhibits will be binding upon each Class B Unitholder and such Class B Unitholder's successors and assigns as if expressly ratified and confirmed in writing by them. Without limiting the generality of the foregoing, the Class B Unitholder Representative has full power and authority, on behalf of each Class B Unitholder and such Class B Unitholder's successors and assigns, to interpret the terms and provisions of this Article 12 and the related agreements, schedules and exhibits, to negotiate and compromise any dispute that may arise under this Article 12 or any related agreements, schedules or exhibits and to sign any releases or other documents with respect to any such dispute. Each Class B Unitholder will be deemed a party or a signatory to any agreement, document, instrument or certificate for which the Class B Unitholder Representative signs on behalf of such Class B Unitholder. All decisions, actions and instructions by the Class B Unitholder Representative will be conclusive and binding on each Class B Unitholder and no Class B Unitholder shall have any right to object, dissent, protest or otherwise contest the same. The Company (and its assign(s)) and the Unitholders have the right to rely conclusively on the instructions and decisions of the Class B Unitholder Representative under this Article 12, and no Class B Unitholder will have any cause of action against the Company and any other Unitholders for any action taken by the Company or any other Unitholders in reliance upon the instructions or decisions of the Class B Unitholder Representative. The appointment of the Class B Unitholder Representative is an agency coupled with an interest and is irrevocable and any action taken by the Class B Unitholder Representative pursuant to the authority granted in this Section 12.11 is effective and absolutely binding on each Class B Unitholder notwithstanding any contrary action of or direction from any Class B Unitholder. Notices and communications to or from the Class B Unitholder Representative shall constitute a notice and communication to or from, respectively, each of the Class B Unitholders. The death or incapacity, or dissolution or other termination of existence, of any Class B Unitholder does not terminate the authority and agency of the Class B Unitholder Representative (or successor thereto). The Class B Unitholder Representative may resign at any time.

The provisions of this Section 12.11 are binding upon the executors, heirs, legal representatives and successors of each Class B Unitholder, and any references in this Agreement to any Class B Unitholder shall mean and

include the successors to such Class B Unitholder's rights hereunder, whether pursuant to testamentary disposition, the laws of descent and distribution or otherwise.

(c) The Class B Unitholder Representative shall act for the Class B Unitholders on all of the matters set forth in this Article 12 and any related agreements, exhibits or schedule in the manner the Class B Unitholder Representative believes to be in the best interest of the Class B Unitholders as a whole and consistent with its obligations under this Agreement. The Class B Unitholder Representative will incur no liability to the Class B Unitholders in connection with such Person's services pursuant to this Agreement and any related agreements except to the extent resulting from such Person's fraud, gross negligence or willful misconduct. The Class B Unitholder Representative shall not be liable to the Class B Unitholders for any action or omission pursuant to the advice of counsel. The Class B Unitholders shall indemnify the Class B Unitholder Representative against any reasonable, documented, and out-of-pocket losses, liabilities and expenses, including the reasonable fees and expenses of any legal counsel, accountants, auditors and other advisors retained by the Class B Unitholder Representative ("**Class B Unitholder Representative Expenses**") arising out of or in connection with this Agreement and any related agreements, in each case as such Class B Unitholder Representative Expense is suffered or incurred; provided, that in the event that any such Class B Unitholder Representative Expense is finally adjudicated to have been caused by the gross negligence or willful misconduct of the Class B Unitholder Representative, the Class B Unitholder Representative will reimburse the Class B Unitholders the amount of such indemnified Class B Unitholder Representative Expense to the extent attributable to such gross negligence or willful misconduct. Class B Unitholder Representative Expenses may be recovered by the Class B Unitholder Representative from any funds that become payable to the Class B Unitholders under this Agreement at such time as such amounts would otherwise be distributable to the Class B Unitholders; *provided*, that while the Class B Unitholder Representative may be paid from the aforementioned sources of funds, this does not relieve the Class B Unitholders from their obligation to promptly pay such Class B Unitholder Representative Expenses as they are suffered or incurred. In no event will the Class B Unitholder Representative be required to advance such Person's own funds on behalf of the Class B Unitholders or otherwise. Notwithstanding anything in this Agreement to the contrary, any restrictions or limitations on liability or indemnification obligations of, or provisions limiting the recourse against non-parties otherwise applicable to, the Class B Unitholders set forth elsewhere in this Agreement are not intended to be applicable to the indemnities provided to the Class B Unitholder Representative hereunder. The foregoing indemnities will survive the resignation or removal of the Class B Unitholder Representative or the termination of this Agreement.

(d) The Class B Unitholders, in their capacities as such, shall refrain from taking any action or engaging in any negotiation or transaction or giving any notice which the Class B Unitholder Representative shall have the authority to do or engage under this Article 12 and any related agreements, exhibits or schedules, it being the intent of the Class B Unitholders that the Class B Unitholder Representative, on behalf of the Class B Unitholders collectively and individually, will be solely responsible for dealing with the Company, the Unitholders and third parties with whom the Class B Unitholders have a contractual relationship arising under this Article 12 or the agreements, exhibits or schedules contemplated herein. At the request of the Class B Unitholder Representative, the Class B Unitholders will execute and deliver such agreements, instruments and certificates as the Class B Unitholder Representative shall reasonably request to give effect to this Article 12.

12.12 **Treatment of Repurchased Class B Units.** All Class B Units repurchased by the Company pursuant to this Agreement shall be cancelled. All Class B Units purchased by assignee(s) of the Company pursuant to this Agreement shall automatically be reclassified as Class A Units upon the Closing of such purchase.

12.13 **Termination.** Notwithstanding anything to the contrary in this Article 12, the rights and obligations under this Article 12 shall automatically terminate immediately prior to the earliest to occur of (a) the Company consummating a

Change of Control, (b) the Company's (or any successor's or parent entity's) consummation of an initial public offering of its equity securities (an "IPO") (c) the Company's

(or any successor's or parent entity's) consummation of the initial listing of its equity securities on an exchange or marketplace by means of an effective registration statement filed by the Company (or such successor or parent entity) with the Securities and Exchange Commission (a "**Direct Listing**") and (d) the Company's and its assign(s) purchase of all Class B Units pursuant to the terms of this Article 12.

## **ARTICLE 13**

### **DISSOLUTION AND TERMINATION**

13.1 **Dissolution.** The Company shall be dissolved upon the first to occur of any of the following events:

- (a) the consent of the Class A Members;
- (b) the sale or distribution by the Company of all or substantially all of its assets; or
- (c) any time there are no Members, unless the Company is continued in accordance with the Act.

The foregoing events shall be the only events causing dissolution under the Act and, to the fullest extent permitted by law, the Members and the Managers hereby waive their right to seek a judicial dissolution of the Company. A Person that wrongfully causes the dissolution of the Company loses the right to participate in the management of the Company in any capacity. For the avoidance of doubt, the dissolution of the Company pursuant to clause (a) of this Section 13.1 shall not require the consent of the Managers.

13.2 **Liquidation, Winding Up and Distribution of Assets.** The Managers shall, upon the Company's dissolution, proceed to liquidate Company assets and properties, discharge Company obligations, and wind up the Company's business and affairs in accordance with the Act and this Agreement. The Profits and Losses of the Company through the period of winding up and liquidation shall be allocated among the Unitholders in accordance with the provisions of **Article 6**. Proceeds from liquidating Company assets shall, to the extent available, be applied and distributed as follows:

(a) first, to the payment and discharge of all Company debts and liabilities, including the expenses and cost of winding up, and to the establishment of any reasonable reserves for contingent, conditional or unmatured debts and liabilities, in the order of priority as provided by law; and

(b) thereafter, any remaining proceeds shall be distributed to the Unitholders in accordance with Section 5.1. Any such distributions to the Unitholders under this Section 13.2(b) shall be made within the time requirements of Regulations Section 1.704-1(b)(2)(ii)(b)(2). The Managers may, in their sole discretion, cause the Company to transfer the Company's assets and liabilities to a trust established for the benefit of the Unitholders for the purposes of liquidating the Company's assets, collecting amounts owed to the Company, and satisfying any contingent, conditional or unmatured liabilities or obligations of the Company. In such case, the Managers shall act as trustees of such trust and amounts shall be distributed to the Unitholders, as beneficiaries of the trust, in the same proportions as would otherwise have been distributed to the Unitholders pursuant to this Agreement.

13.3 **Deficit Capital Accounts.** No Unitholder shall have any obligation to contribute or advance any funds or other property to the Company by reason of any negative or deficit balance in such Unitholder's Capital Account during or upon completion of winding up or at any other time except to the extent that a deficit balance is directly attributable to a Distribution of cash or other property in violation of this Agreement and such Unitholder knew at the time of such Distribution that such Distribution was unlawful.



13.4 **Return of Contribution Non-Recourse to Other Unitholders.** Except as provided by law, upon dissolution, each Unitholder shall look solely to the Company assets for the return of such Unitholder's Capital Contributions. If any Company property remaining after satisfaction (whether by payment or making reasonable provision for payment) of Company debts and liabilities is insufficient to return the cash or other property contribution of one or more Unitholders, such Unitholders shall have no recourse against the Company, any Manager or any other Unitholder.

13.5 **In Kind Distributions.** A Unitholder shall have no right to demand and receive any Distribution from the Company in any form other than cash. However, a Unitholder may be compelled to accept a Distribution of an asset in kind if the Company is unable to dispose of all of its assets for cash.

13.6 **Change of Control.** If in connection with a Change of Control there is a payment of consideration to the Unitholders with respect to their Units, the aggregate consideration to be received by all Unitholders receiving consideration in connection with such Change of Control shall be allocated among such Unitholders in accordance with Section 5.1.

## **ARTICLE 14 CONVERSION**

In the event that a Conversion Event shall occur, the Unitholders shall take all necessary and desirable action to incorporate the Company or take such other action as the Managers may deem advisable, including (a) dissolving the Company, creating one or more subsidiaries of the newly formed corporation and transferring to such subsidiaries any or all of the assets of the Company (including by merger), (b) causing the Unitholders to exchange their Units for shares of capital stock of the newly formed corporation or (c) effecting the conversion of the Company into a corporation pursuant to the Act. In connection with any such transaction, the Unitholders shall receive, in exchange for their respective Units, shares of capital stock of such corporation or its subsidiaries having the same relative economic interest and other rights and obligations in such corporation or its subsidiaries as is set forth in this Agreement, subject to any modifications (as reasonably determined by the Managers) required solely as a result of the conversion to corporate form. At the time of such transaction, the Unitholders shall, and hereby agree to, take any and all actions deemed reasonably necessary and appropriate by the Managers to effect such transaction, including entering into a stockholders' agreement providing for, among other provisions: (i) the restrictions on Transfer on the Class B Units set forth in this Agreement; (ii) an agreement to vote all shares of capital stock held by them to elect the board of directors of the new corporation in accordance with this Agreement; and (iii) an arrangement to reflect the economic agreements among the Unitholders reflected herein. Prior to consummating any such transaction, the Class A Members and the Managers shall approve the proposed forms of a certificate of incorporation, bylaws, stockholders' agreement and any other governing documents proposed to be established for such corporation and its subsidiaries, if any, all of which shall, as nearly as practicable (as reasonably determined by the Managers), reflect the rights and obligations of the Unitholders under this Agreement and comparable agreements applicable to any subsidiary as of the date of such transaction.

## **ARTICLE 15 MISCELLANEOUS PROVISIONS**

15.1 **Notices.** Except as otherwise provided herein, any notice, demand, or communication required or permitted to be given to the Company or any Manager or Unitholder by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if (a) delivered personally to the Company or such Manager or Unitholder, as applicable, (b) sent by e-mail to the Company or such Manager or Unitholder, as applicable, to the applicable e-mail address

set forth in the books and records of the Company for any such Manager, on the Unitholder Register with respect to any such Unitholder, or the signature page hereto for the Company or (c) sent by registered or certified mail,

postage prepaid, addressed to the Company or such Manager or Unitholder at the applicable address set forth in the books and records of the Company, on the Unitholder Register or the signature page hereto, as applicable. Except as otherwise provided herein, any such notice shall be deemed to be given on (i) the date on which the same was personally delivered, (ii) if sent via electronic mail, on the earlier of (1) the time sent (unless such Person previously elected via notice to the sender to render this clause (1) inapplicable to such Person); and (2) the time when actually received and opened by such Person; or (iii) if sent by registered or certified mail, on the seventh day after such notice was deposited in the United States mail addressed as aforesaid.

15.2 **Governing Law.** This Agreement and the rights of the parties hereunder will be governed by, interpreted, and enforced in accordance with the laws of the State of Delaware, without regard to its choice of law provisions.

15.3 **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement among the Company and the Unitholders concerning the matters set forth herein. Except as otherwise expressly provided in this Agreement, this Agreement may be amended, and any provision of this Agreement may be waived, with consent of the Class A Members without the consent of any other Person (including, for the avoidance of doubt, the Managers); *provided, however*, that any amendment or waiver of Section 4.2(b), Section 4.4(c), Section 4.5(b), Section 4.6(b), Section 4.7(b) or Article 12 shall also require the consent of the Class B Members. Notwithstanding the foregoing, the Managers shall be authorized to make any amendments to this Agreement that counsel to the Company opines are necessary to maintain the Company's status as a partnership for federal and state income tax purposes. If any conflict exists between the provisions of this Agreement and the provisions of any oral or prior agreement among the Unitholders and the Company or any of them, the provisions of this Agreement shall prevail.

15.4 **Additional Documents and Acts.** Each Unitholder agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and the transactions contemplated hereby.

15.5 **Headings.** The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

15.6 **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable and the remaining provisions of this Agreement will remain in full force and effect.

15.7 **Heirs, Successors, and Assigns.** Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and the parties' respective heirs, legal representatives, successors and permitted assigns. Any assignment by the Company of any right of the Company under this Agreement shall require the approval of the Managers.

15.8 **Creditors and Other Third Parties.** None of the provisions of this Agreement shall be for the benefit of, or enforceable, by any Company creditors or any other third parties, except that the Managers, the Covered Persons, the Indemnified Persons and the Related Parties of a Unitholder or a Manager (to the extent they have rights set forth in this Agreement) shall have the rights expressly granted to them in this Agreement.

15.9 **Preparation of Document/Independent Counsel.** After negotiations among the Unitholders and the Company, this Agreement was prepared by Wilson Sonsini Goodrich & Rosati, P.C. ("**Wilson Sonsini**"), as legal counsel to

Parent. Wilson Sonsini has not acted as legal counsel to any other Unitholder in preparing this Agreement. Each Unitholder acknowledges that such Unitholder has had the

opportunity to review this Agreement with independent legal counsel of their own choice. The Unitholders acknowledge this Agreement has been the product of negotiation between the counsel of the Unitholders, the Company and Parent. Accordingly, the Unitholders and the Company agree that in the event of any ambiguity in any provision of this Agreement, this Agreement shall not be construed against a party regardless of which party was responsible for the drafting thereof.

15.10 **Section, Other References.** Except to the extent provided to the contrary, references to the terms “Section,” “Schedule,” “Exhibit,” or “Appendix” mean to the corresponding Sections, Schedules, Exhibits, or Appendices attached to or referred to in this Agreement. Each Appendix, Exhibit and Schedule referred to in this Agreement is hereby incorporated by reference in this Agreement as if such Appendix, Exhibit or Schedule were set out in full in the text of this Agreement.

15.11 **Venue.** Any dispute relating hereto shall be heard solely and exclusively in the state or federal courts of Delaware, and the parties and the Unitholders consent to and agree to jurisdiction and venue therein and not to contest jurisdiction or move for *forum non conveniens* or otherwise dispute the forum. Notwithstanding the foregoing, any Person may bring an action (i) to enforce a judgment or order from a state or federal court of Delaware in any court with jurisdiction over the Person against whom such judgment or order is being enforced and (ii) for specific performance or injunctive relief in any court with jurisdiction over the Person against whom such equitable relief is sought.

15.12 **MUTUAL WAIVER OF JURY TRIAL.** EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE BETWEEN OR AMONG ANY OF THE PARTIES HERETO, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, RELATED OR INCIDENTAL TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY AND/OR THE RELATIONSHIP ESTABLISHED AMONG THE PARTIES HEREUNDER. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY BENCH TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

15.13 **Counterparts; Electronic Signature.** This Agreement may be executed in one or more counterparts each of which shall for all purposes be deemed an original, and all of such counterparts, taken together, shall constitute one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or electronic transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement.

15.14 **Performance, Breach and Remedies.** Except as otherwise specifically provided in this Agreement, the remedies set forth in this Agreement are cumulative and shall not exclude any other remedies to which a Person may be lawfully entitled. Without limiting the rights and remedies otherwise available to the Company or any Unitholder, each Unitholder: (a) acknowledges that the remedy at law for damages resulting from such Unitholder’s breach of Article 10, Article 11 or Article 12 is inadequate; and (b) consents to the institution of an action for specific performance of its obligations in the event of such breach. Each Unitholder acknowledges that certain provisions of this Agreement provide for specified consequences in the event of a breach of this Agreement by a Unitholder. Each Unitholder agrees that the default provisions of this Agreement are fair and reasonable and, in light of the difficulty of determining actual damages, represent a prior agreement among the Unitholders as to appropriate specified penalties or specified consequences. Each Unitholder further agrees and acknowledges that any actions taken or not taken by the Managers or any Unitholder with respect to a defaulting Unitholder shall not constitute a breach of this Agreement or of any duty stated or implied in law or equity to any Unitholder, regardless of whether the same or different remedies are applied to each defaulting Unitholder.



(Remainder of Page Intentionally Left Blank)

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**COMPANY:**

HIYA HEALTH PRODUCTS, LLC

Signature: /s/ Darren Litt

Print Name: Darren Litt

Print Title: Manager

Address: 7750 Okeechobee Blvd, Suite 4-769, West Palm Beach, FL

Email: Support@hiyahealth.com

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*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS A MEMBER:**

**USANA Health Sciences, Inc.,**  
a Utah corporation

By: /s/ G. Douglas Hekking

Name: G. Douglas Hekking

Title: Chief Financial Officer

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

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*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

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By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**PARENT:**

**USANA Health Sciences, Inc.,**  
a Utah corporation

By: /s/ G. Douglas Hekking

Name: G. Douglas Hekking

Title: Chief Financial Officer

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

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By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Abraham Cortes  
Abraham Cortes

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, Steffenie Jo Zorner Cortes, spouse of Abraham Cortes (“**Spouse**”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

/s/ Steffenie Jo Zorner Cortes

(Signature)

Steffenie Jo Zorner Cortes

(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

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By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

**Bert Culha, as Trustee of the Sutton 325 Trust Agreement dated  
December 11, 2024**

By: /s/ Bert Culha

Name: Bert Culha

Title: Trustee

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“Spouse”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

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By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Alexander Mark Silverman  
Alexander Mark Silverman

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, Deepika Chopra, spouse of Alexander Mark Silverman (“**Spouse**”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

/s/ Deepika Chopra

(Signature)

Deepika Chopra

(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

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By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Asher Isaac Delug  
Asher Isaac Delug

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“Spouse”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

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By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

**AB Rief, LLC**

By: /s/ Austin Rief

Name: Austin Rief

Title: Authorized Party

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“Spouse”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

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By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Bonnie Hick  
Bonnie Hick

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, Jeffrey Hick, spouse of Bonnie Hick (“**Spouse**”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

/s/ Jeffrey Hick

(Signature)

Jeffrey Hick

(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

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By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Corinne Crockett  
Corinne Crockett

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“**Spouse**”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

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By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Daniel Snow  
Daniel Snow

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“**Spouse**”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

**Matt Cohen as Trustee for the Hayvenhurst Trust dated February 1, 2012**

By: /s/ Matt Cohen  
Name: Matt Cohen  
Title: Trustee

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“Spouse”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Heidi Terese Merrick  
Heidi Terese Merrick

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“**Spouse**”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

**Hiya Holdings 2023, LLC**

By: /s/ Todd Gelman

Name: Todd Gelman

Title: Chief Business Officer

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“Spouse”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Jacob Morayniss  
Jacob Morayniss

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, Erica Katz, spouse of Jacob Morayniss (“**Spouse**”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

/s/ Erica Katz

(Signature)

Erica Katz

(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

**Jared Coren as Trustee of the Gillman 2024 Gift Trust FBO Lev  
Gillman dated September 5, 2024**

By: /s/ Jared Coren  
Name: Jared Coren  
Title: Trustee

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“Spouse”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

**Jared Coren as Trustee of the Gillman 2024 Gift Trust FBO Lev  
Gillman dated September 5, 2024**

By: /s/ Jared Coren  
Name: Jared Coren  
Title: Trustee

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“Spouse”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

**JMBH Ventures LLC**

By: /s/ Kelly J. Engel

Name: Kelly J. Engel

Title: Manager

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“Spouse”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Jonathan Snow  
Jonathan Snow

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“**Spouse**”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Joseph Barger  
Joseph Barger

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“Spouse”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Kelene LeVeque  
Kelene LeVeque

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“Spouse”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

**LH Family Investments LLC**

By: /s/ Kelly J. Engel

Name: Kelly J. Engel

Title: Vice President

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“Spouse”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Matthew Bilinsky  
Matthew Bilinsky

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“**Spouse**”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Nicholas Green  
Nicholas Green

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“**Spouse**”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

**Rogue Trading LLC**

By: /s/ Raaja Nemani

Name: Raaja Nemani

Title: Authorized Party

**Class B Units Issued in the Merger:**

\*\*\* total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“Spouse”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Sandeep Kella  
Sandeep Kella

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, Gunjan Kella, spouse of Sandeep Kella (“**Spouse**”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

/s/ Gunjan Kella

(Signature)

Gunjan Kella

(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Shawn E. Matian  
Shawn E. Matian

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, Sepideh Rabi, spouse of Shawn E. Matian (“**Spouse**”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

/s/ Sepideh Rabi

(Signature)

Sepideh Rabi

(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

**SS3H Ventures LLC**

By: /s/ Kelly J. Engel

Name: Kelly J. Engel

Title: Manager

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“Spouse”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Stacey Renee Heuser  
Stacey Renee Heuser

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, Kenneth Evan Heuser, spouse of Stacey Renee Heuser (“**Spouse**”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

/s/ Kenneth Evan Heuser

(Signature)

Kenneth Evan Heuser

(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

**The Palmer Trust**

By: /s/ Andrew Palmer

Name: Andrew Palmer

Title: Co-Trustee

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“Spouse”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B MEMBER:**

/s/ Zachary J. Cohen  
Zachary J. Cohen

**Class B Units Issued in the Merger:**

[\*\*\*] total Class B Units:

SPOUSAL CONSENT (if applicable):

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“**Spouse**”), have read and approve of this Agreement, together with all exhibits and related agreements hereto and thereto and the transactions contemplated hereby and thereby. I hereby appoint Spouse as my attorney-in-fact to the exercise or waiver of any rights under this Spousal Consent and under this Agreement, and each other related agreement (as applicable), and agree to be bound by the provisions of such agreements, together with all exhibits hereto and thereto and transactions contemplated hereby and thereby insofar as I may have any rights herein or therein under the marital property laws in the state of our residence or any other applicable jurisdiction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

---

By execution below, each of the undersigned agrees to the terms and provisions of this Agreement.

**CLASS B UNITHOLDER REPRESENTATIVE:**

By: /s/ Adam Gillman

Name: Adam Gillman

*[Signature page to Amended and Restated Limited Liability Company Agreement of Hiya Health Products, LLC]*

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## Schedule 12.2(a)

For purposes of this **Schedule 12.2(a)**, the following terms shall have the following meanings:

- **“Adjusted EBITDA”** means, with respect to an applicable twelve-month period, an amount equal to (a) the Net Income of the Company for such period (such amount with respect to such period, the **“Company Net Income”**) plus (b) the following (without duplication) to the extent deducted in calculating such Company Net Income for such period: (i) the sum of (A) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (excluding capitalized interest), in each case, to the extent treated as interest in accordance with GAAP and (B) the portion of rent expense of the Company for such period under capital leases that is treated as interest in accordance with GAAP, (ii) the provision for federal, state, local and foreign income taxes payable by the Company for such period, and (iii) the amount of depreciation, depletion and amortization expense deducted in determining such Company Net Income, minus (c) the following (without duplication) to the extent such amounts are included in the calculation of Company Net Income for such period: the sum of (i) all interest income, and (ii) any gains on federal, state, local and foreign income taxes, in each case of clauses (a) through (c) of this definition, calculated in accordance with the provisions and adjustments set forth in this **Schedule 12.2(a)**. Notwithstanding the foregoing, if the Adjusted EBITDA for an applicable twelve-month period is equal to or less than \$0.00 for such period, the Adjusted EBITDA for purposes of Section 12 of the Agreement for such twelve-month period shall be deemed to be \$1.00.
- **“Affiliate”** has the meaning set forth in the Agreement.
- **“GAAP”** means generally accepted accounting principles in the United States set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession) including, without limitation, the FASB Accounting Standards Codification.
- **“Merger Agreement”** has the meaning set forth in the Agreement.
- **“USANA”** means USANA Health Sciences, Inc., a Utah corporation.

For purposes of calculating Adjusted EBITDA and Company Net Income, the following provisions shall apply:

- The term “Net Income” and all other accounting terms set forth in this **Schedule 12.2(a)** shall be construed in conformity with GAAP applied in a manner consistent with the accounting principles, practices, procedures, policies and methods, classifications, judgments, inclusions, exclusions and methodologies, conventions, categorizations, definitions, elections, assumptions and estimation and valuation techniques applied and used in the preparation of USANA’s audited financial statements, except as otherwise specifically prescribed on this **Schedule 12.2(a)**.
- Any costs directly or indirectly incurred by USANA or any of its Affiliates on behalf of, with respect to or for the benefit of, the Company or the business or operations of the Company (any of the foregoing, the **“Company Business”**) or the Company Service Providers, will be deducted from, and will reduce, Company Net Income and Adjusted EBITDA, which costs may include, by



way of example and not limitation, the following: (A) an allocable share of the cost of any financing, accounting, legal, administrative or product development services provided by USANA or any of its Affiliates to the Company or on behalf of, with respect to or for the benefit of, the Company Business or the Company Service Providers, and (B) an allocated share of any out-of-pocket costs for products or services purchased or procured by USANA or any of its Affiliates from third parties on behalf of, with respect to or for the benefit of, the Company or the Company Business or the Company Service Providers, such as public company reporting and compliance costs, audit fees and insurance costs.

- The calculation of Adjusted EBITDA will exclude (A) any legal, audit, accounting or other advisory fees to the extent such amounts constitute “Transaction Expenses” (as defined in the Merger Agreement) that are set forth on the Closing Statement (as defined in the Merger Agreement) as Transaction Expenses and reduce the amount of the Estimated Closing Cash Merger Consideration (as defined in the Merger Agreement) and (B) any amounts incurred by USANA to finance the Estimated Closing Cash Merger Consideration.
- Without limiting the foregoing, any costs of the Company that are approved or incurred by the officers or employees of the Company will be deducted from, and will reduce, Company Net Income and Adjusted EBITDA.

**EXHIBIT A**  
**FINAL ADJUSTED EBITDA REFERENCE AMOUNT**

	<b>Final Adjusted EBITDA Reference Amount is equal to or greater than:</b>	<b>Final Adjusted EBITDA Reference Amount is less than:</b>	<b>Multiple</b>
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Final Adjusted EBITDA Reference Amount in the twelve-month period ended on December 31, 2027 or on December 31 in any prior year is:	\$0.00	\$45,300,000	7.0
	\$45,300,000	\$45,670,000	8.0
	\$45,670,000	\$46,040,000	8.1
	\$46,040,000	\$46,410,000	8.2
	\$46,410,000	\$46,780,000	8.3
	\$46,780,000	\$47,150,000	8.4
	\$47,150,000	\$47,520,000	8.5
	\$47,520,000	\$47,890,000	8.6
	\$47,890,000	\$48,260,000	8.7
	\$48,260,000	\$48,630,000	8.8
	\$48,630,000	\$49,000,000	8.9
	\$49,000,000	\$49,760,000	9.0
	\$49,760,000	\$50,520,000	9.1
	\$50,520,000	\$51,280,000	9.2
	\$51,280,000	\$52,040,000	9.3
	\$52,040,000	\$52,800,000	9.4
	\$52,800,000	\$53,560,000	9.5
	\$53,560,000	\$54,320,000	9.6
	\$54,320,000	\$55,080,000	9.7
	\$55,080,000	\$55,840,000	9.8
	\$55,840,000	\$56,600,000	9.9
	\$56,600,000	\$58,480,000	10.0
	\$58,480,000	\$60,360,000	10.0
	\$60,360,000	\$62,240,000	10.0
	\$62,240,000	\$64,120,000	10.0
	\$64,120,000	\$66,000,000	10.0
	\$66,000,000	\$67,880,000	10.0
	\$67,880,000	\$69,760,000	10.0
\$69,760,000	\$71,640,000	10.0	



*provided*, however, that in no event shall the Company Value Reference Amount exceed \$1,250,000,000

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Final Adjusted EBITDA Reference Amount in the twelve-month period ended on December 31, 2029 or on December 31 in any year thereafter	\$0.00	\$45,300,000	7.0
	\$45,300,000	\$45,670,000	8.0
	\$45,670,000	\$46,040,000	8.1
	\$46,040,000	\$46,410,000	8.2
	\$46,410,000	\$46,780,000	8.3
	\$46,780,000	\$47,150,000	8.4
	\$47,150,000	\$47,520,000	8.5
	\$47,520,000	\$47,890,000	8.6
	\$47,890,000	\$48,260,000	8.7
	\$48,260,000	\$48,630,000	8.8
	\$48,630,000	\$49,000,000	8.9
	\$49,000,000	\$49,760,000	9.0
	\$49,760,000	\$50,520,000	9.1
	\$50,520,000	\$51,280,000	9.2
	\$51,280,000	\$52,040,000	9.3
	\$52,040,000	\$52,800,000	9.4
	\$52,800,000	\$53,560,000	9.5
	\$53,560,000	\$54,320,000	9.6
	\$54,320,000	\$55,080,000	9.7
	\$55,080,000	\$55,840,000	9.8
	\$55,840,000	\$56,600,000	9.9
	\$56,600,000	\$60,890,000	10.0
	\$60,890,000	\$65,180,000	10.0
	\$65,180,000	\$69,470,000	10.0
	\$69,470,000	\$73,760,000	10.0
	\$73,760,000	\$78,050,000	10.0
	\$78,050,000	\$82,340,000	10.0
	\$82,340,000	\$86,630,000	10.0
\$86,630,000	\$90,920,000	10.0	



*provided*, however, that in no event shall the Company Value Reference Amount exceed \$1,250,000,000.

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**EXHIBIT B**  
**FORM OF PUT EXERCISE NOTICE**

[Date]

A1.

A2. **Strictly confidential**

Hiya Health Products, LLC

[Address]

Attention: [●]

Email: [●]

A3. Re: **Project Karate – Put Option Election Notice**

To Whom It May Concern:

Reference is hereby made to that certain Amended and Restated Limited Liability Company Agreement (as amended, the “**A&R LLCA**”) of Hiya Health Products, LLC, a Delaware limited liability company (the “**Company**”), dated as of [●], 2024, pursuant to which the Company has granted the Class B Unitholders (as defined in the A&R LLCA) an irrevocable option and right exercisable solely by the Requisite Class B Members (as defined in the A&R LLCA) to cause the Company to purchase and acquire or to cause its assigns to purchase and acquire, all of the outstanding Subject Class B Units (as defined in the A&R LLCA) owned of record or beneficially owned by such Class B Unitholder (the “**Unit Purchase**”) and all right, title and interest therein free and clear of all Liens, on the terms and conditions set forth in the A&R LLCA. Capitalized terms used but not otherwise defined herein shall have the meanings given such terms in the A&R LLCA. In accordance with Section 12.4 of the A&R LLCA, the undersigned, constituting the Requisite Class B Members, hereby irrevocably elect to exercise the Company’s right, evidenced by the A&R LLCA as follows.

- Pursuant to Section 12.4 of the A&R LLCA, the Requisite Class B Members hereby irrevocably elect as of the Effective Date to cause the Company (or, if elected by the Company, to cause its assign(s)) to repurchase the Subject Class B Units (such election, the “**Put Right**”); and
- Such purchase by the Company of the Put Units pursuant to the Put Right shall be based on a Purchase and Sale Agreement in the form attached to the A&R LLCA as Exhibit E and the exhibits thereto and the terms and conditions set forth in therein.

*(Signature page follows)*

**IN WITNESS WHEREOF**, the parties hereto have caused this Put Exercise Notice to be duly executed as of the date first written above.

**REQUISITE CLASS B MEMBERS<sup>1</sup>:**

[ENTITY MEMBER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

[INDIVIDUAL MEMBER]

<sup>1</sup> To be executed by the Requisite Class B Members.

**EXHIBIT C**  
**FORM OF CALL EXERCISE NOTICE**

**HIYA HEALTH PRODUCTS, LLC**  
**[ADDRESS]**

**[Date]**

**A4. Strictly confidential**

Class B Unitholder Representative

[Address]

Attention: [●]

Email: [●]

**A5. Re: Project Karate – Call Option Election Notice**

To Whom It May Concern:

Reference is hereby made to that certain Amended and Restated Limited Liability Company Agreement (as amended, the “**A&R LLCA**”) of Hiya Health Products, LLC, a Delaware limited liability company (the “**Company**”), dated as of [●], 2024, pursuant to which each Class B Unitholder (as defined in the A&R LLCA) has granted the Company an irrevocable option and right to acquire or to cause its assigns to acquire, all of the outstanding Subject Class B Units (as defined in the A&R LLCA) owned of record or beneficially owned by such Class B Unitholder (the “**Unit Purchase**”) and all right, title and interest therein free and clear of all Liens, on the terms and conditions set forth in the A&R LLCA. Capitalized terms used but not otherwise defined herein shall have the meanings given such terms in the A&R LLCA. In accordance with Section 12.4 of the A&R LLCA the Company, hereby irrevocably elects to exercise the Company’s right, evidenced by the A&R LLCA as follows.

- Pursuant to Section 12.4 of the A&R LLCA, the Company hereby irrevocably elects as of the Effective Date to (or, if elected by the Company, cause its assign(s) to) repurchase the Subject Class B Units (such election, the “**Call Right**”); and
- Such purchase by the Company of the Subject Class B Units pursuant to the Call Right shall be based on a Purchase and Sale Agreement in the form attached to the A&R LLCA as Exhibit E and the exhibits thereto and the terms and conditions set forth in therein.

*(Signature page follows)*



**IN WITNESS WHEREOF**, the parties hereto have caused this Call Exercise Notice to be duly executed as of the date first written above.

**HIYA HEALTH PRODUCTS, LLC<sup>2</sup>**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

<sup>2</sup> To be approved by the Managers acting by Majority Consent, which will be obtained separately.

**EXHIBIT D**  
**FORM OF PURCHASE OPTION ELECTION NOTICE (WITHDRAWAL)**

**HIYA HEALTH PRODUCTS, LLC**  
**[ADDRESS]**

**[Date]**

Strictly confidential

Class B Member

[Address]

Attention: [●]

Email: [●]

Re: Project Karate – Purchase Option Election Notice (Class B Member Withdrawal)

To Whom It May Concern:

Reference is hereby made to that certain Amended and Restated Limited Liability Company Agreement (as amended, the “**A&R LLCA**”) of Hiya Health Products, LLC, a Delaware limited liability company (the “**Company**”), dated as of [●], 2024, pursuant to which each Class B Unitholder (as defined in the A&R LLCA) has granted the Company an option and right to acquire or to cause its assigns to acquire, all of the outstanding Subject Withdrawal Units (as defined in the A&R LLCA) owned of record or beneficially owned by such Class B Unitholder (the “**Unit Purchase**”) and all right, title and interest therein free and clear of all Liens, on the terms and conditions set forth in the A&R LLCA. Capitalized terms used but not otherwise defined herein shall have the meanings given such terms in the A&R LLCA. In accordance with Section 10.5(a) of the A&R LLCA the Company, hereby irrevocably elects to exercise the Company’s right, evidenced by the A&R LLCA as follows.

- Pursuant to Section 10.5(a) of the A&R LLCA and the approval of the Managers acting by Majority Consent, the Company hereby elects as of the Effective Date (or, if elected by the Company, to cause its assign(s)) to repurchase [NUMBER] Subject Withdrawal Units (such election, the “**Purchase Option**”); and
- Such purchase by the Company of the Subject Withdrawal Units pursuant to the Purchase Option shall be based on a Purchase and Sale Agreement in the form attached to the A&R LLCA as Exhibit E and the exhibits thereto and the terms and conditions set forth in therein.

*(Signature page follows)*

**IN WITNESS WHEREOF**, the parties hereto have caused this Call Exercise Notice to be duly executed as of the date first written above.

**HIYA HEALTH PRODUCTS, LLC<sup>3</sup>**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

<sup>3</sup> To be approved by the Managers acting by Majority Consent, which will be obtained separately.

**EXHIBIT E**  
**FORM OF PURCHASE AND SALE AGREEMENT**

**HIYA HEALTH PRODUCTS, LLC**  
**PURCHASE AND SALE AGREEMENT<sup>4</sup>**

This Purchase and Sale Agreement (this “Agreement”) is made as of [ ], by and among Hiya Health Products, LLC, a Delaware limited liability company (the “Company”), and each of [ ] and [ ] (the “Sellers”<sup>5</sup> and together with the Company, the “Parties”). Capitalized terms not defined herein shall have the meanings set forth in that certain Amended and Restated Limited Liability Company Agreement of the Company, dated as of [ ], by and among the Company, the Sellers and the other parties thereto (as has been amended, the “A&R LLCA”).

**RECITALS**

**[PUT RIGHT]**

WHEREAS, pursuant to the A&R LLCA, the Company granted the Sellers the Put Right exercisable by the Requisite Class B Members to cause the Company (or, if elected by the Company, its assign(s)) to purchase [all / a portion] of the Class B Units held by the Sellers.

WHEREAS, the Requisite Class B Members submitted a Notice of Exercise of Put Option on [ ] (the “Notice Date”) notifying the Company of its intention to exercise its Put Right as to an aggregate of [ ] Class B Units (the “Subject Class B Units”).

WHEREAS, the Sellers desire to sell to the Company, and the Company desires to purchase from the Sellers, the Subject Class B Units (such purchases, the “Purchases”) in accordance with the terms of this Agreement.

**[CALL RIGHT]**

WHEREAS, pursuant to the A&R LLCA, the Sellers granted the Company the Call Right exercisable by the Managers acting by Majority Consent to cause the Requisite Class B Members to sell [all / a portion] of the Class B Units held by the Sellers.

WHEREAS, the Company submitted a Notice of Exercise of Call Option on [ ] (the “Notice Date”) notifying the Sellers of its intention to exercise its Call Right as to an aggregate of [ ] Class B Units (the “Subject Class B Units”).

WHEREAS, the Sellers desire to sell to the Company, and the Company desires to purchase from the Sellers, the Subject Class B Units (such purchases, the “Purchases”) in accordance with the terms of this Agreement.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

**A1.**  
**PURCHASE OF THE UNITS**

(a) **Purchase of Units.** At the Closing (as defined below), the Sellers shall sell, assign, transfer, deliver and convey and the Company shall purchase the Subject Class B Units free and clear of

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<sup>4</sup> To be updated if purchaser is assignee of Company.

<sup>5</sup> Tailor entire agreement to reflect sale by one Seller if Company is exercising call right under Section 10 of the A&R LLCA.

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any and all Liens at the Per Unit Purchase Price of \$[ ] for the aggregate purchase price of \$[ ] (the “Purchase Price”), payable in [cash]<sup>6</sup>, as follows; provided, however that the Purchase Price shall be reduced by any tax or other amounts required to be withheld by the Company under applicable Law:

<u>Seller</u>	<u>Number of Class B Units</u>	<u>Purchase Price</u>
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
<b>Total</b>	[ ]	[ ]

(b) **Closing.** The closing of the Purchases will take place on the date of this Agreement or on a date to be mutually agreed to in writing by the parties following the date hereof (which place and date are referred to as the “Closing”). At the Closing, upon satisfaction or waiver of the conditions set forth in this Agreement, the Company shall pay each Seller the amount of the Purchase Price set forth in Section 1 in cash or promissory notes.

**A2.**  
**CONDITIONS TO CLOSING**

(a) **Obligations of the Company.** The obligations of the Company to effect the Purchases are subject to:

(i) each of the representations and warranties of the Sellers contained in Section 3 being true and correct in all respects on and as of the date hereof, and on and as of the Closing with the same effect as though such representations and warranties had been made on and as of the Closing;

(ii) the Sellers having performed and complied in all respects with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by the Sellers, and that this Agreement becomes effective, on or before the Closing; and

(iii) the Sellers shall have delivered to the Company properly completed and executed Internal Revenue Service Form W-9s.

(b) **Obligations of the Sellers.** The obligations of each Seller to effect the Purchases are subject to:

(i) each of the representations and warranties of the Company contained in Section 4 being true and correct in all respects on and as of the date hereof, and on and as of the Closing with the same effect as though such representations and warranties had been made on and as of the Closing; and

(ii) the Company having performed and complied in all respects with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it, and that this Agreement becomes effective, on or before the Closing.

**A3.**  
**REPRESENTATIONS OF THE SELLERS**

Each Seller hereby severally and not jointly represents and warrants to, and agrees with and covenants to, the Company, as of the date hereof, and as of the Closing that:

\_\_\_\_\_

<sup>6</sup> Note to Draft: If agreement is for a repurchase under Article 10 this could be a promissory note.

(a) **Disclosure of Information**. Such Seller understands that in connection with an initial public offering, a sale of the Company, or other transactions, the Subject Class B Units may have a higher value in the future than the Purchase Price, and that by selling the Subject Class B Units for the Purchase Price, such Seller will lose the ability to participate in any future appreciation in the value of the Subject Class B Units. Such Seller agrees that neither the Company nor any of its officers, managers, directors, members, employees or agents has made any representation to that Seller (a) in connection with the sale of the Subject Class B Units under this Agreement which is not contained in this Agreement; or (b) concerning the current or future value of the Subject Class B Units. Such Seller has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of this Agreement and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to that Seller or to which that Seller had access. Such Seller has received or has had full access to all the information that such Seller considers necessary or appropriate to make an informed investment decision with respect to the sale of the Subject Class B Units under this Agreement. Such Seller acknowledges that the Company is entering into this Agreement in reliance upon the Seller's representations and warranties in this Agreement.

(b) **Investment Experience**. Such Seller has a preexisting personal or business relationship with the Company or certain of its officers, managers and directors of a nature and duration sufficient to make such Seller aware of the character, business acumen and general business and financial circumstances of the Company and those officers, managers and directors. Such Seller acknowledges that such Seller is able to fend for itself and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the transactions contemplated by this Agreement and protecting its own interests in connection therewith.

(c) **Due Authorization**. All action on the part of such Seller necessary for the execution and delivery of this Agreement and the performance of all obligations of such Seller hereunder has been taken, and this Agreement constitutes a valid and legally binding obligation of the Seller, enforceable in accordance with its terms, subject to (a) applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application limiting enforcement of creditors' rights generally and (b) the availability of equitable remedies. Such Seller has full capacity, power and right and authority to sell, assign, transfer, convey and deliver such Subject Class B Units to the Company as contemplated by this Agreement.

(d) **Ownership of Subject Class B Units**. Such Seller is the record and beneficial owner of—and has valid title to—the Subject Class B Units, and the Subject Class B Units are—and will at all times through the Closing be—free of any liens, claims, security interests or other encumbrances. Such Seller has not sold, assigned or otherwise transferred to any third party any of the Seller's right, title or interest in or to any of the Subject Class B Units. Upon the consummation of the Closing, the Company will receive good title to such Subject Class B Units, subject to no liens retained, granted or permitted by such Seller.

(e) **Counsel**. Such Seller has had the opportunity to review this Agreement, the documents referred to herein and the transactions contemplated by this Agreement with such Seller's own legal counsel. Except as set forth in this Agreement, such Seller is relying solely on such Seller's legal counsel and not on any statements or representations of the Company, any of the Company's agents or counsel to the Company, for legal advice with respect to this Agreement and any transaction contemplated hereby, including, without limitation, the Purchase.

(f) **No Conflicts and Consents**. The execution and delivery of this Agreement, and the performance of the obligations of such Seller hereunder do not and will not (a) violate, conflict with or result in the breach of any of the terms of, constitute a default under, result in any modification of, accelerate or permit the acceleration of the performance required by, otherwise give any other contracting party the right to terminate, or give rise to the loss of any benefit under, in each case with or without notice or lapse of time or both, any agreement, instrument, license or contract to which such Seller is a party, or by or to which any Seller or any assets or properties of that Seller, may be subject; (b) violate any writ, ruling, order,

directive, judgment or decree of any court, arbitrator or governmental agency or authority; or (c) violate any applicable law, rule, regulation or ordinance. No consent, approval, order, or authorization of, and no registration, qualification, designation, declaration, or filing of or with any government authority or third party is required in connection with such Seller's sale of the Subject Class B Units to the Company or with the consummation of the transactions contemplated by this Agreement.

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(g) **No Legal, Tax, or Investment Advice.** Such Seller has had an opportunity to review the United States federal, state, local and foreign, tax consequences of the Seller's sale of the Subject Class B Units to the Company. Such Seller understands that nothing in this Agreement or in any other materials presented to such Seller in connection with the Company's purchase of the Subject Class B Units or the Seller's other agreements under this Agreement constitutes legal, tax or investment advice. Such Seller has consulted such legal, tax and investment advisors as the Seller, in the Seller's sole discretion, has deemed necessary or appropriate in connection with the sale of the Subject Class B Units under this Agreement. **SUCH SELLER ACKNOWLEDGES THAT SUCH SELLER WILL BE RESPONSIBLE FOR SUCH SELLER'S OWN TAX LIABILITY THAT MAY ARISE AS A RESULT OF SUCH SELLER'S SALE OF THE SUBJECT CLASS B UNITS TO THE COMPANY AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.**

(h) **Sophisticated Seller.** Such Seller acknowledges that (a) the Company currently may have, and later may come into possession of, information with respect to the Company that is not currently in existence, is not known to such Seller, and that may be material to a decision to sell the Subject Class B Units ("Seller Excluded Information"), (b) such Seller has determined to sell the Subject Class B Units notwithstanding its lack of knowledge of the Seller Excluded Information, and (c) the Company and its affiliates shall have no liability to such Seller, and such Seller waives and releases any claims that it might have against the Company or its affiliates whether under applicable securities laws or otherwise, with respect to the nondisclosure of the Seller Excluded Information in connection with the sale of the Subject Class B Units and the transactions contemplated by this Agreement. Such Seller understands that the Company and its affiliates will rely on the accuracy and truth of the foregoing representations, and such Seller hereby consents to such reliance.

#### A4.

#### REPRESENTATIONS OF THE COMPANY

(a) The Company hereby represents and warrants to, and agrees with and covenants to, each Seller, as of the date hereof, and as of the Closing that:

(a) **Due Authorization.** All action on the part of the Company necessary for the execution and delivery of this Agreement and the performance of all obligations of the Company hereunder has been taken, and this Agreement constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms, subject to (a) applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application limiting enforcement of creditors' rights generally and (b) the availability of equitable remedies and funds legally available to effect the Purchase. The Company has full capacity, power and right and authority to purchase such Subject Class B Units from each Seller as contemplated by this Agreement.

(b) **Counsel.** The Company has had the opportunity to review this Agreement, the documents referred to herein and the transactions contemplated by this Agreement with the Company's own legal counsel. The Company is relying solely on the Company's legal counsel and not on any statements or representations of the Sellers, or any of the Sellers' agents or counsel to the Sellers, for legal advice with respect to this Agreement or any transaction contemplated hereby, including, without limitation, the Purchase.

(c) **No Conflicts and Consents.** The execution and delivery of this Agreement, and the performance of the obligations of the Company hereunder do not and will not (a) violate, conflict with or result in the breach of any of the terms of, constitute a default under, result in any modification of, accelerate or permit the acceleration of the performance required by, otherwise give any other contracting party the right to terminate, or give rise to the loss of any benefit under, in each case with or without notice or lapse of time or both, any agreement, instrument, license or contract to which the Company is a party or by or to which the Company or any assets or properties of the Company, may be subject; (b) violate

any writ, ruling, order, directive, judgment or decree of any court, arbitrator or governmental agency or authority; or (c) violate any applicable law, rule, regulation or ordinance. No consent, approval, order, or authorization of, and no registration, qualification, designation, declaration, or filing of or with any government authority or third party is required in connection with the Company's purchase of the Subject Class B Units from each Seller or with the consummation of the transactions contemplated by this Agreement.

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## A5.

### INDEMNIFICATION; RELEASE

(a) **Survival as to the Sellers.** The representations and warranties of the Sellers contained in or made pursuant to this Agreement shall survive for a period of two years following the Closing and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of the Company. The covenants of the Seller contained in or made pursuant to this Agreement shall survive indefinitely.

(b) **Survival as to the Company.** The representations, warranties and covenants of the Company contained in or made pursuant to this Agreement shall survive for a period of two years after the Closing.

(c) **Indemnification.** Each Seller hereby agrees that it shall indemnify and hold harmless the Company, its affiliates, subsidiaries (direct and indirect), directors, managers, officers, members, employees, agents, lenders (and agents related thereto) and representatives (each, an "Indemnified Party") against any losses, claims, damages or liabilities to which an Indemnified Party may become subject, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any breach of any of the representations, warranties or agreements made by such Seller in this Agreement.

(d) **Release of Claims.** Effective as of the date hereof, each Seller, on behalf of such Seller and each of such Seller's affiliates, agents, trustees, beneficiaries, directors, managers, officers, subsidiaries, estates, successors, assigns, members and partners (each a "Releasor"), fully, finally, and forever waives, releases, relinquishes, and discharges all claims (including but not limited to Unknown Claims (as defined below)), demands, losses, rights, and causes of action of any nature whatsoever, that have been or could in the future be asserted in any forum, whether foreign or domestic, whether arising under federal, state, common, or foreign law, by the Releasor whether brought directly or indirectly against the Company or any of its officers, directors, managers, members, employees, affiliates, contractors, consultants, auditors, accountants, financial advisors, professional advisors, attorneys, investment bankers, representatives, insurers, trustees, trustors, agents, attorneys, professionals, predecessors, successors, assigns, heirs, executors, or administrators (the "Released Parties"), arising out of, based on, or relating in any way to any transaction with the Company that has occurred up until and including the date hereof, including, without limitation, any claim, demand, cause of action, obligation, debt and liability arising out of or relating to an investment in, holding or ownership of, and the sale or disposition of the Subject Class B Units (collectively, "Claims"); *provided, however*, that nothing in this release is intended, nor shall be construed, to release any Claims (a) based on or arising from fraud by the Released Parties, (b) arising out of any agreement or transaction entered into by any of the Parties after the date hereof or (c) arising from rights of the Releasor pursuant to this Agreement for full and complete payment for the Subject Class B Units. Each of the Releasors hereby irrevocably agrees to refrain from directly or indirectly asserting any claim or demand or commencing (or causing to be commenced) any suit, action or proceeding of any kind, in any court or before any tribunal, against any Released Party based upon any and all Claims. The Released Parties are intended third-party beneficiaries of this Section 5.4 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

"Unknown Claims" means any and all claims of every nature and description against the Released Parties which a Releasor does not know or suspect to exist in its favor at the time of this release including, without limitation, those which, if known by such Releasor might have affected its decision to enter into this Agreement or provide the releases. With respect to any and all such released claims, such Releasor stipulates and agrees that he shall expressly waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASING PARTY.

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**A6.**  
**MISCELLANEOUS**

(a) **Notices.** Except as otherwise provided herein, any notice, demand, or communication required or permitted to be given to any Party by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if (a) delivered personally to such Party, as applicable, (b) sent by such Party as applicable, to the applicable e-mail address set forth on the signature page hereto or (c) sent by registered or certified mail, postage prepaid, addressed to such Party at the applicable address set forth on the signature page hereto, as applicable. Except as otherwise provided herein, any such notice shall be deemed to be given on (i) the date on which the same was personally delivered, (ii) if sent via electronic mail, on the earlier of (1) the time sent (unless such Person previously elected via notice to the sender to render this clause (1) inapplicable to such Person); and (2) the time when actually received and opened by such Person; or (iii) if sent by registered or certified mail, on the seventh day after such notice was deposited in the United States mail addressed as aforesaid.

(b) **Governing Law.** This Agreement and the rights of the parties hereunder will be governed by, interpreted, and enforced in accordance with the laws of the State of Delaware, without regard to its choice of law provisions.

(c) **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement among the Company and the Sellers concerning the matters set forth herein. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by the Company and the Class B Unitholder Representative. If any conflict exists between the provisions of this Agreement and the provisions of any oral or prior agreement among the Company and the Sellers or any of them, the provisions of this Agreement shall prevail.

(d) **Additional Documents and Acts.** The Sellers and the Company agree to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and the transactions contemplated hereby.

(e) **Headings.** The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

(f) **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable and the remaining provisions of this Agreement will remain in full force and effect.

(g) **Transfers.**

(i) The Sellers shall not sell, assign, transfer, hypothecate, pledge or otherwise encumber, in any manner, this Agreement. Any attempt to sell, assign, transfer, hypothecate, pledge or otherwise encumber this Agreement and any levy of execution, attachment, or similar process on such securities or property shall be null and void. The Sellers shall not assign their right, title and interest in this Agreement, in whole or in part, without the prior written consent of the Company.

(ii) The Company may assign, transfer, hypothecate, pledge or otherwise encumber, this Agreement, or right, title and interest in this Agreement, in whole or in part, without the prior written consent of Sellers or any other person.

(h) **Heirs, Successors, and Assigns.** Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and the parties' respective heirs, legal representatives, successors and permitted assigns.

(i) **Preparation of Document/Independent Counsel.** Each Party acknowledges that such Party has had the opportunity to review this Agreement with independent legal counsel. Consequently,



no provision of this Agreement shall be construed against any Party on the grounds that such Party drafted the provision or caused it to be drafted.

(j) **Section.** Except to the extent provided to the contrary, references to the terms “Section,” mean to the corresponding Sections attached to or referred to in this Agreement.

(k) **Venue.** Any dispute relating hereto shall be heard solely and exclusively in the state or federal courts of Delaware, and the Parties consent to and agree to jurisdiction and venue therein and not to contest jurisdiction or move for *forum non conveniens* or otherwise dispute the forum. Notwithstanding the foregoing, any Person may bring an action (a) to enforce a judgment or order from a state or federal court of Delaware in any court with jurisdiction over the Person against whom such judgment or order is being enforced and (b) for specific performance or injunctive relief in any court with jurisdiction over the Person against whom such equitable relief is sought.

(l) **MUTUAL WAIVER OF JURY TRIAL.** EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE BETWEEN OR AMONG ANY OF THE PARTIES HERETO, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, RELATED OR INCIDENTAL TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY AND/OR THE RELATIONSHIP ESTABLISHED AMONG THE PARTIES HEREUNDER. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY BENCH TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(m) **Counterparts; Electronic Signature.** This Agreement may be executed in one or more counterparts each of which shall for all purposes be deemed an original, and all of such counterparts, taken together, shall constitute one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or electronic transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement.

(n) **Performance, Breach and Remedies.** Except as otherwise specifically provided in this Agreement, the remedies set forth in this Agreement are cumulative and shall not exclude any other remedies to which a Person may be lawfully entitled. The parties each acknowledge that, in view of the uniqueness of the transactions contemplated by this Agreement, each party may not have an adequate remedy at law for money damages in the event that this Agreement has not been performed in accordance with its terms, and, therefore, agrees that the other party shall be entitled to specific enforcement of the terms hereof in addition to any other remedy to which it may be entitled, at law or in equity, without any requirement for posting a bond. Each party agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that the other party has an adequate remedy at law, on the basis that any award of specific performance is not an appropriate remedy for any reason at law or in equity or on the basis that the other party has breached this Agreement in any respect.

*(Signature Pages Follow)*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

**COMPANY:**

HIYA HEALTH PRODUCTS, LLC

Signature: \_\_

Print Name: \_\_

Print Title: \_\_

Address: \_\_

Email: \_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

**SELLERS:**

[SELLER]

Signature: \_\_

Print Name: \_\_

Print Title: \_\_

Address: \_\_

Email: \_\_

**APPENDIX 1**  
**SPECIAL TAX AND ACCOUNTING PROVISION**

A1. **Accounting Definitions.** The following terms, which are used predominantly in this Appendix 1, shall have the meanings set forth below for all purposes under this Agreement.

(a) **“Adjusted Capital Account Balance”** means, with respect to any Unitholder, the balance of such Unitholder’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

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

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

The foregoing definition of Adjusted Capital Account Balance is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(b) **“Capital Account”** means, with respect to any Unitholder, the Capital Account maintained for such Person in accordance with the following provisions:

(i) To each such Person’s Capital Account, there shall be credited the amount of money and the initial Gross Asset Value of such Person’s Capital Contributions as determined by the Managers, such Person’s distributive share of Profits and any items in the nature of income or gain that are specially allocated pursuant to Sections A2 and A3, and the amount of any Company liabilities assumed by such Person.

(ii) To each such Person’s Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Company assets Distributions to such Person pursuant to any provision of this Agreement as determined by the Managers, such Person’s distributive share of Losses, and any items in the nature of expenses or losses that are specially allocated pursuant to Sections A2 and A3, and the amount of any liabilities of such Person assumed by the Company.

(iii) In the event any Units are Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the Transferred Units.

(iv) Section 752(c) of the Code shall be applied in determining the amount of any liabilities taken into account for purposes of this definition of “Capital Account.”

(v) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations. The Managers may modify the manner of computing the Capital Accounts or any debits or credits thereto (including debits or credits

relating to liabilities that are secured by contributions or Distributions of property or that are assumed by the Company or any Unitholder) in order to comply with such Regulations, provided that any such modification is not likely to have a material effect on the amounts distributable to any Unitholder pursuant to Section 13.2 upon the dissolution of the Company. Without limiting the generality of the preceding sentence, the Managers shall

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make any adjustments that are necessary or appropriate to maintain equality between the aggregate sum of the Capital Accounts and the amount of capital reflected on the balance sheet of the Company, as determined for book purposes in accordance with Regulations Section 1.704-1(b)(2)(iv)(g). The Managers shall also make any appropriate modifications if unanticipated events (for example, the availability of investment tax credits) might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

(c) “**Company Minimum Gain**” has the same meaning as the term “partnership minimum gain” under Regulations Section 1.704-2(d).

(d) “**Depreciation**” means, for each Fiscal Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; *provided, however*, that if such depreciation, amortization or other cost recovery deductions with respect to any such asset for federal income tax purposes is zero for any Fiscal Year, Depreciation shall be determined with reference to the asset’s Gross Asset Value at the beginning of such year using any reasonable method selected by the Managers.

(e) “**Gross Asset Value**” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(i) the initial Gross Asset Value for any asset (other than money) contributed by a Unitholder to the Company shall be its gross fair market value as determined by the Managers and the contributing Unitholder;

(ii) the Gross Asset Value of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Managers as of the following times: (1) the acquisition of additional Units in the Company by any new or existing Unitholder in exchange for more than a de minimis Capital Contribution; (2) the Distribution by the Company to a Unitholder of more than a de minimis amount of cash or property as consideration for Units in the Company, if (in any such event) such adjustment is necessary or appropriate, in the reasonable judgment of the Managers, to reflect the relative economic interests of the Unitholders in the Company; (3) the liquidation of the Company for federal income tax purposes pursuant to Regulations Section 1.704-1(b)(2)(ii)(g); or (4) the grant of an interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by an existing Unitholder acting in a Unitholder capacity, or by a new Unitholder acting in a Unitholder capacity or in anticipation of being a Unitholder;

(iii) the Gross Asset Value of any Company asset distributed to any Unitholder shall be adjusted to equal its gross fair market value on the date of Distribution;

(iv) the Gross Asset Value of the Company’s assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and Section A2(g); provided, however, that Gross Asset Values shall not be adjusted pursuant to this subsection (iv) to the extent that an adjustment pursuant to subsection

(ii) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (iv); and

(v) if the Gross Asset Value of an asset has been determined or adjusted pursuant to subsection (i), (ii) or (iv) above, such Gross Asset Value shall thereafter be

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adjusted by the Depreciation taken into account from time to time with respect to such asset for purposes of computing Profits and Losses.

(f) **“Member Nonrecourse Debt”** has the same meaning as the term “partner nonrecourse debt” under Regulations Section 1.704-2(b)(4).

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

(h) **“Member Nonrecourse Deductions”** has the same meaning as the term “partner nonrecourse deductions” under Regulations Section 1.704-2(i)(1). The amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for each Fiscal Year of the Company equals the excess (if any) of the net increase (if any) in the amount of Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt during such Fiscal Year over the aggregate amount of any Distributions during such Fiscal Year to the Unitholder that bears the economic risk of loss for such Member Nonrecourse Debt to the extent that such Distributions are from the proceeds of such Member Nonrecourse Debt which are allocable to an increase in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(2) of the Regulations.

(i) **“Nonrecourse Debt”** or **“Nonrecourse Liability”** has the same meaning as the term “nonrecourse liability” under Regulations Section 1.704-2(b)(3).

(j) **“Nonrecourse Deductions”** has the meaning set forth in Regulations Section 1.704-2(b)(1). The amount of Nonrecourse Deductions for a Company Fiscal Year equals the excess (if any) of the net increase (if any) in the amount of Company Minimum Gain during that Fiscal Year over the aggregate amount of any Distributions during that Fiscal Year of proceeds of a Nonrecourse Debt that are allocable to an increase in Company Minimum Gain, determined according to the provisions of Regulations Section 1.704-2(c).

(k) **“Profits”** or **“Losses”** means, for each Fiscal Year or other period, the taxable income or taxable loss of the Company as determined under Code Section 703(a) (including in such taxable income or taxable loss all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code) with the following adjustments:

(i) all items of gain or loss resulting from the sale of any Company assets shall be determined upon the basis of the Gross Asset Value of such property rather than the adjusted tax basis thereof;

(ii) any income of the Company that is exempt from federal income tax shall be added to such taxable income or loss;

(iii) any expenditures of the Company that are described in Code Section 705(a)(2)(B), or treated as such pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and that are not otherwise taken into account in the computation of taxable income or loss of the Company, shall be deducted in the determination of Profits or Losses;

(iv) if the Gross Asset Value of any Company asset is adjusted pursuant to subsection (ii) or (iii) of the definition of “Gross Asset Value” set forth in this Appendix 1, the amount of such adjustment shall

be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses unless such gain or loss is specially allocated pursuant to Section A2;

(v) in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in determining such taxable income or loss, there shall be deducted Depreciation, computed in accordance with the definition of such term in this Appendix 1, and

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(vi) notwithstanding any of the foregoing provisions, any items that are specially allocated pursuant to Section A2 or A3 or the second parenthetical of Section 6.1 shall not be taken into account in computing Profits or Losses.

A2. **Special Allocations.** The allocation of Profits and Losses for each Fiscal Year shall be subject to the following special allocations in the order set forth below:

(a) **Company Minimum Gain Chargeback.** If there is a net decrease in Company Minimum Gain for any Fiscal Year, each Unitholder shall be specially allocated items of income and gain for such year (and, if necessary, for subsequent years) in an amount equal to such Unitholder's share of the net decrease in Company Minimum Gain during such year, determined in accordance with Regulations Section 1.704-2(g)(2). Allocations pursuant to the preceding sentence shall be made among the Unitholders in proportion to the respective amounts required to be allocated to each of them pursuant to such Regulation. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f)(6). Any special allocation of items of Company income and gain pursuant to this Section A2(a) shall be made before any other allocation of items under this Appendix 1. This Section A2(a) is intended to comply with the "minimum gain chargeback" requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) **Member Nonrecourse Debt Minimum Gain Chargeback.** If there is a net decrease during a Fiscal Year in the Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt, then each Unitholder with a share of the Member Nonrecourse Debt Minimum Gain attributable to such debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of income and gain for such year (and, if necessary, subsequent years) an amount equal to such Unitholder's share of the net decrease in the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the preceding sentence shall be made among the Unitholders in proportion to the respective amounts to be allocated to each of them pursuant to such Regulation. Any special allocation of items of income and gain pursuant to this Section A2(b) for a Fiscal Year shall be made before any other allocation of Company items under this Appendix 1, except only for special allocations required under Section A2(a). The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section A2(b) is intended to comply with the provisions of Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) **Qualified Income Offset.** If any Unitholder receives any adjustments, allocations, or Distributions described in clauses (4), (5) or (6) of Regulations Section 1.704-1(b)(2)(ii)(d), items of income and gain shall be specially allocated to each such Unitholder in an amount and manner sufficient to eliminate as quickly as possible, to the extent required by such Regulation, any deficit in such Unitholder's Adjusted Capital Account Balance, such balance to be determined after all other allocations provided for under this Appendix 1 have been tentatively made as if this Section A2(c) were not in this Agreement.

(d) **Gross Income Allocation.** In the event any Unitholder has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount (if any) such Unitholder is obligated to restore pursuant to any provision of this Agreement, and (ii) the amount such Unitholder is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Unitholder shall be specially allocated items of income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section A2(d) shall be made only if and to the extent that such Unitholder would have a deficit Capital Account in excess of such

sum after all other allocations provided for in this Appendix 1 have been made as if Section A2(c) and this Section A2(d) were not in the Agreement.

(e) **Nonrecourse Deductions**. Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated to the Unitholders in accordance with their Percentage Interests.

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(f) **Member Nonrecourse Deductions.** Member Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated, in accordance with Regulations Section 1.704-2(i)(1), to the Unitholder or Unitholders who bear the economic risk of loss for the Member Nonrecourse Debt to which such deductions are attributable.

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

(h) **Syndication Expenses.** Any syndication expenses which must be deducted from each Unitholder's Capital Account in accordance with Regulations Section 1.704-1(b)(2)(iv)(i)(2) in the year paid shall be allocated pro rata to the Unitholders based on their Percentage Interest. If Unitholders are admitted to the Company on different dates, all syndication expenses shall be divided among the Unitholders from time to time so that, to the extent possible, the cumulative syndication expenses allocated pursuant to this Section A2(h) with respect to each Unit is the same amount. In the event the Managers shall determine that such result is not likely to be achieved through future allocations of syndication expenses, the Managers may allocate a portion of Profits or Losses so as to achieve the same effect on the Capital Accounts of the Unitholders, notwithstanding any other provision of this Agreement.

A3. **Curative Allocations.** The allocations set forth in subsections (a) through (g) of Section A2 ("**Regulatory Allocations**") are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding any other provisions of this Appendix 1 (other than the Regulatory Allocations and the next two (2) following sentences), the Regulatory Allocations shall be taken into account in allocating other Profits, Losses and items of income, gain, loss and deduction among the Unitholders so that, to the extent possible, the net amount of such allocations of other Profits, Losses and other items and the Regulatory Allocations to each Unitholder shall be equal to the net amount that would have been allocated to each such Unitholder if the Regulatory Allocations had not occurred. For purposes of applying the preceding sentence, Regulatory Allocations of Nonrecourse Deductions and Member Nonrecourse Deductions shall be offset by subsequent allocations of items of income and gain pursuant to this Section A3 only if (and to the extent) that: (a) the Managers reasonably determine that such Regulatory Allocations are not likely to be offset by subsequent allocations under Section A2(a) or Section A2(b), and (b) there has been a net decrease in Company Minimum Gain (in the case of allocations to offset prior Nonrecourse Deductions) or a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt (in the case of allocations to offset prior Member Nonrecourse Deductions). The Managers shall apply the provisions of this Section A3, and shall divide the allocations hereunder among the Unitholders, in such manner as will minimize the economic distortions upon the Distributions to the Unitholders that might otherwise result from the Regulatory Allocations.

A4. **General Allocation Rules.** For purposes of determining the Profits, Losses or any other items allocable to any period,

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Profits, Losses and any such other items shall be determined on a daily, monthly or other basis, as determined by the Managers using any method permissible under Code Section 706 and the Regulations thereunder. For purposes of determining the Unitholders' proportionate shares of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), their respective interests in Unitholder profits shall be in the same proportions as their Percentage Interests.

A5. **Recharacterization of Fees or Distributions**. In the event that a guaranteed payment to a Unitholder is ultimately recharacterized (as the result of an audit of the Company's return or otherwise) as a Distribution for federal income tax purposes, and if such recharacterization has the effect of disallowing a deduction or reducing the adjusted basis of any asset of the Company, then an amount of Company gross income equal to such disallowance or reduction shall be allocated to the recipient of such payment. In the event that a Distribution to a Unitholder is ultimately recharacterized (as the result of an audit of the Company's return or otherwise) as a guaranteed payment for federal income tax purposes, and if any such recharacterization gives rise to a deduction, such deduction shall be allocated to the recipient of the Distribution.

A6. **Recapture of Deductions and Credits**. If any "recapture" of deductions or credits previously claimed by the Company is required under the Code upon the sale or other taxable disposition of any Company assets, those recaptured deductions or credits shall, to the extent possible, be allocated to Unitholders, pro rata in the same manner that the deductions and credits giving rise to the recapture items were allocated using the "first-in, first-out" method of accounting; provided, however, that this Section A6 shall only affect the characterization of income allocated among the Unitholders for tax purposes.



## **USANA Health Sciences Announces**

### **Strategic Acquisition of Hiya Health**

*Hiya is a fast-growing, emerging leader of high-quality children's health & wellness products.*

*Broadens USANA's reach into the highly attractive direct-to-consumer channel driven by Hiya's powerful subscription model with runway for sustainable future growth.*

*Expected to be immediately accretive to 2025 adjusted EBITDA.*

*9/30/2024 LTM net sales of \$103 million, LTM net income of \$19 million, and LTM adjusted EBITDA of \$22 million.*

*The Company will discuss the transaction during a conference call on Monday, December 23, 2024, at 5:00 PM ET.*

**SALT LAKE CITY, December 23, 2024 (BUSINESS WIRE)**—USANA Health Sciences, Inc. (NYSE: USNA) (the “Company,” “USANA”), today announced its acquisition of a 78.8% controlling ownership stake in Hiya Health Products, LLC (“Hiya”), a leading direct-to-consumer provider of high-quality children’s health & wellness products. The \$205 million cash transaction closed on December 23, 2024 and is anticipated to be accretive to USANA’s 2025 adjusted EBITDA. For the last twelve months ended September 30, 2024 (unaudited), Hiya generated net sales of \$103 million, net income of \$19 million, and adjusted EBITDA of \$22 million. As of September 30, 2024, Hiya had more than 200,000 customers.

“The Hiya brand is a natural fit for USANA and this acquisition represents a key strategic milestone for our business,” said Jim Brown, President and Chief Executive Officer of USANA



Health Sciences, Inc. “Hiya’s co-founders, Darren Litt and Adam Gillman, have disrupted the children’s health and wellness market by building a high quality, better-for-you brand that aligns with our vision of creating the healthiest family on Earth. This strategic acquisition adds a diversified layer of growth to USANA’s overall business, while maintaining our commitment to our core direct sales business, where we continue to invest in initiatives to drive growth. Notably, this acquisition will allow USANA to reach a broader audience by diversifying distribution channels through Hiya, which we believe will enhance our ability to generate sustainable long-term growth and deliver value for our stakeholders. Darren and Adam will continue to lead Hiya through its next phase of growth. Their leadership and expertise is instrumental to Hiya’s business, which is now part of USANA’s mission and strategic objectives.”

Darren Litt, co-founder and CEO of Hiya, commented, “Today represents an exciting chapter for Hiya and we are thrilled to join the USANA family. As parents ourselves, we recognized that so many wellness companies did not prioritize our children’s health interests, so we created Hiya to give families the very best in clean, honest nutrition. With the help of USANA’s extensive capabilities, support and international expertise, we can now extend that commitment to create healthy products for more families in more countries. USANA and Hiya share a deep commitment to improving the lives of families everywhere by providing the best nutritional products possible, and we look forward to continuing this exciting journey as part of USANA.”

## Strategic Rationale

- **Fast-Growing, Emerging Leader in the Children’s Health and Wellness Market.** The acquisition of Hiya provides the opportunity for USANA to expand its presence in the children’s health & wellness market through Hiya. For the last twelve months ended September 30, 2024, Hiya’s net sales of \$103 million grew 50% as compared to fiscal year 2023. For fiscal year 2025, the Company currently anticipates Hiya’s net sales growth to approach 30% year-over-year.

- **Strengthens USANA's Financial Profile.** Hiya offers a compelling subscription model with attractive margins, profitability, and cash flow generation, which is expected to enhance the Company's ability to deliver long-term growth and drive shareholder value. Hiya's domestic profitability diversifies USANA's geographic sales mix and is anticipated to lower the Company's consolidated effective tax rate and create a more tax-efficient structure.
- **Presents Opportunity to Accelerate Growth and Enhance Profitability by Leveraging Synergies.** Over the next several years, USANA and Hiya will work together to take advantage of identified synergies, assets and expertise across both companies to create efficiencies, and to accelerate growth and profitability. For example, there are opportunities for Hiya to leverage USANA's significant manufacturing and international expansion expertise. Similarly, USANA may leverage Hiya's market data insights, marketing expertise, and children-focused products within its direct sales channel.
- **Channel Expansion into Direct-to-Consumer Wellness Market with a Leading and Proven Brand.** Hiya currently holds a leading position in children's Vitamins, Minerals & Supplements brand sales in the United States<sup>i</sup> and has a clear pathway and strong growth strategy to become the #1 children's wellness platform through new product introductions, channel expansion, and geographic expansion. Hiya's commitment to being the most trusted and preferred brand for wellness products in the 0-18 age range is an additive category for the Company and is complimentary to USANA's vision of the healthiest family on Earth.
- **Expands the Company's United States Operations.** The transaction meaningfully expands and diversifies the Company's revenue mix as Hiya's net sales are generated in the United States through their direct-to-consumer subscription model, with plans to enter other sales channels. This will allow USANA to reach a broader audience of health-conscious consumers to grow the enterprise's overall customer base.

<sup>i</sup> Source: Nielsen

### **Transaction Highlights**

- The Company made an initial cash investment of approximately \$205 million (subject to customary closing and post-closing purchase price adjustments) in exchange for a 78.8% ownership stake in Hiya.
- Transaction structure includes a put/call feature that provides for USANA's acquisition of the remaining rollover equity at a pre-negotiated valuation scale, which is based on Hiya's financial performance.
- The transaction was financed with \$200 million cash on hand with the balance covered by the Company's existing credit facility.

BofA Securities acted as exclusive financial advisor to the Company in connection with the transaction. Wilson Sonsini Goodrich & Rosati, P.C. served as the Company's legal advisor. William Hood & Company, LLC acted as exclusive financial advisor to Hiya. Bodman PLC acted as Hiya's legal advisor.

### **Conference Call**

The Company will provide a supplemental presentation and discuss the transaction on a conference call on Monday, December 23, 2024 at 5:00 PM Eastern Time. The supplemental presentation and live audio webcast of the conference call will be available on the Company's investor relations website at <http://ir.usana.com>.

### **Non-GAAP Financial Measures**

This press release contains the non-GAAP financial measure LTM adjusted EBITDA of Hiya. Adjusted EBITDA is a Non-GAAP financial measure of earnings before interest, taxes,

depreciation, and amortization that also excludes certain adjustments as indicated below in the reconciliation from net income.

The Company prepares its financial statements using U.S. generally accepted accounting principles (“GAAP”) and investors should not directly compare with or infer relationship from any of the Company’s operating results presented in accordance with GAAP to the LTM adjusted EBITDA of Hiya. We believe that this non-GAAP financial information of Hiya may be helpful to investors as an indication of future cash flow generation. Non-GAAP financial measures have limitations in their usefulness to investors because they have no standardized meaning prescribed by GAAP and are not prepared under any comprehensive set of accounting rules or principles. In addition, other companies, including companies in our industry, may calculate similarly titled non-GAAP financial measures differently or may use other measures to evaluate their performance, all of which could reduce the usefulness of non-GAAP financial information as a tool for comparison. As a result, the non-GAAP financial information of Hiya is presented for supplemental informational purposes only and should not be considered in isolation from, or as a substitute for financial information presented in accordance with GAAP.

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The following is a reconciliation of net income, presented and reported in accordance with GAAP, to Adjusted EBITDA:

*(Unaudited)*

	<b>Last Twelve Months Ended (\$000's) 30-Sep-24</b>
	<hr/>
<b>Net income</b>	<b>\$ 19,416</b>
<u>Definitional Adjustments:</u>	
Interest expense	143
Depreciation and amortization	38
Income tax expense	80
EBITDA before Adjustments	<hr/> 19,677
<u>Adjustments to EBITDA:</u>	
Transaction expenses and other non-recurring items	760
Non-operational costs	566
Normalizations	321
Timing adjustments	212
Management compensation	142
<b>Adjusted EBITDA</b>	<hr/> <b>\$ 21,678</b> <hr/>

## About USANA

USANA develops and manufactures high-quality nutritional supplements, functional foods and personal care products that are sold directly to Associates and Preferred Customers throughout the United States, Canada, Australia, New Zealand, Hong Kong, China, Japan, Taiwan, South Korea, Singapore, Mexico, Malaysia, the Philippines, the Netherlands, the United Kingdom, Thailand, France, Belgium, Colombia, Indonesia, Germany, Spain, Romania, Italy, and India. More information on USANA can be found at [www.usana.com](http://www.usana.com).

## About Hiya



Hiya is the leading children's health brand, re-imagining kids' wellness with an inspired range of clean-label products. Offering a delicious and high-quality line of powders and chewables, Hiya is at the forefront of wellness with a focused assortment of better-for-you products. Since its founding in 2020, Hiya has established itself as a trusted name in the industry and is loved by both parents and children with adherence to the highest clean nutrition standards, ingredient transparency, and commitment to continuous improvement through ongoing collaborations with experts. More information on Hiya can be found at [www.hiyahealth.com](http://www.hiyahealth.com).

### **Safe Harbor**

This press release contains forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act, including but not limited to statements that: Hiya is fast growing; the Hiya acquisition will be accretive to USANA's 2025 adjusted EBITDA, experience net sales growth approaching 30% year-over-year in fiscal 2025, allow USANA to reach a broader audience, generate long-term growth, deliver value for USANA stakeholders, scale the Hiya brand, bring better health to children across the country and the world, enhance USANA's geographic sales mix and income tax efficiency in the near and long-term, take advantage of synergies, create efficiencies, accelerate growth and profitability, expand and diversify USANA's revenue mix, grow overall customer base, and strengthen USANA's overall financial profile; Mr. Litt and Mr. Gillman will continue to lead Hiya through its next phase of growth; Hiya will have a clear pathway and growth strategy to become the #1 children's wellness platform through new product introductions, channel expansion, and geographic expansion; and other forward-looking statements. These forward-looking statements are based on current plans, expectations, estimates, forecasts, and projections as well as the beliefs and assumptions of management. Words such as "expect," "vision," "envision," "evolving," "drive," "anticipate," "intend," "maintain," "should," "believe," "continue," "plan," "goal," "opportunity," "estimate," "predict," "may," "will," "could," and "would," and variations of these terms or the negative of these terms and similar expressions are intended to identify



these forward-looking statements. Our actual results could differ materially from those projected in these forward-looking statements, which involve a number of risks and uncertainties, many of which involve factors or circumstances that are beyond our control, including: risks that the acquisition disrupts each company's current plans and operations; the diversion of the attention of the management teams of USANA and Hiya from ongoing business operations; the ability of to retain key personnel of Hiya; the ability to realize the benefits of the acquisition, including efficiencies and cost synergies; the ability to successfully integrate Hiya's business with USANA's business, at all or in a timely manner; the amount of the costs, fees, expenses and charges related to the acquisition; global economic conditions generally, including continued inflationary pressure around the world and negative impact on our operating costs, consumer demand and consumer behavior in general; reliance upon our network of independent Associates; risk that our Associate compensation plan, or changes that we make to the compensation plan, will not produce desired results, benefit our business or, in some cases, could harm our business; risk associated with governmental regulation of our products, manufacturing and direct selling business model in the United States, China and other key markets; potential negative effects of deteriorating foreign and/or trade relations between or among the United States, China and other key markets; potential negative effects from geopolitical relations and conflicts around the world, including the Russia-Ukraine conflict and the conflict in Israel; compliance with data privacy and security laws and regulations in our markets around the world; potential negative effects of material breaches of our information technology systems to the extent we experience a material breach; material failures of our information technology systems; adverse publicity risks globally; risks associated with commencing operations in India and future international expansion and operations; uncertainty relating to the fluctuation in U.S. and other international currencies; and the potential for a resurgence of COVID-19, or another pandemic, in any of our markets in the future and any related impact on consumer health, domestic and world economies, including any negative impact on discretionary spending, consumer demand, and consumer behavior in general. The contents of this release should be considered in

conjunction with the risk factors, warnings, and cautionary statements that are contained in our most recent filings with the Securities and Exchange Commission. The forward-looking statements in this press release set forth our beliefs as of the date hereof. We do not undertake any obligation to update any forward-looking statement after the date hereof or to conform such statements to actual results or changes in the Company's expectations, except as required by law.

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**USANA**

## Hiya Health | Acquisition Overview

NYSE: USNA

December 2024

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# Disclaimer

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## Industry and Market Data.

Certain information contained in this presentation relates to or is based on studies, publications, surveys and other data obtained from third-party sources and the Company's own internal estimates and research. While the Company believes such third-party sources to be reliable as of the date of this presentation, it has not independently verified, and makes no representation as to the adequacy, fairness, accuracy or completeness of, any information obtained from third-party sources. In addition, all of the market data included in this presentation involves a number of assumptions and limitations, and there can be no guarantee as to the accuracy or reliability of such assumptions. Finally, while the Company believes its research is reliable, such research has not been verified by any independent source.

## Non-GAAP Financial Measures.

The Company prepares its financial statements using U.S. generally accepted accounting principles ("GAAP") and investors should not directly compare with or infer relationship from any of the Company's operating results presented in accordance with GAAP to the LTM adjusted EBITDA of Hiya. Adjusted EBITDA is a Non-GAAP financial measure of earnings before interest, taxes, depreciation, and a amortization that excludes certain adjustments as indicated in the reconciliation from net income provided herein. We believe that this non-GAAP financial information of Hiya may be helpful to investors as an indication of future cash flow generation. Non-GAAP financial measures have limitations in their usefulness to investors because they have no standardized meaning prescribed by GAAP and are not prepared under any comprehensive set of accounting rules or principles. In addition, other companies, including companies in our industry, may calculate similarly titled non-GAAP financial measures differently or may use other measures to evaluate their performance, all of which could reduce the usefulness of non-GAAP financial information as a tool for comparison. As a result, the non-GAAP financial information of Hiya is presented for supplemental informational purposes only and should not be considered in isolation from, or as a substitute for financial information presented in accordance with GAAP.

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## USANA Management Team



**JIM BROWN**  
Chief  
Executive Officer



**DOUG HEKKING**  
Chief  
Financial Officer



**WALTER NOOT**  
Chief  
Operating Officer



**JOSH FOUKAS**  
Chief  
Legal Officer



**BRENT NEIDIG**  
Chief  
Commercial Officer

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# Hiya Is a Compelling Strategic Fit

- 1 Accelerates USANA's Vision of Creating the Healthiest Family on Earth
- 2 Increases Sales and Profitability
- 3 Hiya's Direct-to-Consumer Model Adds a Diversified Layer of Growth
- 4 Strengthens USANA's Financial Profile
- 5 Expands USANA's Business in the United States

# Hiya Accelerates USANA's Vision



Aligned  
Company  
Visions

Creating the Healthiest  
Family on Earth



High-Quality,  
Premium  
Products

Commitment to Innovative,  
Premium Nutrition and Wellness  
Products



Health-Focused  
Customer Base

Increases Active  
Customer Base



Children's  
Wellness  
Category

Immediate Impact In The  
Children's Nutrition Market

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# The Hiya Management Team

Experienced, driven, disciplined, creative

DARREN LITT



CEO,  
Co-Founder

Successful entrepreneur  
Previously founded  
MarketerHire and GoLive!  
Mobile

2024 Ernst & Young  
Entrepreneur of the Year  
award.

BS, UC Berkeley  
JD, UCLA Law School

ADAM GILLMAN



President, COO,  
Co-Founder

Oversees, directs and  
manages the day-to-day  
operations

Previously was the CMO of  
GoLive! Mobile

BS, USC School of Business

CORINNE CROCKETT



Chief Marketing Officer

Leads all aspects of marketing

Led Marketing teams at  
high-growth startups for 15  
years, including Outer, Thrive  
and Match.com

BA, UCLA

MBA, UC Berkeley Haas School  
of Business

JOE BARGER



Chief Revenue Officer

Focuses on customer  
retention, data and net  
LTV optimization

Previously ran Business  
Intelligence and Operations at  
PrettyLitter

BA, Michigan State, Eli Broad  
School of Business

BONNIE HICK



Chief Financial Officer

Oversees financial planning  
and accounting

Previously worked as a  
fractional consulting CFO and  
eight years at KPMG as an  
auditor

BA, Master of Professional  
Accounting, University of Texas

CPA issued in 2011

# Hiya is Reimagining Children's Health and Wellness



FOUNDED in 2020 with the vision of bringing “better-for-you” to children’s health and wellness products.

HIYA’S next-generation products deliver clean, honest ingredients that discerning parents demand, combined with great taste and high engagement that kids love!

*Hiya’s “Kidsperience” removes the traditional barriers to better nutrition by making healthy habits fun and interactive for kids.*

# Leading The Way in Children's Health and Wellness

**81%**

of consumers that say it's important to them to purchase clean-label products<sup>(1)</sup>

**72%**

of consumers looking to reduce sugar intake or avoid it entirely<sup>(1)</sup>

**65%**

of consumers that purchase better-for-you products<sup>(1)</sup>

## Incumbent Brands

Food & Beverage

## Better-for-You Brands



Hygiene & Personal Care



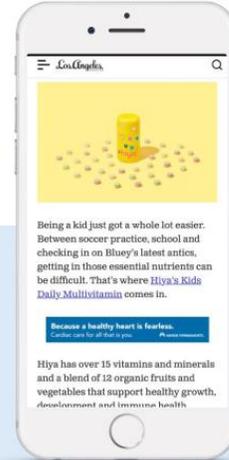
Children's Wellness



<sup>(1)</sup> Acosta Group, GutCheck, and International Food Information Council

# Diversified Marketing

Influencers  
Collaborations  
Podcasts  
Instagram  
Google  
Facebook



Tik Tok  
Meta  
Advertorial  
Branded Ads  
Direct Mail  
Display Ads



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# The Hiya Subscription Model



## PREDICTABLE REVENUE

Subscriptions provide a steady, predictable income stream, making it easier to manage cash flow and plan for growth



## STRONG CUSTOMER RELATIONSHIPS

The ongoing nature of subscriptions fosters stronger relationships with customers by making it easier for them to receive products regularly, which leads to higher retention rates and loyalty



## COST EFFICIENCIES

Hiya's subscription business model focuses on retaining existing subscribers, which lowers expenses on acquiring new customers



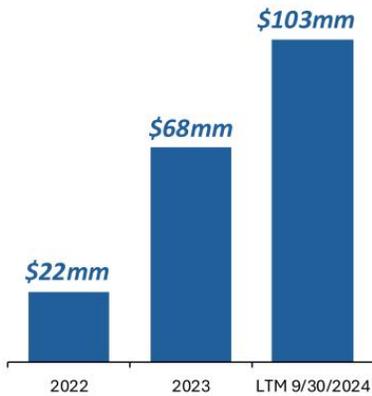
## OPERATIONAL BENEFITS

Hiya's subscription model provide rich data on customer preferences and behaviors, which enables personalized offerings, efficient marketing and data-driven innovation insights

# Rapid Growth With Strong Financials

Hiya's Subscription Model Features Attractive Margins and Cash Flow Generations

## Net Sales



## Net Income / Adjusted EBITDA <sup>(1)</sup>



## Customers <sup>(2)</sup>



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## Future Hiya Growth Initiatives



Provide the ultimate “Kidsperience” through new products and new brand collaborations.

Increase availability through other online marketplaces and select retail partners.

Leverage USANA's expertise to expand into new geographic markets.

# Immediate and Long-Term Upside

Hiya Immediately Positions USANA as a Leader In The Attractive, Growing Children's Health and Wellness Category

## Long-Term Tailwinds In Children's Health & Wellness

**\$9.9B**

Annual Sales<sup>(1)</sup>

Large Category

**7.0%**

Sales CAGR<sup>(2)</sup>

Healthy Long-Term Trends



**8.1%**

DTC Sales CAGR<sup>(2)</sup>

Growing Faster than other VMS Distribution Channels

# Strengthens Revenue and Expands Customer Base

Estimated Pro Forma Revenue by Sales Channel



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# Transaction Overview

## Structure and Consideration

- Transaction enterprise value of \$260mm<sup>1</sup>
- Of the \$260mm enterprise value, USANA paid the sellers \$205mm cash at closing for a 78.8% ownership interest with the sellers rolling \$55mm of equity representing a 21.2% ownership interest
- Put/Call features in the transaction structure provide for the potential acquisition of remaining rollover equity
- Funded the \$205mm acquisition, related transaction costs and initial working capital needs through \$200mm of cash reserves and a draw of \$23mm on its credit facility
- Hiya's co-founders and management team will remain in place

## Income Statement

- Combined Net Sales in excess of \$960mm for the LTM 9/30/2024 period (unaudited)
- Accretive to FY2025 Adjusted EBITDA
- Presented numbers do not reflect potential synergies although longer-term benefits are expected given overlap in business activities

# Transaction Exemplifies USANA's Approach To Disciplined Capital Allocation



## Strong Cash Generation

Enables Continued Reinvestment in Organic Growth Initiatives



## Attractive Margins

Strengthens USANA's Financial Profile



## DTC Subscription Model

Large and Growing Subscriber Base



## Reduced Effective Tax Rate

Opportunity to Reduce USANA's Effective Tax Rate with Improved Domestic Profitability



## Financially Accretive

Immediately Accretive to Adjusted EBITDA



## Balance Sheet Strength

Leverage: 0.2x Net Debt/Adjusted EBITDA<sup>(1)</sup>

The USANA logo is rendered in a bold, white, sans-serif typeface. The letters are closely spaced, and a small registered trademark symbol (®) is positioned at the top right of the final letter 'A'.

USANA<sup>®</sup>

The hiya logo is written in a white, lowercase, sans-serif font. A small trademark symbol (™) is located at the top right of the final letter 'a'.

hiya<sup>™</sup>

# Non-GAAP Reconciliation

hiya™

(Unaudited)

	<b>Last Twelve Months (S000's)</b>
	<b>30-Sep-24</b>
<b>Net income</b>	<b>\$ 19,416</b>
<b>Definitional Adjustments:</b>	
Interest expense	143
Depreciation and amortization	38
Income tax expense	80
EBITDA before Adjustments	19,677
<b>Adjustments to EBITDA:</b>	
Transaction expenses and other non-recurring items	760
Non-operational costs	566
Normalizations	321
Timing adjustments	212
Management compensation	142
<b>Adjusted EBITDA</b>	<b>\$ 21,678</b>



**Cover****Dec. 23, 2024****Cover [Abstract]**

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<u>Document Period End Date</u>	Dec. 23, 2024
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<u>Entity Tax Identification Number</u>	87-0500306
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<u>Entity Address, City or Town</u>	Salt Lake City
<u>Entity Address, State or Province</u>	UT
<u>Entity Address, Postal Zip Code</u>	84120
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<u>Trading Symbol</u>	USNA
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